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Reforming institutional responses to violence against women

**A thesis submitted for the degree of Doctor of
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by

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Abstract

Battering has been described as an example of the total institution (Avni, 1991), within which batterers use violence, threats of violence, isolation, and other tactics of abuse to enforce compliance with their rules. Battering has well-documented physical, psychological, social, and economic consequences for women. It flourishes within the batterer-enforced privacy of the home. When it does come to the attention of outsiders, it is too often disregarded or trivialised – even when women seek protection through the justice system. In effect, this form of violence against women continues because it *works*.

Drawing on both the literature and my own research, I argue that although there are various positive initiatives, single interventions are rarely enough to successfully breach the walls of the total institution and provide the resources needed for women to live independently of the men who batter them. Refuges (shelters) and advocacy programmes for women, stopping violence programmes for men, criminal justice policies mandating the arrest and prosecution of batterers, and the availability of civil-law remedies for battered women - none of these has proved to be the “magic bullet” (Buzawa & Buzawa, 1993b) which will, of itself, end battering. This is hardly surprising considering the resilience of the total institution and the multiple resources battered women require if they are to exercise a presumed choice to leave the batterer.

I argue that a more comprehensive approach is needed in which multiple interventions are delivered in a consistent and co-ordinated manner with the twin objectives of (a) enhancing the safety and autonomy of women and (b) holding men accountable for their use of violence. Within the justice system, this can be achieved by legislative and administrative reforms which reduce the ability of decision makers to exercise discretion in woman-blaming and batterer-colluding ways, which ensure that there is a common set of priorities across agencies, which provide for the sharing of safety-relevant information between agencies and which include mechanisms for battered women’s advocates to monitor institutional practices so that decision makers can, in effect, be held accountable to battered women.

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Ruth Busch, from whom I have learnt how the dominant discourses within which I was raised simultaneously perpetrate and mask injustice and oppression. Ruth has often been the one to ask the crucial question in interviews and to spot the inherent contradictions in decision-makers' rationalisations. In a very real sense, this could almost be her thesis.

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Chapter 1

Introduction

Peggy – and Linda

There are certain stories which stay with one for a long time, which forever alter the way one views the world. For me, one such story began on an autumn afternoon in 1991 as I sat in a large city police station, reading through a voluminous file concerning what might easily have been called “another domestic.” As part of a larger study (Busch, Robertson & Lapsley, 1992), I was compiling a case study on a woman we called “Peggy.”

Peggy had been killed by her ex-husband (whom we called “Brian”) within four hours of his being given bail by the police. Of course it was not the first time Peggy had been attacked: she had been beaten for much of the 30-odd years she had been married. Like many batterers, Brian had told her that he would kill her if she ever left. But Peggy did leave, once her children reached adulthood, and moved into the first of a series of flats. She had to keep moving because Brian kept tracking her down. Peggy obtained protection orders against him but he breached them regularly. Peggy complained to the police, but each time the police did nothing more than issue a warning.

Finally, however, Brian was arrested. This happened on a Friday afternoon. When Brian attempted to get into Peggy’s flat, she rang the police. They came and found Brian across the street. He had been drinking, he complained that he only wanted to see his wife, he was tearful. Brian was searched and found to have in his pocket four rounds of .303 ammunition. He explained that he was going to leave them in Peggy’s letterbox.

Brian was taken to the police cells where he continued to complain that he just wanted to see his wife, that he was upset at the separation, and that he was not a real criminal. As the effects of the alcohol appeared to wear off, the officer in charge decided that Brian could be bailed. Peggy was not advised. Within four hours she was dead. Brian had left the station, picked up a rifle, broken into Peggy’s flat, shot her and then turned the rifle on himself.

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My colleague, Ruth Busch, and I were naturally interested in how a man who had repeatedly breached protection orders and had been found to be carrying rifle shells could be given bail so easily, and without notifying his victim. We spoke to one of the police officers involved. He told us how he found a tearful Brian outside the flat complaining about not being able to see Peggy. In the officer's words, Brian was "blubbing." We asked him what he thought Brian was trying to do by leaving ammunition in Peggy's letter box. To the police officer it was quite clear: Brian was trying to terrorise Peggy. Then Ruth asked a question: "Did you think Brian was dangerous?"

"Dangerous?" said the police officer, almost incredulously. "No, he was pathetic."

Of course, to the police officer, Brian was "pathetic." In many circles, there are few things more pathetic than a grown man crying. Brian was clearly not a danger to the police officer. But in substituting his experience of Brian for Peggy's experience, the police officer had graphically illustrated to us what we began to call "the gap." That is, a gap between women's experience of violence and the response of the justice system to that violence. A gap in which violence against women is trivialised or rendered invisible. A gap in which discourses about men's violence and terroristic behaviour are displaced by discourses about relationship dynamics, communication problems, vindictive women and a supposed need for children to see their fathers. A gap in which police officers, judges, lawyers, counsellors, priests, family members, bosses and workmates repeatedly collude with the abuser's rationalisations and blame women for the violence they have suffered. This thesis is about that gap and attempts to close it.

In lectures and training seminars, I have often repeated the story about Peggy and the police officer, but the story now has a more personal sequel. On another Friday afternoon, a year or so after our interview with the police officer, I left my office at the university to travel into the city where the offices of the Hamilton Abuse Intervention Project are located. I was intending to join friends there in a visit to a local bar. We never did make it to the bar. That day, a woman, whom I shall call Linda, had been assisted by project staff to obtain from the Family Court protection orders and a tenancy order giving her the right of sole occupancy of the flat she had jointly occupied with her husband. In the normal course of events, it would have been well into the next week before the bailiffs had served those orders, so to

expedite matters it was decided that project staff would serve the orders. I was asked to help.

While we were getting organised, I learnt from my friends a little about Linda's husband. He had previously been convicted of assaults upon her. He had inflicted serious injuries, including, on a couple of occasions, knocking her unconscious. He struck me as being a very dangerous man.

Considering the risks, four or five of us, as well as Linda, went to her flat to find her husband. We parked our cars across the road, to make it very clear to him that he was being watched. Darren, the Maori men's programme co-ordinator, Linda and I walked across to the flat where Linda's husband was sitting on the front steps. To say I was nervous is a considerable understatement, but I did my best to control the nervousness in my voice as I introduced myself, explained that we were from the Hamilton Abuse Intervention Project, and that we had orders to serve upon him. I began to explain what these orders meant.

Linda's husband was upset. He held his head in his hands. He was teary-eyed. He told Linda how sorry he was. He began to implore her to give him another chance. He explained how he had just bought a gift for her to show how sorry he was. He began to cry. He looked rather pathetic.

I found myself relaxing. In fact, I remember thinking, "This man is not so dangerous after all!"

Of course, I had made the very same mistake as the police officer who had arrested Brian. Despite several years of working with men who batter, despite hearing any number of stories of men's violence against women, despite having, I thought, a reasonable understanding of the justice system's failure to protect victims and hold abusers accountable for their use of violence, I had responded to Linda's husband out of my own experience of him instead of ensuring that my response was informed by, and was accountable to, Linda's experience. This thesis is also about attempts to ensure key decision makers are made accountable to the experiences of battered women.

An outline of the thesis

In this I will describe some of the problematic aspects of the New Zealand justice system's response to violence against women within the domestic sphere and examine attempts to reform that response. I will pay particular attention to the Police, the Courts and related institutions, developing an analysis of the problems which arise *within* these institutions. I will also develop an analysis of the problems which arise *between* these institutions: that is, I will be concerned with the problem of uncoordinated action. And finally, I will present and analyse data from the evaluation of the Hamilton Abuse Intervention Project, a community-based initiative aimed at developing, within the justice system, a co-ordinated, victim-referenced response to battering.

Specific objectives are:

- i. To review the literature on institutional and community interventions in men's violence against women partners.
- ii. To develop an analysis of some problematic aspects of local (i.e. New Zealand) institutional and community responses to wife/partner abuse.
- iii. To describe and evaluate recent attempts to reform these institutional and community responses.

The thesis brings together a programme of research in which I have been engaged for most of this decade. In the second part of this chapter, I describe this research and the methodologies employed in it. I also discuss my role as a Pakeha¹ male working as a researcher (and sometimes as a practitioner) in efforts to end male violence against women partners.

In Chapter 2, I lay out my starting assumptions about the nature of battering. I do this because I believe that there is a widespread failure among decision makers, especially male decision makers, to comprehend the nature of battering, the resources batterers are able to employ to maintain their position, and the constraints battering places on women. I describe some of the ways women resist their batterer and attempt to end the violence they are experiencing, before setting out a tentative

¹ A white New Zealander, especially one of British descent.

list of some of the resources and services battered women may need if they are to be able to enjoy lives free of male violence. This chapter concludes with some considerations of how one should evaluate efforts to provide those services and resources.

Chapters 3 and 4 describe what I have called community responses to battering. By this I mean services available in the community external to the justice system. In the former, I describe services for women: that is, safe housing, advocacy, health services, including mental health services, and relevant social services. In Chapter 4 I provide a review of programmes for men who batter. I believe it is necessary to understand these community responses to both women who are battered and the men who batter them because they provide the context in which key statutory agencies (police, courts, correctional services) operate.

Chapters 5, 6 and 7 consider the response of police, criminal courts and civil courts respectively. Like the earlier chapters, these draw from both the general research literature and from work carried out by me and my colleagues. For example, in Chapter 5, I present data I collected by interviewing police officers and reading police records. This data is set alongside key incidents drawn from case studies we prepared, case studies which document failures of the police to provide an effective response to violence against women. Through this approach, it has been possible to develop an understanding not only of the problems battered women experience at the hands of these agencies, but also of some of the processes within the institutions which lead to those problems.

However, it is clear that some of the problematic aspects of the justice system's response to battering are attributable not to problems *within* those institutions but from a lack of co-ordination *between* them, and between them and other relevant agencies. This becomes clearer in Chapter 8 in which I present a case study of the death of one woman, Kathryn Coughlin, killed by her estranged husband, David. Described by the police as neither preventable nor predictable, Kathryn's death, in my analysis, was a logical development from a number of ill-considered and disconnected interactions that various agencies had with her, with her husband or with them both. Kathryn's death teaches us not only about problems within key agencies, but also the deadly consequences which can follow from a lack of coordination between agencies.

Chapter 9 draws together my analysis of the problems presented in the earlier chapters and lays out a theoretical model for addressing them. In this chapter, I draw heavily on the work of Ellen Pence and the Duluth Abuse Intervention Project and briefly describe the way the intervention protocols developed in Duluth were adapted and implemented in Hamilton.

Chapter 10 summarises the evaluations conducted of the Hamilton Abuse Intervention Project, based on over seven years of participant observation and including analysis of police and court records, information collected by project staff and interviews conducted with clients, project staff and staff in associated agencies. This chapter attempts to answer the question, have the protocols as developed in Hamilton succeeded in ensuring a more effective response to battering in our community?

In Chapter 11 I reflect on progress made in reforming institutional responses to violence against women, outline some of the challenges ahead, and reflect on what I have learnt as a male community psychologist working in this area.

A personal background

This thesis is neither a beginning, nor an end. At most, it represents some of what I, at this point in time, have come to understand about men's violence towards women partners and, in particular, about what happens when that violence, which normally occurs in private, comes to "public" attention. It is, at best, a provisional understanding, open to change. It has been shaped by and is limited by my experience and position in society. I owe it to you as reader to explain a little about how I came to be involved in this work and to describe some of the key experiences which have shaped my views. In doing this, I will also describe in some detail the specific research methods I and my colleagues have employed to gather the data presented in this thesis. However, as you will quickly see, I have made use of more than what could be called "data" in the more formal sense. That is, I also draw on my experiences as a community activist and as a practitioner working within stopping violence programmes. Thus, I will also take some time to describe these roles which have provided additional insights on which I have drawn.

Growing up male

Looking back, I realise that I have always been interested in gender. As a young boy growing up in a largish farming family in the middle of the Canterbury plains during the 1950s and 60s, the world often seemed to me to be comprised of dualities. There were farmers (like us) and farm workers. There were country folk (like us) and “townies.” There were Protestants (like us) and Catholics. There were Pakeha, although we did not use that word then, and Maori. But of all these dualities, the one which confronted me daily was the distinction between male and female.

My world was profoundly gendered. As a boy, there were certain “outside” chores expected of me, such as bringing in the firewood and helping on the farm, and contrasting “inside” chores from which I was excused but my sisters were not: doing the dishes, bringing in the washing, vacuuming the house and cooking. While my sisters learnt the piano, I played rugby, where, among other things, I learnt that the worst thing to do was to “play like a girl.” Even playing by myself, which often happened because there were no similar age children close by, I could create an entire match in the horse paddock as I acted out in quick succession the roles of my rugby heroes, the All Blacks. The importance of men’s sports was illustrated by the almost religious manner in which farm work stopped on winter Saturday afternoons as we gathered around the radio to listen to the commentary from Lancaster Park.

There were some gender-based expectations which I resented: as a boy, I did not qualify for piano lessons, my interest in cooking was never encouraged and I often worried that another war might see me drafted into the army. No doubt, these experiences helped bring gender to the foreground of my experience. But by and large I grew up knowing that there were certain resources and privileges which were going to be mine by virtue of my gender. For example, until I decided that I did not want to be a farmer, a major issue in our family was whether the farm was big enough to provide a living for both my brother and me. There was never any question that our three sisters might have a share in this considerable resource. Indeed, my oldest sister was required to leave school at age 15 so that she could help my mother run the farmhouse while my brother and I had five years of expensive secondary education at a private boarding school. And it was very clear the male roles carried authority. Many dining table discussions between my parents ended with

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my father commenting, “Yes, that’s right dear” or “No, it’s like...” reserving for himself the role of final arbiter.¹

It was, in many ways, a life of privilege. This was reinforced at boarding school where I rubbed shoulders with the sons of doctors, lawyers and successful businessmen.² We were being trained for positions of power and influence in a colonial and patriarchal power system. Boarding school provided a comprehensive training in the practice and theory of hierarchy. There was an official hierarchy reaching from the Rector, through masters, prefects and down through the lower forms. There existed an unofficial but largely overlapping hierarchy based on physical prowess, especially as demonstrated on the rugby field and in locker room brawls. Although perhaps less important, academic ability also helped establish one’s position in the scheme of things.

In many ways, it was a system which suited me. Big for my age and reasonably skilled on the rugby field and in the classroom, school held few terrors. Not so for others, some of whom sought me out for protection. The experiences of these boys and of the third formers I was put in charge of in my final year taught me much about the cost of the hierarchical system in which we were embedded.

During my secondary schooling, my interactions with girls were limited mainly to the joint theatrical productions we mounted with our sister school and a few awkward adolescent dating experiences. It took until my relationship with Rosemary – we met and were married while undergraduate students – to further my education in the politics of gender. Rosemary was brought up by country doctors. Her mother was one of two or three women in her medical school class, and, even rarer, continued to practise throughout her child-rearing years. While in some respects our experiences of our families of origin were similar, from the example of her mother, Rosemary had some expectations about the roles of women quite different to those with which

¹ Much later, I came to understand some of the subtleties in the ways my mother managed her relationship with my father. It would be quite wrong to say that she was powerless, but such power that she possessed had to be exercised discreetly and could not openly challenge my father’s authority.

² It was a boy’s only school, and of course, we did not identify ourselves as the sons of our mothers!

I had grown up. For example, I recall members of my family assuming that Rosemary would be giving up university now that she had found a man to marry.

She did not give up university, but trained as a teacher, as did I. In our brief teaching careers and in the many years of our marriage, there have been numerous opportunities to observe the differential treatment Rosemary and I have received in various settings. One formative experience will suffice. When we moved into our first flat together, Rosemary went to the Post Office to apply for a telephone connection. The official patiently explained that as Rosemary was a married woman, it would actually be my phone and that I should be making the application. Rosemary pointed out that the phone was to be a joint responsibility and that as she was the one at the Post Office, she should be able to complete the application. The “compromise” reached was that Rosemary was allowed to forge my signature, the only signature which was required on the form. Male privilege was sustained with the help of state-sanctioned forgery.

Community activism

As I had observed in earlier years, while the patriarchal system in which I lived brought me many privileges, there were areas in which I became frustrated with some of the gender roles expected of me. Particularly relevant here was my frustration with male friendships. My models of male friendship came from the mateship of male sports (cf. Phillips, 1987). We played together, we drank together and we discussed the game together but there was little approaching the sort of intimacy I desired. Thus, in my early thirties, I joined a male support group.

In many respects, this was a forerunner of what has become known, especially in the United States, as the men’s movement. (For an excellent feminist analysis of the men’s movement, see Hagan, 1992.) In its various permutations, formed and reformed as members left and new ones were recruited, the group continued for two or three years. While our specific circumstances and interests varied, broadly speaking, we were motivated by a desire to explore more emotionally fulfilling ways of being a man and we were informed by a selective reading of feminist scholars. By this I mean we were much more focused on personal growth and the limitations of traditional male socialisation than on political analysis or social change. However, challenge was not far away. Most of us were in relationships with feminist women,

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several of whom were activists in opposing violence against women. Principally, they were members of women's refuges and/or rape crisis groups. The message from them was clear and went something like this: *it is all very well you men taking time to feel better about yourselves but in the meantime, we are busy cleaning up the results of male violence. What are you going to do about it?*

Our first response was to reform ourselves as Men Against Rape. In conjunction with the local Rape Crisis Centre, we developed an educational package for secondary school students. For those schools we could gain access to, we worked with the male students while Rape Crisis volunteers worked with the female students. We also engaged in a variety of perhaps ill-focused social action activities: some of us stickered *Playboy* centre folds, some of us wrote letters to the editor, some of us picketed strip joints and wet tee shirt competitions. *Playboy*, strip joints and wet tee shirt competitions are still evident in our community, but perhaps the fact that local men were prepared to oppose such things may have made some impact.

We became more organised and incorporated ourselves as the Men's Action Network¹: a group "to encourage and support men to overcome violent and destructive behaviour and to promote sensitive and caring roles for men" (Men's Action Network, 1991, p. 1). The local Women's Refuge² asked us to develop a programme for men who batter. We had among us men with relevant skills in social work, group facilitation and counselling. (At the time, I was working as a probation officer.) We found a packaged programme in the work of Daniel Sonkin and Michael Durphy: *Learning to live without violence* (1985). Wisely, we decided to trial the programme with ourselves. There was an important personal lesson here. Having thought of myself as a mild-mannered, gentle man, I found the programme confronted me with the evidence of my own struggles with anger.

Sonkin and Durphy's early work can now be seen as limited by its focus on men's anger as the primary cause of battering and its failure to address patriarchal belief systems and the presumed entitlements of men, a theme to which I return in Chapter

¹ The Men's Action Network disbanded in 1992 following the establishment of the Hamilton Abuse Intervention Project. In what I still feel as a bitter irony, its title was appropriated by a group whose aim was to advocate for men who felt that they had been abused by women.

² *Shelters* in North American terms.

4. Nevertheless, it provided a starting point, and over the following three or four years, our programme came to incorporate a more feminist analysis of violence. There was a second personal lesson here: I was not immune from a tendency to exploit, in my own relationships, the privileges extended to me by a patriarchal society.

A third lesson came from this work. Slowly, and unevenly, I and some of my colleagues came to understand the importance of making our work accountable to women. In weekly sessions, our group participants bared their souls, or appeared to do so. They owned up to their abusive and violent behaviour, some of it anyway, and were determined to do better. We began to understand the pressures on them. We began to admire their efforts to change. We warmed to them. We wanted their relationships to “succeed.” But then, in our contacts in the women’s refuges, we would be reminded of a quite different reality. The men who were, apparently, trying so hard to change, still resorted to violence, sometimes inflicting significant injury on partners who continued to fear them. Yet at the same time, these women held out hopes that our programme was going to improve their lives. It became evident that our work was potentially dangerous. Delivering a safe and effective programme could not be done without subjecting our work to the scrutiny of women’s advocates. And without the work of those advocates, we could not get reliable feedback on the impact of our work. What happened in group sessions was sometimes painful, sometimes exhilarating, but it was what happened outside the group that counted. Safe practice required victim referencing.

The above description of my evolving understanding of male partner violence sounds tidier than it really was. In particular, I think it is important to acknowledge that while my experiences with the Men’s Action Network gave me *some* understanding about the dynamics of battering, the risks of colluding with the batterer, and the importance of establishing accountability systems to ensure safety, my education had really only just begun.

The Domestic Protection Study

In 1990 I was invited to join two University of Waikato colleagues, Ruth Busch from the Law School and Hilary Lapsley from Women’s Studies, in tendering for a

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research contract with the Victims Task Force.¹ Our tender was successful, and so began a research project that was, without exaggeration, to change my life.

The requests for proposals called for a study of “continuing breaches of non-violence and non-molestation orders made by the Family or District Court, with a view to improving the protection offered to victims” (Victims Task Force, 1990, p. 1). In my arrogance, I thought I was reasonably well qualified to take part in this research. By that time, I had had three years experience in working with men who batter. I knew little of the Family Court system but in my time as a probation officer I had developed a quite detailed knowledge of the criminal justice system. As a teacher of psychology, I had presented lectures on the topic of aggression. As a community psychologist, I had a particular interest in the evaluation of human services. On all four counts, I could be seen as someone who had something to contribute.

However, as we worked on this project, I came to understand that what I saw as “qualifications” for this work were, in fact, part of the problem. That is, I began to seriously doubt the value of programmes such as that provided by the Men’s Action Network and started to understand their potential to further endanger women (a theme developed in Chapter 4). I came to recognise the criminal justice system as being misogynous and offender-focused, colluding in men’s violence against their partners. And I reflected anew on my standard social psychology, largely gender-neutral approach to the subject of “aggression,” retired my lecture notes and developed new material on the theme of male violence against women and children.²

While our research brief was to focus on continuing breaches of protection orders, we soon realised that we could not do our topic justice without also examining the broader context in which women sought the protection of the police and the courts. With the agreement of our advisory committee, we broadened our study to include analysis of

¹ While we three were the authors of the project report it is important to also acknowledge the contributions of Dianne McColl, our research assistant, and Maanu Paul, with whom we collaborated in ensuring the input of Maori.

² On the fourth count, my expectations were borne out. In fact, I have become stronger in my view that community psychology is particularly well-placed to contribute to efforts to eliminate violence against women, a point I will return to in the final chapter.

judicial decision making in relation to violence against women. Our study was multi-faceted.

Methodology

At the heart of our study were 20 case studies of women who had experienced difficulties in having their protection orders enforced, and who sometimes, had had difficulties in obtaining those orders in the first place.¹ Most of the case studies were based on interviews with the women. Sometimes these interviews were supplemented by analysis of documents such as affidavits and copies of judgements and/or interviews with professionals who had had dealings with the woman concerned. Two case studies involved women who had been killed by their estranged partners and were compiled from police records, coroners' reports and interviews with some of the officials involved. I was responsible for these last two case studies, one of which appears in Chapter 8, and wrote up two others (using my colleagues' interview notes and police files) but did not take part in interviewing the women who featured in our case studies. We agreed that it was not appropriate for a man to be asking questions of women about their experiences of male violence.

Key informant interviews (Patton, 1980) formed the second part of our study. To get an overview of the justice system's response to battering, we interviewed judges, court staff, counsellors, family law practitioners, women's refuge workers and police officers.² It was with this last group that I made a particular contribution. As I sat in various police stations around the country, often with *Playboy* calendars on the wall, there

¹ These women were recruited through our networks (women's refuge workers, police officers, lawyers) and via advertising. The sample was not representative of all women who had protection orders. Instead, women were selected in order to obtain a mix of both Maori and non-Maori women and to ensure a range of "problems" was represented.

² The recruitment and selection of key informants varied according to the particular professional group. We wanted to have a wide geographic spread and planned an itinerary which took us to the main cities and a selection of smaller centres. We wrote to Family Court judges and interviewed those who were available. In most districts we visited, the counsellor coordinator was willing to be interviewed and suggested counsellors and lawyers who might be interested in talking to us. Our networks within the refuge movement and the legal profession provided us with other interviews. Thanks to the support of a senior police manager, we were able to obtain interviews in most districts, usually with either the local prosecutor and/or the officer who held the family violence portfolio.

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seemed to be an unspoken assumption that I shared with my interviewees certain views about women and their relationships with men. Thus police officers explained to me how some women were provocative and how they could understand why some men were driven to violence. They noted that women often lied or exaggerated about the violence they experienced. In sympathetic terms, they described the way in which regular men like ourselves could suddenly, arbitrarily, be denied access to their wives and children by a piece of paper. They recalled how their attempts to prosecute batterers had been frustrated by unreliable women who went back on their word and refused to testify against their partners. It was, in my view, a profoundly misogynist world view and I, as a male researcher, was given free access to it.¹

The third part of our study involved document analysis. Particularly important here was the analysis of reported and unreported decisions from the District Court, the High Court and the Family Court. These formed the basis of judicial decision-making in respect of domestic violence-related cases. In the light of what I describe below, it is important to appreciate that the authors of these decisions were cited: that is, the judges were named.²

We obtained handbooks and other policy documents to help us understand the relevant procedures within the Department of Justice and the Police Service. We conducted an analysis of police records: prosecution files relating to breaches of non-molestation orders and filed records of 111 calls to a sample of three police stations. I used these, along with key informant interviews and key incidents from the case studies to write a chapter on the police response to domestic violence. (A revised version of this work appears in Chapter 5).

¹ It would be unfair to characterise the views of all the police officers I interviewed in this manner. Some displayed a strong empathy with women who had been victims of male violence and spoke of their desire to see batterers held accountable for their actions. Interestingly, a number of these officers freely disclosed that their mothers had been abused. Nevertheless, the pattern I have described was the dominant one.

² Standard practice for legal scholarship is to identify the judgement by the parties' names (unless these have been suppressed by order of the court, in which an initial letter is usually used), the judge, the location of the court and the date the judgement was delivered.

Most of our data was collected during 1991. We completed our report early in 1992. What happened next is vital to understanding the perspectives and biases I bring to this work.

A political campaign

We submitted our report to the Victims Task Force early in May 1992. It included 101 recommendations, including some 30 recommendations for statutory changes. The Advisory Committee set up to oversee the research approved the report for publication. A date was set for it to be given a public launch.

A month later, with what proved to be fortuitous timing, I rang a Justice Department official who worked in the office which serviced the Victims Task Force.¹ I asked how plans for the public release of the report were proceeding. I was told, firstly, the office had been very busy, and secondly, that nothing was going to happen until after a meeting to be held later that week to discuss the report, a meeting to which had been invited certain senior members of the judiciary, police managers and top-level officials within the Department of Justice.

That such a meeting was to be held was news to us and to members of our Advisory Committee. One member later told me that the possibility of a meeting with judges had been discussed but no decision had been made. In any event, the Advisory Committee saw our report as final and any pre-launch release of the report to relevant stakeholders (principally, the judiciary and the police) was to be a courtesy only: there was to be no negotiation over the report's contents. We asked to attend

¹ The Victims Task Force was established by the Victims of Offences Act, 1987. In a general sense, its role was to promote the interests of victims within the criminal justice system (s.13). It was funded by 1% of fines collected by the Crown being diverted to a Victims Task Force Fund (s.14). Under section 12, four of its members (later increased to six by the Victims of Offences Amendment Act, 1988) were to be appointed by the Minister of Justice. The Commissioner of Police and the Secretary of Justice (or their nominees) were to be ex-officio members. In the event, the Secretary of Justice appointed someone from outside the department as his nominee. However, the Task Force was not as independent of the department as we, and no doubt many other people, thought. Under section 14, the Secretary of Justice was charged with the "control and supervision" of the Victims Task Force Fund. In effect, all expenditure was under the control of the department. Naturally, that included the funds needed to publish our report.

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the meeting. Our request was declined. But we did learn that there were concerns that our report had included the names of judges.

We subsequently obtained notes of the meeting. They make interesting reading. We were accused of being biased, simplistic and impractical. Our methodology was criticised. Some of our recommendations were considered too expensive to implement. Concern was expressed that the research would “create unrealistic expectations about how much difference its implementation would make to domestic violence” (Department of Justice, 1992, p. 4). One participant thought that “the overall thrust of the study seemed to be to give up on the family unit” (Department of Justice, p. 5). A Department of Justice official thought our report “seemed to attack the system rather than focussing on the victim’s needs” (Department of Justice, p. 6). In what I thought was a particularly revealing comment, one of the judges present was recorded as saying that our recommendation to increase the maximum penalty for breaches of non-molestation orders “gave him the impression that the researchers aimed to make every breach a crime” (Department of Justice, p. 3). Of course, that would have been unnecessary: breaches are crimes. Section 18 of the Domestic Protection Act (1982) states “Every person commits an offence... who does any act in contravention of a non-molestation order.” In a pattern we had identified in the report itself, certain judges are well able to interpolate their own values into their reading of the law and to characterise acts of violence against women as mild indiscretions. To do this to the extent that (statutorily-defined) crimes could become non-crimes, was raising this art to a new height.

In what were to become key issues, it was noted firstly, that the report contained judges’ names and secondly, that the report might be considered to be in contravention of section 35 of the Domestic Protection Act (1982) which places restrictions on the publication of reports of proceedings under the Act.¹

¹ Specifically, for other than criminal proceedings, a “report of proceedings” can be published only with the leave of the Court – unless in a publication that “(a) Is of a bona fide professional or technical nature; and (b) Is intended for circulation among members of the legal or medical professionals, officers of the Public Service, psychologists, advisers in the sphere of marriage counselling, of social welfare workers.” (Domestic Protection Act, 1982, s.35)

By the next day, it was clear that the launch of our report was cancelled. The Law Reform Division of the Department of Justice was asked for an opinion on whether the report did contravene section 35. We were asked to respond to a methodological critique of our work prepared by the Policy and Research Division. Ruth and I were requested to attend a meeting in Wellington (at this stage, Hilary was overseas) with some members of the Victims Task Force. At this meeting we agreed to make some minor changes. Some phrases which could have been interpreted as making generalised comments about judges were to be altered. We were to add some more detail to our methodology section. We agreed to standardise our referencing of Family Court judgements by deleting the names of parties in all cases (we had initially retained the names in those judgements which had previously been published). We agreed to update our references to the Police Family Violence Policy which had been updated since our report was completed. These last changes were, in fact, the first evidence that our report was being implemented. The police manager responsible for family violence policy had had our draft report for several months and the updated policy incorporated changes, which, with one exception, were consistent with our recommendations.¹

Over the next few months, we found ourselves in the middle of a significant public controversy. By this stage, there was considerable interest in our research within what might loosely be called family violence networks (principally women's refuges, certain stopping violence groups and sympathetic counsellors and family law practitioners). We received numerous invitations to present seminars on our work, which we accepted. People to whom we had given draft copies of our report for comment and feedback began to photocopy them for others. The delay in the publication of our report became more widely known as the media began to take an interest. This interest increased when Dorothy and Donald Palleson, the parents of Kathryn

¹ The exception was an important one. One of the "gaps" we identified was the common practice of dealing with domestic violence offenders by way of diversion, by which offenders who indicated a guilty plea could escape conviction by undertaking some "programme", such "programmes" often requiring nothing more than a small donation to a charity of the offender's choice. Among other things, we pointed out that this was in contravention to the police's policy on diversion (which precluded violent offences). The policy was changed to provide for diversion "in appropriate cases and where suitable local programmes are in place" (Police Commissioner, 1992).

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Coughlin whose murder we included in our case studies, went to the *Holmes Show*¹. The Secretary of Justice had to defend his position on prime time television following a story of Kathryn's death and a (sympathetic) interview with me about our research. We found ourselves regularly responding to questions from radio, television and newspaper journalists, sometimes in live debates with senior officials or the Minister of Justice. Supportive opposition party politicians became involved and the issue became party-political. We cultivated sympathetic journalists, contacting them whenever we wanted to get our rebuttal of the latest statement from the Minister or the Department into the public debate. Sometimes we took advantage of related news stories (e.g. stories about gun control) to get our message out. I became reasonably skilled at writing press releases. I think all of us got better at handling live interviews.

To all intents and purposes, we were running a political campaign out of our offices. This might be seen as going well beyond what was appropriate for researchers. Certainly, it was well beyond what I had learnt in methodology classes, although as a community psychologist, I had come to see research as a political act and advocacy as a legitimate professional role. But in the final analysis, the move from researcher to advocate seemed unavoidable. The women we interviewed talked to us because they wanted their stories told. As *researchers*, we had had a responsibility to ensure that those stories were told. From this point of view, what we were doing was not abandoning research for advocacy but being responsible researchers. There did not seem to be any alternative.

Officially, our report never became a public document. In late 1992 the Victims Task Force did publish a heavily censored version of our work. While we had called our report, *Domestic violence and the justice system*, the censored report was renamed *Protection from family violence (abridged)*. In changes drafted by the Law Reform Division of the Department of Justice, all references to decisions of the Family Court were removed, even though most of these had already been published in legal journals and the like. The deletions included material quoted from affidavits and women's recollections of what happened to them in court. The deletions mean that it is difficult to make sense of

¹ *Holmes* is a prime time, week-night current affairs programme which is consistently among the top-rating television shows in New Zealand.

important parts of the report and it is almost impossible for readers to judge the validity of our conclusions in relation to the Courts. Moreover, the names of all the judges were removed, even from judgements from the criminal courts which are open to the public and to which section 35 of the Domestic Protection Act did not apply. We declined to be listed as the authors of this heavily censored report. Instead, the title page notes that it was “prepared for public release from an original report by Ruth Busch, Neville Robertson and Hilary Lapsley” (Victims Task Force, 1992, p.i).

A second document was given restricted release by the Victims Task Force. This document, also titled *Protection from family violence*, was made available to those who applied to the Task Force and could establish that they came within the ambit of section 35(4) of the Domestic Protection Act (lawyers, doctors, psychologists etc). It retained reports of proceedings of the Family Court but like the shorter document, all the judges’ names were deleted.¹

This two-fold approach to the release of our research was based on an opinion prepared by the Law Reform Division of the Department of Justice that our original report contravened section 35. The Victims Task Force accepted this, despite opinions to the contrary submitted by a number of legal experts.

This was not a case of protecting confidentiality. We took the normal steps to ensure the anonymity of all our interviewees (that is, the women who featured in our case studies and our key informants, including, of course, the judicial officers who were interviewed) and of those women whose cases we reviewed in the legal analysis. The real reason for the censorship becomes apparent in the decision to delete the names of all the judges, even in criminal cases where section 35 does not apply. It is also evident in the title change. What was missing from the new title was the very justice system which our report critiqued. And of course, it was the same system which had not only provided the legal advice that the report in its original form could not be published but which also drafted the changes to it. The newspaper cartoons which appeared provided

¹ There was one other deletion common to both documents. One case study was deleted after a man claimed to have recognised himself in press reports about the research. As well as attempting to murder his wife, this man had a history of making threats against police officers and judges. Indeed, we were advised to take extra precautions for our own safety when this man, who was under police surveillance, unexpectedly disappeared from his home town during the public controversy over the report.

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apt comment on the real issue. In one, a judge comments to his colleague, “I’m all for tougher penalties too – criticising us should be a hanging offence” (Fletcher, 1992). In another cartoon, a judge was portrayed reading a document labelled “Domestic Violence Report Censored.” His face has been masked in the manner used for news pictures of offenders whose identity cannot be revealed (Klarc, 1992). We shared the cartoonists’ analysis: this was not about confidentiality but about the (non) accountability of judges.

An interesting point arose in relation to our commitment to our interviewees to give them feedback after their participation. We were told that the women could have their own case studies sent to them unedited but that otherwise, they could have only the censored version of the report. I can only see this as the justice system colluding with the isolation abusers typically impose on their victims. The mechanism is simple: encourage the oppressed to view their oppression as somehow related to distinctive characteristics of them as individuals. Oppression is harder to maintain if the oppressed develop a class-based analysis of what is happening to them.

Subsequent developments – the Domestic Violence Act (1995)

By late 1994 the government had introduced the Domestic Violence Bill into the House. Its provisions incorporated all but one of our recommendations for statutory change. Of course, there were things other than our research which had influenced the drafters of the proposed legislation. A particularly important one was the inquiry into the Bristol killings (Davison, 1994). In February, 1994, Alan Bristol killed his three children, Tiffany, Holly and Claudia, and himself by using the exhaust gases from his car. At the time the children were in his custody, pursuant to an interim custody order made by the Family Court three months earlier. This order had been made despite Alan Bristol’s record of repeated violence towards the children’s mother, Christine Bristol. (See Busch & Robertson, 1994a, for a detailed description of this case.) Sir Ronald Davison, a former Chief Justice, was commissioned by the Minister of Justice to investigate the way the Family Court had handled proceedings between Christine and Alan Bristol and to consider “the need for any change in the law or in Family Court practice” (Davison, p. 2).

These killings and the resultant inquiry brought into public debate the connection between violence against women and violence against children, and a problem we

had identified in our earlier work; namely, a tendency by certain judges to see violence against one's spouse as irrelevant to determining one's suitability to be a parent.¹ In the event, Sir Ronald Davison's (1994) report to the Minister recommended an amendment to the Guardianship Act (1968) to the effect that a parent who has been violent to his/her spouse and/or a child should not have custody of or unsupervised access to (visitation) the child unless it could be established that the child would be safe. This recommendation was incorporated into the Domestic Violence Bill.

The Bill was referred to the Justice and Law Reform Select Committee which heard public submissions, including one from Ruth and me. (We subsequently published a summary of our submission; see Busch & Robertson, 1995). Through this process, a number of what we saw as improvements were made to the legislation, which was finally passed into law in late 1995, with an implementation date of 1 July 1996. Key features of the Domestic Violence Act (1995), which repealed the Domestic Protection Act (1982), were:

- Protection orders became available to a wider range of people (e.g. same sex partners, parents, children, whanau members), not just people living in a relationship in the nature of marriage.
- Psychological abuse was explicitly included in the definition of domestic violence, as was causing or allowing a child to witness domestic violence.
- A simplified process by which interim orders automatically become final orders unless the respondent successfully opposes this. That is, applicants do not have to file a second application to obtain a final order.
- A single protection order which can be customised to fit particular circumstances. The order contains no-contact provisions which are suspended during any period that the respondent, with the consent of the applicant, resides in the same house, and which are re-activated if the parties separate (removing the need to apply for new orders).

¹ Ruth and I contributed to this debate through the media and through scholarly articles, namely, a detailed description of the case (Busch & Robertson, 1994a) prepared after Christine Bristol approached us, and a literature review on the links between the battering of women and child abuse (Robertson & Busch, 1994).

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- Respondents are required to surrender any firearms they have in their possession.
- Increased penalties for breaching protection orders and incremental penalties for repeated breaches.
- Mandatory referral of respondents to stopping violence programmes and a streamlined procedure for enforcing those referrals.

In addition, the associated Guardianship Amendment Act (1995) incorporated a rebuttal presumption that a violent parent would not get custody of, or unsupervised access to, a child of the relationship.

Of course, the new legislation has not closed all the gaps we had earlier identified. (See Busch & Robertson, 1997, for an analysis of early trends under the Domestic Violence Act.) But it has provided some important new tools in helping ensure the safety of women and children who have been abused by their partners or fathers.

Reflections on the Domestic Protection Study

I have provided this description of my experiences with the Domestic Protection Study because they are crucial to understanding the particular perspectives, biases and values which I bring to this thesis. Working on the research and becoming embroiled in its aftermath has left me with a much better understanding of the systemic nature of men's violence against their women partners. That is, battering is not just about individual men abusing individual women. Those individual acts of abuse are made possible, even facilitated, by an interlocking system of institutional processes which systematically collude with men who batter and continue to expose women to their partner's violence. Indeed, as Ruth wrote in the preface she drafted for our report, one of the unforeseen outcomes of our research was that at the end of it, we felt we could "produce a manual for assailants on how to avoid the consequences of their spousal abuse" (Busch, Robertson & Lapsley, 1992, p. vi).

This is not to say that I came to see individuals working within the institutions we studied as universally flawed or inadequate. I met many people for whom I developed a considerable respect. They included certain police officers and judges. Often, to the extent that the system "worked," it was through the efforts of such people. But as we pieced together our case studies, we repeatedly saw how even individuals of good will could, nevertheless, unwittingly collude with the abuser. Sometimes this was out of

ignorance, but often it was a direct result of the way the system in which they worked was structured. (This theme is developed in Chapter 5, in respect of police, and in Chapter 8, in respect of inter-agency arrangements.)

My experiences with the Domestic Protection Study also led me to reflect on my role as a male working in the arena of violence against women. Sometimes, there seemed to be advantages: my interviews with male police officers, particularly, come to mind. My position as a white male also seemed useful when the controversy erupted over our research. Ruth and I would routinely confer about who was to respond to particular media requests. From time to time, we thought it expedient if I spoke on behalf of the team, believing that it might enhance the credibility of the research among certain audiences to have a man speaking.¹

But while my position as a male was useful in giving me entrée to certain settings, in other situations, it was a barrier. As I have already mentioned, we agreed that I would not take part in interviews with women who had been battered. It was considered likely that at least some, if not all, would feel less comfortable talking about their experiences with a male interviewer. In recent times, Ruth and I have sometimes jointly interviewed women about their experiences with the justice system: that is, interviews which focused more on their interactions with the relevant agencies than on the violence they had experienced per se. In these cases, women were given the option of being interviewed by Ruth alone.² On rare occasions, for example when two interviews have been scheduled simultaneously, I have done such interviews by myself. In each case, a third party, usually a refuge worker, had first checked with the woman whether she minded being interviewed by me. As far as I can tell, such interviews have gone reasonably well, but I am not convinced that it is a good idea for men to act as interviewers in such circumstances.

¹ This is not a non-controversial position. It could be seen as buying in to certain sexist stereotypes. I recall one occasion on which Ruth and I were jointly interviewed by a television news crew. Even allowing for a male tendency to overestimate the amount of time women contribute to conversation (Spender, 1980), I thought that Ruth had probably responded about twice as much as me. Of the 15 minutes of interview, two “sound bites” were carried in the news bulletin – both featuring me speaking.

² It is a moot point how easy it would be for someone to object to my participation. On the other hand, our interviewees have seemed comfortable about the arrangement.

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Another point is that as a male researcher investigating institutional responses to violence against women, I continually experience opportunities to be co-opted into the logic of certain institutional players who wish to justify their own or their colleagues' actions – or indeed, their inaction. This is not altogether a bad thing. Promoting positive change in the way these institutions respond to women who have been battered and to the men who batter them can be enhanced by careful understanding and analysis of the constraints under which staff carry out their duties. My point here is that as a man, exposed to much the same socialisation as, for example, the male police officer who has given bail to a man arrested for breaching his protection orders, I believe I face a particular challenge to put that socialisation aside to focus squarely on the impact of institutional policies and practices on the safety and autonomy of women.

So how should male researchers proceed? I do not have a highly detailed answer to this question, but in general terms, for me, the notion of accountability is crucial. By this, I mean male researchers need to develop processes and structures to ensure that their work is informed by and accountable to women. In Chapter 4 I discuss how accountability might be achieved in relation to providing programmes for men who batter. In Chapter 9 I describe some arrangements which might help ensure accountability within the criminal justice system. Those arrangements might provide models on which to base mechanisms to ensure the accountability of male researchers. In my own case, I believe that to the extent to which my work is accountable and safe, it is because I have not worked alone. Each research project has been planned and conducted with the active participation, usually the leadership, of women who have a good knowledge of the dynamics of male partner violence and extensive experience as either researchers or advocates, and usually both. (The enforced individualism of completing a thesis has provided certain challenges which I discuss later.)

The HAIP evaluations

The second major component of the work on which this thesis is based is the evaluation of the Hamilton Abuse Intervention Project (HAIP¹). As described in

¹ In its initial stages, the project was known as HAIPP – that is, the Hamilton Abuse Intervention Pilot Project. The word “Pilot” was dropped from the name when the

Chapter 9 HAIP was established by the Family Violence Prevention Co-ordinating Committee as a national trial of the intervention model developed in the United States by the Duluth Abuse Intervention Project. It aims to provide an integrated response to family violence through practice protocols negotiated with the Police, the Courts and the Probation Service. The project office monitors the services these agencies provide. It also provides services directly. In conjunction with the women's refuges, it provides victim advocacy services. It provides an education and support programme for women. And it provides an education programme for men who batter.

I have worked with HAIP since its inception in 1991. Like several other men from the Men's Action Network, part of my interest was in the batterers' education programme. We put the Network into recess and began working in the HAIP men's education programme which, with some breaks, I have continued to do. But my interest was also in research. I volunteered to assist the project's evaluation efforts. This role too, has continued. In particular, during the first two years of the project, I, along with Ruth, was contracted through the University of Waikato's research office to undertake process evaluations for the Family Violence Prevention Co-ordinating Committee (Robertson, Busch, Ave, & Balzer, 1991; Robertson, Busch, Glover, & Furness, 1992; Robertson, & Busch, 1992; Robertson, & Busch, 1993). Data from these and subsequent evaluations form the basis of Chapter 10.

Methodology

The HAIP evaluations relied on four main sources of data.

The HAIP database: This is a database developed and maintained under my supervision. Day to day data entry is the responsibility of project staff. Particularly relevant for this thesis are those part of the database which are used to track offenders through the criminal justice system and their participation in the men's education programme.

project lost its pilot status with the Family Violence Prevention Co-ordinating Committee and became an independent Trust. For simplicity, I will use the current, shorter name.

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Interviews with women referred to the project: At various times through the life of the project, interviews have been conducted with samples of women who have been referred to the programmes. The precise content of the interviews has varied according to the research priorities at the time but they have all focused on women's experiences of the various agencies with whom they were in contact. In each case, in consultation with project staff, I have developed semi-structured interview schedules and supervised the pilot testing of them. After making revisions, I have supervised the sample selection and data collection. The responses have been entered into a data base (Paradox) which I have used for the analysis.

Key informant interviews: Staff of HAIP and relevant personnel in the participating organisations have been formally interviewed at various stages. These include police supervisors and managers, court staff, probation officers, and women's refuge workers. (Initially, local judges also agreed to be included but their co-operation was withdrawn after the controversy surrounding the Domestic Protection Study.) I have conducted the majority of these interviews. Some have been conducted by Ruth.

Participant observation: Throughout the life of the project, I have played the role of a participant-observer (Robson, 1993). For example, I have been a regular participant in the monthly inter-agency meetings which are held to review the implementation of the practice protocols. Particularly in the early days of the project, I attended major staff meetings. As already mentioned, I have been a regular facilitator in the men's education programme. Since its inception in 1993, I have been a member of the HAIP Trust which assumed overall responsibility for the project at that time.

The role of internal evaluator

In most respects, I could fairly be described as an internal evaluator (cf. Patton, 1986). That is, in my roles as a facilitator and Trust member, I arguably have a stake in the project, albeit, not a financial one (that is, I am not a paid staff member). In nine years of involvement with the project, I have come to regard many of the project staff as my friends. I have spent a lot of time at the project office, consuming gallons of coffee in the process. Some of this time and coffee has been consumed in the course of planning research but much of it has been spent in more general

discussion, strategising solutions to problems we have identified in the response of the various agencies.

As the above descriptions suggests, I have played a number of roles with HAIP. In addition to those already identified (facilitator and Trust member), these roles include:

Programme developer. In the early days of the project, I contributed to the development of the men's education programme, co-facilitating the first course and helping in the development of course materials. Similarly, I contributed to the development of a programme for youth. As results of particular evaluation efforts have come to hand, I have been involved in discussing the implications of these for the development of the project.

Information systems consultant. A major part of my role has been to help establish and refine the record-keeping systems within the project office. I designed, and later revised, some of the forms used by project staff. I developed the specifications to guide software specialists in designing the various aspects of the project data base. These tasks were a logical part of my evaluator role, and have meant that, generally, information systems have been developed which support the needs of project evaluation as well as the day-to-day needs of project management.

Public spokesperson. From time to time, the project office has directed media enquiries about the project to me. These have generally been enquiries about the effectiveness of the project.

Trainer. From time to time, I have contributed to training sessions for men's programme facilitators.

Staff team member. Although not on the paid staff, in some aspects I have acted as a staff member (with particular responsibility for programme evaluation). This was evident in the intermittent planning days project staff held, particularly in the early days of the project. It should be noted that the project has a flat structure, and most decisions are made by consensus.

Organisation consultant. From time to time, particular issues have arisen within the project which have not been able to be resolved in staff meetings. I have been called upon to provide advice to key decision makers within the project.

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Interagency meeting participant. As I have already observed, I have been a regular participant in the monthly interagency meetings. From time to time, this participation has extended to recording the minutes and chairing the meetings.

I would argue that most of these roles are perfectly consistent with the role of an evaluator, at least, an evaluator with responsibility for process evaluation. In process evaluation, where the users of the evaluation are programme staff and the focus is on assisting the development of the programme, close involvement with the setting is increasingly recognised as being essential (cf Patton, 1986). Indeed, most of the roles listed above are included in Patton's list of the multiple roles of the situationally-responsive, utilisation-focused evaluator (1986, p. 319). My experience is that my close involvement in the setting has enabled evaluation efforts to be designed which have shed light on matters relevant to current programme decision making.

On the other hand, such close involvement with the setting is arguably less consistent with outcome evaluation: that is, evaluation which assesses the effectiveness of a programme. Evaluators who are closely identified with a programme may be less credible with some of the intended users of outcome evaluation, especially funders or potential funders. Certainly, it was made clear to me that I was not going to be contracted to undertake the externally funded evaluation of HAIP which was commissioned by the Crime Prevention Unit during 1994 (Dominick, 1995).

No description of my roles in relation to HAIP and this thesis would be complete without explaining one further point. The aim of HAIP is to reform the criminal justice system's response to violence against women in order to enhance the safety and autonomy of women and improve the system's ability to hold perpetrators accountable for their violence. In Chapter 10, I discuss data from the HAIP evaluations which assesses the extent to which reform was achieved. This is data about the performance of the Police, the Courts and the Probation Service. While I might be considered an insider in relation to HAIP, I am clearly an outsider in relation to those agencies.

Other roles relevant to this thesis

As may be evident from the above, this thesis is part of a larger body of research and action. While the Domestic Protection Study and the HAIP evaluations are the most

directly relevant, there are other parts which should be mentioned briefly to provide a full account of the experiences which have helped to mould the perspectives and values which underlie this thesis.

One branch of this work grew directly out of the Domestic Protection Study. Through analysis of judgements and interviews with women, family law practitioners and Family Court judges, Ruth and I have examined judicial decision-making about custody and access where there has been violence between the parties (See, Busch & Robertson, 1994a; Robertson, 1994; Robertson & Busch, 1994; Robertson & Busch, 1997).

Another theme has been to examine the responsiveness of institutions outside the criminal justice system. Here, my role has been limited to supervision and consultancy. Under my supervision, a graduate student in community psychology has completed a study of health workers' responses to the needs of battered women (Flaherty, 1996). Another student has studied battered women's experiences with the state child protection service, the Children, Young Persons and Their Families Agency (Corbett, 1999). In a more action-oriented project, I have worked with a local crime prevention group, the Hamilton Safer Communities Council¹, on the development and implementation of a Zero Tolerance to Family Violence Charter. The Charter, which could be described as making reasonably non-controversial statements about family violence, was drawn up through a process of consultation with a wide range of community groups and agencies. Many have since signed it. In the second phase of the project, an implementation coach has been hired to work with signatories (mostly social service agencies) to help them conduct safety audits, provide training and review their policies and procedures, to ensure that they are prioritising the safety of victims and the accountability of perpetrators – using screening tools and procedures relevant to their particular settings.

¹ The Hamilton Safer Communities Council is part of a nation-wide programme sponsored by the Crime Prevention Unit (part of the Department of the Prime Minister and Cabinet). Under this programme, local Safer Community Councils are established in partnership with local sponsors, either local government or iwi organisations. The Councils bring together community groups and representatives of government agencies to plan local crime prevention initiatives. I was the inaugural non-Maori chair of the Hamilton council and continue to be a member of its Family Violence Reference Group.

1: Introduction

One further role is relevant. I chair one of the two panels of child protection consultants for the local office of the Children, Young Persons and Their Families Agency. These panels, established by statute (Children, Young Persons and Their Families Act, 1989, ss428 – 432), routinely review the files on cases of suspected child abuse and provide advice to social workers. Considering the huge overlap between child abuse and the abuse of women, many of these files refer to children whose mothers are also being abused. Thus, via their casenotes, I am privy to child protection workers' perspectives on battered women as mothers (or, in a theme I will return to later, certain social workers' apparent blindness to indicators of battering).

Collaboration and this thesis

In most of the roles I play and in most of the research I have undertaken, I have worked in collaboration with others. I would have it no other way. I find collaboration enhances research, especially if such collaborations can effectively harness the distinctive perspectives of each party. In family violence research especially, I think collaborative working relationships are essential.

As I have already briefly mentioned, collaborative working relationship with knowledgeable women are, in my view, particularly important for male researchers. Without the ability to check out proposed methodologies, without the ability to provide gender-matched interviewers, without the analysis of data being informed by women-centred understandings of battering, male researchers face a high risk of conducting research that is unsafe for individual women participants. Such research may also be unsafe for women as a class if it perpetuates androcentric biases.

But irrespective of the gender of the researchers, collaboration can help ensure the safety of research in other ways. Family violence research often raises safety issues for participants, who may pay for their participation if their partners or ex-partners discover that they have broken the isolation enforced by the abuser. Methodologies which may be appropriate in other areas can be quite inappropriate for family violence research. And the risks are not always easy to anticipate. In the Domestic Protection Study, it was agreed with one of our participants that it would be safe to mail to her the copy of her interview transcript. After all, she had been separated from her partner for some time. Unfortunately, the very day our transcript arrived, he broke into her house, found the transcript and “punished” her for her

participation in our research. It is no guarantee, but having a team of researchers to consider the safety of proposed methodologies may reduce the chances that researchers will inadvertently endanger participants.

The support of colleagues may enhance the safety of researchers having to deal with distressing subject matter. While the stories participants tell may be leavened with black humour, tales of great bravery and the celebration of survival against the odds, the accounts are often harrowing and include events of chilling horror. I suspect these exact a toll on most, if not all researchers. For example, I recall an afternoon spent in a police station reviewing a murder file and afterwards walking through city streets, tears streaming down my face – and later, trying to get drunk in an ill-advised attempt to deal with my feelings. The work can be isolating. I recall going to parties, bursting with what I was working on and finding, not surprisingly, that no-one much cared to hear. And I have sometimes found myself ambushed by my reactions. I recall once shutting my office door and sobbing after learning, quite unexpectedly, that a woman with whom I had worked for many years had been terrorised by a gun-owning partner in an earlier relationship. In a vulnerable moment, the extent of male partner violence had suddenly seemed overwhelming to me. In times such as these, the support of colleagues can be invaluable.

Whatever the merits of collaborative research, and I believe that they are many, it can sit uneasily against the requirements for the award of academic degrees. After all, it is my name only which appears on the cover of this document. Yet this thesis would not have been possible without the collaboration of certain other researchers, all of them women. How can this collaborative pattern of working be reconciled with the enforced individualism of the academic requirements?

Throughout this thesis I have tried to be as clear as possible as to the nature of the information on which I am drawing. By that I mean I present as my “own” work only that for which I was solely or principally responsible. For example, this applies to the analysis of policing practice presented in Chapter 5, to the case study in Chapter 8, and to most of Chapter 10, in which information from the HAIP evaluations is presented. In each case, I was the researcher responsible for the study or the particular part of the study I am using. In all other instances, the source of material has been referenced in the usual manner.

1: Introduction

In this chapter, I have tried to describe something of my background and experience so that the particular biases and values which I bring to this work are made explicit. In the following chapter, I set out my understanding of the nature of battering. I do this because, in my experience, the priorities for agencies in responding to violence against women partners are often strongly contested. For example, should the safety and autonomy of women be the objective or the preservation of the family unit? While these conflicting positions in part reflect contrasting value systems, they also, in my view, reflect differing understandings about what is the nature of battering. It is to that question that I now turn.

Chapter 2

Battering, women's resistance and community responsiveness

A safe and effective response to battering is unlikely unless service providers can identify and critically evaluate the tactics batterers use and the constraints those tactics place on the women they batter. Thus this chapter begins with a description of the dynamics of battering and some of the cultural facilitators of violence against women: that is, the beliefs and values which support battering and upon which men may call to justify their behaviour. Next, to avoid misunderstandings, I have provided some explanation of the terms I am using in this thesis. This is followed by a discussion of the impact of battering, of women's resistance to battering, and a tentative list of some of the resources women coping with battering may need. In doing this, I am trying to describe the context (or at least, common features of the context) in which battered women live – and within which they interact with service providers. The chapter concludes with a brief discussion of the way efforts to respond to the needs of battered women may be evaluated.

The nature and scope of male partner violence

Heise has argued that

Violence against women is the most pervasive yet least recognised human rights abuse in the world. It is also a profound health problem sapping women's physical and emotional vitality and undermining their confidence - both vital to achieving widely held goals for human progress, especially in the developing world. (1993, p171)

While violence against women can take many forms - Heise's list included rape, battery, homicide, incest, psychological abuse, forced prostitution, trafficking in women, sexual harassment, genital mutilation and dowry-related murder - much of it occurs within the context of marital and marriage-like relationships. Exactly how common such violence is, is a matter of debate (for a review, see Lapsley, 1993): Heise noted estimates ranging from 25% to 75% of all women being battered at some stage in their lives. Probably the best New Zealand study of the prevalence of male partner violence was a 1996 survey of 500 women who were either living with a partner or had separated from a partner within the previous 2 years (Morris, 1997). Of the 126 Maori women currently living with a partner, 44% reported that that partner had used violence against them. Of the 312 non-Maori women currently

living with a partner, 22% reported violence against them. Among the separated women, 90% of the Maori (n=25) and 70% of the non-Maori (n=46) women reported that their ex-partners had been violent towards them.¹

That estimates of prevalence vary is in part a reflection of differing definitions, a matter addressed later in this chapter. But there is widespread agreement that violence against women within the family unit is a major problem affecting women's physical and psychological health and their economic position. It also impacts on the well-being of children (see Robertson and Busch, 1994) for a review of the effects of marital violence on children) and provides the context for a large proportion of child abuse (Stark & Flitcraft, 1984). There is a calculable economic cost to this. In New Zealand, Suzanne Snively (1994) calculated the direct costs incurred by government services as a result of family violence to be between \$1.2 billion and \$2.9 billion per year.²

So how should one view such violence? As arguments which have got out of control? As a symptom of underlying psychopathology in one or both of the parties? As the result of a failure to communicate effectively? It is not my intention here to provide a detailed review of the various frameworks which have been developed to "explain" domestic violence. Rather, the intention is to provide a brief analysis of the dynamics of abuse and its relationship to wider social and cultural processes.

As Yllö has pointed out, "domestic violence cannot be adequately understood unless gender and power are taken into account" (1993, p. 47). The everyday reality of this observation was well conveyed by one battered woman.

When he's hitting me, I'll do anything, promise anything, if only he will stop. That's what he wants. He wants me in that state. That's when he feels most powerful, most in control. (Quoted in Toone, 1992, p. 1).

¹ The definition of violence used included threats of physical violence but not psychological violence. This definition is consistent with the criminal law. The application of physical force is not necessary for an assault to be deemed to have occurred: a threat to assault with the immediate ability to carry out that threat also constitutes an assault under New Zealand criminal law.

² This range in costs to central government reflects the difference between low and high estimates of the incidence of family violence. The cost of services to child victims, a proportion of whom do not come from woman-abusive homes, are included. The estimates do not include the costs borne by individuals or the cost of income forgone.

The notion of battering as a pattern of “coercive control” (Yllö, 1993, p53) has been well explicated in the work of Noga Avni (1991) and Barbara Hart (1996b). Avni's starting point was Goffman's (1961) account of the total institution, examples of which include old age homes, mental asylums, prisons, army camps and monasteries. On the basis of interviews with 35 women residents in an Israeli shelter, Avni argued that the homes of battered women share important characteristics of the total institution. These are:

- (1) Rules are made by the husband (cf. staff) who is the sole authority and who will punish recalcitrance. Initial moments of socialization may involve obedience tests and will-breaking contests. Avni reported that most of her interviewees had been battered within the first month of marriage in an explicit obedience test. One was told, “You are my property and I can do with you whatever I like” (1991, p. 141).
- (2) Wives (inmates) are confined to the home (institution) and have their lives planned for them. They have to ask permission to engage in most pursuits.
- (3) Wives (inmates) have limited contact with those outside the home. That includes limited contact with family and friends. Husbands (staff) become the only source of information, separating their wives from “polluting” ideologies.
- (4) Wives undergo mortification of self. This involves abasements, degradations, humiliations and profanations of self. “It is essential for them to look constantly over their shoulders and anticipate any forthcoming sanction” (p. 144). They are constantly under surveillance and accusations of flirting or of having affairs are common.
- (5) As is the case in total institutions, the privacy of the home precludes outside interference and protection. On the other hand, unlike institutional inmates, battered wives have no possibility of taking collective action, at least while subject to batterer-imposed isolation.

Barbara Hart's work on rule making provides further insight into the dynamics of battering. While the scope and detail of the rules vary, Hart argued that “rule-making and enforcement is universally practised by men who batter their wives and intimate

partners" (1996b, paragraph 1). Some batterers make their rules very explicit. Hart described one who wrote 13 pages of rules for his partner, covering such areas as prohibitions against contacting others without his permission, directives regarding sexual services to be performed, specifications of how meals were to be prepared, expectations of her behaviour while in public and procedures for ensuring that his behaviour remained private. Other batterers set out scheduled activities for their partners. Arrangements are made for monitoring compliance. Whatever the specific rules, according to Hart, there are four basic rules enforced by batterers:

You cannot leave this relationship unless I am through with you.

You may not tell anyone about my violence or coercive controls.

I am entitled to your obedience, service, affection, loyalty, fidelity and undivided attention.

I get to decide which of the other rules are critical. (1996b, paragraph 2)

The specification of rules could suggest that there is a regularity and predictability to the lives of battered women: that compliance will win the approval of the batterer while failure to do so will result in the imposition of predictable sanctions. In fact, there is little certainty.

Women soon learn that full compliance is not a safeguard. Violent, degrading and controlling conduct is inflicted by abusers at whim; because the batterer had a difficult experience at work, won a softball game, is mad that his favorite television show has been cancelled, has no money for a fishing license, lost in video games with the children, or because the battered woman went to church to teach her Sunday School class, refused to send the children to school when they were sick, baked cookies for the Little League fund-raiser, etc. (1996b, paragraph 12)

Another perspective on the enforcement actions of abusers is provided by Larry Tift (1993). He reviewed literature on the dynamics of abuse and compared specific tactics of abusers with a list of methods of torture developed by Amnesty International. According to his analysis, tactics of abuse (e.g. social isolation of the victim) are but the specific applications of a method of torture (in this case isolation) deployed to achieve a desired effect (depriving the victim of support needed for resistance and making her dependent upon the abuser/interrogator). (See Table 2.1.)

Table 2.1

Methods of torture: their desired effects and application within intimate relationships

Method	Desired Effect	Application
Isolation	<p>Deprives victim of all social support for resistance</p> <p>Develops an intense concern with self</p> <p>Makes victim dependent on interrogator</p>	<p>Social isolation is frequently a characteristic of the nuclear family.</p> <p>The social isolation of battered women is even more pronounced. The battering partner attempts to control her contact with the outside world, her potential sources of support for a different reality.</p>
Monopolization of perception	<p>Fixes attention on immediate predicament</p> <p>Fosters introspection</p> <p>Eliminates any stimuli competing with those controlled by captor</p> <p>Frustrates all action not consistent with compliance</p>	<p>The possessiveness that some battering men display toward battered partners regarding their relationships not only with other men but also with women, jobs, school, or any other interest they may have effects a monopolization of perception as well as isolation and dependence. The battering partner enforces his definitions of reality on her, getting her to question her own perceptions and judgements.</p>
Induced debility and exhaustion	<p>Weaken mental and physical ability to resist</p>	<p>Physical violence is clearly one common method of inducing debility, as is the imposition of forced or unwanted sex acts. Psychological tactics, such as cruel putdowns, especially in front of others, can be effective. The battering partner attacks her personhood, demeans and belittles her, and undermines her self-worth.</p>
Threats	<p>Cultivate anxiety and despair</p>	<p>The battering partner verbally threatens to injure or even kill his partner. Many battered partners are intimidated by the batterers' physical strength, even when these partners are not directly threatened physically.</p>
Occasional indulgences	<p>Provide positive motivation for compliance</p> <p>Hinder adjustment to deprivation</p>	<p>There are usually more than occasional indulgences in most violent relationships, but in some, indulgences are orchestrated to gain partner compliance. The battering partner selectively withholds and distributes positive reinforcers within the relationship.</p>
Demonstrations of omnipotence	<p>Suggest futility of resistance</p>	<p>Coercion clearly serves to convey "omnipotence"; partner rape and the imposition of other unwanted sex acts appear to serve this purpose.</p>
Degradation	<p>Makes resistance appear more damaging to self-esteem than capitulation</p>	<p>Many battered women comply with their partners because they perceive that resistance may be more costly to their self-esteem than capitulation. Consequently, some battered women submit or do not fight back when being raped or physically battered by their partners; others, fearing physical injury, remain silent when being publicly humiliated.</p>
Enforcement of trivial demands	<p>Develops habits of compliance</p>	<p>It is common for battered women to described their partners' violence as being set off by the most trivial things (e.g., an undusted shelf, a meal not cared for, a dinner not being ready when he got home, even though there was no way of knowing when he would arrive). Tyrannical behaviour helps develop the habits of compliance, anxiety, and focus on him.</p>

Source: Tiff, 1993, p. 52-53.



Figure 2.1
Power and control: Tactics of men who batter
 Source: Domestic Abuse Intervention Project, 206 West Fourth St, Duluth, Mn.

The work of the Duluth Intervention Project has also helped illuminate the controlling nature of domestic violence. In consultation with battered women, the project developed the image of the wheel to describe the various tactics by which batterers maintain power and control over their partners. (See Figure 2.1). The spokes of the wheel represent specific tactics (isolation, intimidation etc). The rim of the wheel represents physical (including sexual) violence. There is a necessary link between the physical violence and the other tactics of control. It is physical violence and/or the threat of physical violence which give the other controlling tactics their potency (Hart, 1996b; Myers, 1995; Robertson & Busch, 1998).

There are three important implications of what can be described as a power and control analysis of battering. The first is that battering is more than physical violence. As has been noted by Jacobson:

Battering is not just physical aggression. Rather, battering constitutes the systematic use of violence and threat of violence in order to control, subjugate, and intimidate women. Without fear, there can be no battering. (1994, p. 99)

Thus an important component of battering is the sustained emotional or psychological abuse to which women are typically subjected: degradation, social isolation, economic deprivation and attacks on their perceptions (Kirkwood, 1993). This is said to amount to “a kind of brainwashing which undermines a woman’s self-respect, her ability to have a balanced perspective on what is happening to her, and her capability for planning how to free herself from the violence” (Bowker & Maurer, 1985, p. 6).

A second, related point, is that a power and control analysis emphasizes the importance of placing individual acts of violence into the broader context of women’s lives. What may be seen by outside observers as trivial or minor, may, when viewed within the context of fear and intimidation characteristic of battering relationships, take on enormous significance (Meier, 1993). The point is well illustrated by the experiences of two women, interviewed as part of the Domestic Protection Study, who reported to the police that their ex-partners had breached the terms of their protection orders. In one case, the respondent had broken into his ex-partner’s home and left presents for their children. In the other case, the respondent had broken into his ex-partner’s house and while there had washed the dishes. Both women wanted their ex-partners arrested but in both cases the police saw the respondents’ actions as breaching the orders only in a technical sense. The men’s

actions were seen by the police as gestures of goodwill, but to the women concerned, there was a different message. The women were being reminded that their abusers knew where to find them and still had the ability to harass and intimidate (Busch, Robertson & Lapsley, 1992).

A third point is that a contextual analysis is useful in clarifying the conflicting evidence about the gendered nature of domestic violence. Some research, especially research using the Conflict Tactics Scale (Straus, 1990), has suggested that marital violence is roughly symmetrical: that is, husbands are just as likely as wives to be victims of spousal violence. The Conflict Tactics Scale is confined to questions about specific "acts". For example, respondents are asked if they have "pushed", "slapped", "kicked" or "bit" their partner. Depending on the specific item, an affirmative answer identifies the respondent as being a perpetrator of either "violence" (e.g. pushed or slapped) or "severe violence" (e.g. kicked or bit). The problem is that this focus on the specific act without considering the context in which it occurs renders invisible the intention of the act, its meaning for each party and its consequences. For example, Ellen Pence (personal communication) vividly portrays the inadequacy of the Conflict Tactics Scale with the hypothetical example of a woman who bites the arm of the man who is strangling her. The Conflict Tactics Scale would score them as being equally violent. When researchers have investigated domestic violence using context-sensitive methods, such as case studies and in-depth interviewing, they have concluded that women almost always employ violence in defence of themselves or their children, or in retaliation for previous physical abuse (e.g. Browne, 1987; Pagelow, 1984; Campbell, 1992b; Polk & Ranson, 1991; Saunders, 1986). As Dobash and his colleagues (1992) have pointed out, a noteworthy feature of the literature proclaiming the existence of battered husbands and battering wives is the absence of case histories suggestive of the chronic intimidation characteristic of woman battering.

Cultural supports for battering

Men's ability to control women does not occur in a vacuum. Nor is a belief that one is justified in using violence to enforce that control solely the product of the minds of individual men. There are powerful cultural supports which legitimate male hegemony and condone violence against women.

Feminist scholars have identified a range of institutions and institutional practices as cultural facilitators of violence against women. Christian tradition is one (Ritchie & Ritchie, 1990). The notion of redemption in Christian theology is premised on female wickedness. Salvation is needed because there was a Fall, brought about by the archetypal woman, Eve (Walker, 1983). Saint Paul provided a model for Christian marriage.

Wives, submit yourself unto your husbands, as unto the Lord. For the husband is head of the wife, even as Christ is head of the Church. (Ephesians, 5:22)

He advised men to “let your women keep silence in the churches; for it is not permitted unto them to speak” (First Epistle to the Corinthians, XIV). Such a view has survived nearly 2,000 years. In a survey of Protestant pastors in the United States, 21% said that no amount of abuse suffered by a married woman would justify her leaving her marriage and 26% agreed that “a wife should submit to her husband and trust that God would honor her action by either stopping the abuse or giving her the strength to endure it” (Alsdurf, 1985, p. 10).

British and British-derived law enshrined the inferior position of women, denying them independent legal status.

By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated or consolidated into that of her husband, under whose wing, protection or cover, she performs everything. (Blackstone, 1857, p. 468)

Women, like children, were deemed to be not competent to make contracts.¹ Before marriage, a woman was deemed to be under the control of her father: after marriage, she was under the control of her husband (Sigler, Crowley & Johnson, 1990).

Violence against wives was expressly permitted by what became known as the rule of thumb after an eighteenth century British jurist ruled that a man could beat his wife as long as he used a rod no thicker than his thumb (Family Violence Prevention Coordinating Committee, 1991). The rule of thumb was adopted by American courts (Salzman, 1994) and though overturned by subsequent legislation the reluctance of courts to intrude into the domestic sphere to protect women against male partner violence is well-documented in a number of jurisdictions (e.g. Pence, 1989; see

¹ The action of the Post Office official I described in the previous chapter could be seen as reflecting this doctrine.

Busch, 1994, for a review of contemporary New Zealand judges' attitudes to domestic violence). Until 1985, New Zealanders were immune from prosecution for rapes committed against a current spouse (Crimes Act, 1961, s.128; Crimes Amendment Act, 1985, s.2(4)). This is still the case in some jurisdictions in the United States of America (Harvard Law Review, 1993). Outside the home, the fear of rape has been used by men in what Susan Brownmiller (1975) referred to as a "male protection racket," allowing men, in effect, to argue that women need their protection, reinforcing the dependent position of women.

Cultural supports for violence against women can also be traced in the evolution of Western capitalism. In feudal times, marriage was used to secure the consolidation of land and political alliances (Family Violence Prevention Coordinating Committee, 1991). The role of women as an economic resource is illustrated by *droit de seigneur*, "the right of a landlord to 'use' the virgin on her wedding night, prior to her tenant husband" (Family Violence Prevention Coordinating Committee, p. 127).

Industrialisation required a separation between home and work, and women were increasingly consigned to the domestic sphere, providing domestic services to their breadwinning husbands, further reinforcing their subservient, dependent role (Dobash & Dobash, 1979; Friges, 1970). Modern advertising, with its heavy reliance on semi-pornographic images of women to sell commodities from cars to cleaning agents, contributes powerfully to the depersonalisation of women (Wolf, 1991). As various writers have pointed out, depersonalising one's partner (e.g. by calling her derogatory names) is a significant precursor to battering (cf. McMaster & Swain, 1989; Pence, 1989).

Thus, the position taken in this thesis is an explicitly feminist one which puts gender and power at the centre of the frame (c.f. Yllö, 1993, p. 47). From this perspective, violence against women becomes less a matter of individual pathology or interpersonal conflict and more a matter of deeply entrenched cultural values. These values are operationalised in specific practices within the administration of the law and in the delivery of health and welfare services which, to varying degrees, condone violence against women and undermine the efforts of battered woman to live violence-free lives. (I discuss some of these practices later.) Moreover, these anti-women and violence-condoning values have been shown to be held by large segments of the general population. For example, Russell (1988) reviewed a number

of general population surveys conducted in the United States. Among the findings: 24% of men and 22% of women viewed minor violence against spouse as normal, 19% of women thought wife assault was sometimes justified, and 25% of college men and 14% of college women thought assaulted wives enjoyed being hit. In a New Zealand study of 2,000 randomly selected men 66% either approved or only moderately disapproved of hitting a female partner in at least one of twenty scenarios presented to them¹ (Leibrich, Paulin, & Ransom, 1995).

This is not to say that battering is *only* about gender. After all, some gay men and some lesbian women batter their partners (see Pence, 1987). Indeed, feminist analyses of battering have been attacked as narrow and concentrating on a single variable, patriarchy (e.g. Gelles, 1993). However, such criticisms rely on excessively narrow definitions of patriarchy.

Feminist theory does not regard patriarchy as a discrete, measurable variable (like age, sex, or socio-economic status. Rather, patriarchy - the system of male power in society - is very complex and multidimensional. (Yllö. 1993, p. 49)

A similar point was made by Pence who quoted a women's advocate describing her developing understanding of battering. Having been confronted by evidence that not only was there violence within some lesbian relationships but that some women who battered their partners were active within the women's movement, the advocate commented:

This is when I first began to understand the pervasiveness of patriarchy. Patriarchy is not only a gender issue, but a form of dominance and control that permeates the thinking of all human beings subjected to patriarchal environments. I began to see battering not just as a gender issue, but as a much deeper manifestation of the concept of power and dominance in our culture. I also began to see that the enemy was not men or males. While males definitely enjoyed more freedoms, privilege and status in a patriarchal structure, I no longer believed that if women ran things instead of men, everything would change and be better. This realization made me realize how complete the cultural transformation must be in order to realize a non-violent society. (1987, p. 18)

The need for cultural transformation has been powerfully argued by Tifft who drew links between battering and structural violence (e.g. low-intensity warfare, withholding of access to survival goods, state-sponsored terrorism) which is used to "sustain racism, ageism, heterosexism, anti-Semitism, economic control, and gender hierarchy, and other forms of group domination" (1993, p. 26). According to Tifft

¹ None of the scenarios included self-defence as a reason for hitting.

2: Battering, women's resistance and community responsiveness

Many men who work in structurally violent organizational contexts imitatively organize and impose decision-making processes and labor arrangements within the family that render them inflictors, rather than receivers, of structural violence. (1993, p. 35)

By such means, societal arrangements of oppression are replicated in family processes such as: hierarchical, non-participatory decision making; corporal punishment; child care and other divisions of labour based on gender and age (Family Violence Prevention Coordinating Committee, 1991; Ritchie & Ritchie, 1990; Tift, 1993). Thus structural violence provides the “groundwork for normative justification of (interpersonal) control and violence” (Tift, p. 29).

While violence against women within Pakeha society can be seen to have its cultural roots in Christianity, British law and capitalism, the relevance of such an analysis to Maori is more complex. There are conflicting views about the relative status of men and women in pre-colonisation Maori society. While some commentators, mostly Pakeha, have concluded that Maori women had a status no greater than that of servants (e.g. Maning, 1922, cited in Glover, 1993) others have painted a picture of women and men having distinct, but complementary roles in which neither could be said to exercise power over the other (Robin, 1991). There is, however, some consensus that the process of colonisation, especially the introduction of Christianity, has contributed to a loss of status of Maori women and resulted in patriarchal practices being widely adopted within colonised Maori society (Balzer, Haimona, Henare & Matchitt, 1997; Glover, 1993; Robin, 1991; Wainohu, 1991). Colonisation has also severely disrupted a complex value system and mechanisms of social control which had earlier served to restrain perpetrators of violence within traditional communities (Ritchie & Ritchie, 1990). The impact of colonisation can be traced at the individual level: some of the Maori women interviewed by Glover reported being subjected to racist taunts by their Maori partners. The curriculum of the Hamilton Abuse Intervention Project makes explicit links between colonisation, sexism and other forms of oppression (Nikora & Robertson, 1995).

Feminist analyses of battering which emphasise gender, power and control and broad socio-cultural processes are now well established. Feminist activism, in general, and the refuge (or shelter) movement in particular, have meant that there has been a fundamental shift in how the problem of abuse of women has been understood (Carlin, 1988). There has been significant legislative and policy reforms which could be broadly described as the criminalisation of domestic violence (Buzawa & Buzawa,

1993b; Carbonatto, 1995; Stark, 1993) some of which are reviewed in Chapters 5, 6 and 7. However, apart from the refuge movement and associated advocacy services, much of the reform has focused on offenders: that is, policing, prosecution initiatives and batterer treatment programmes. As will be seen in the following Chapters, it has not always been possible to determine the extent to which such reforms have improved the lives of battered women, for not only have the reforms been offender-focused, but the evaluations of such reforms have frequently relied on offender-relevant outcomes such as conviction, treatment completion and recidivism rather than the safety and autonomy of victims. I believe that a victim-centred approach is needed. For this reason, much of the rest of this chapter is devoted to a consideration of the impacts of battering on women and the needs of women who are being battered or who are escaping battering relationships. But first, a brief discussion of terminology is in order.

Terminology

Thus far, I have referred to the phenomena of interest as *battering, abuse, violence against women, male partner violence, domestic violence* and *family violence*. Other similar terms used in the literature include *spousal violence, wife (or spouse) abuse* and *marital violence*. While these terms have areas of overlap, they are not synonymous. None are without their problems. For example, *domestic, family* or *spousal* violence/abuse are not gender specific and can include violence against family members other than adult women (which is the focus of this thesis). Terms such as *spouse* and *marital* are similarly gender neutral and like the gender specific *wife* exclude violence in relationships other than legally constituted marriages. *Violence against women* is gender specific but clearly includes violence outside family relationships. *Violence against women by male partners* is probably the most accurate term, albeit a somewhat cumbersome one. But even the term *violence* is problematic if it is understood to include only physical violence. As the discussion above indicates, a focus specifically on physical assault belies the variety of controlling tactics which are of interest. Some scholars use the term *abuse* to indicate a broader range of behaviour than physical assault. This may be useful but has been criticised by Stark who argued that it “evokes a powerful adult on whom the victim is dependent, as in elder or child abuse” (Stark, 1993, p. 667). The inequality evident in male partner violence, Stark noted, originates in socially constructed roles and not in a state of dependency that is a consequence of the physical or mental frailty of the

victim (although many battered woman may be financially dependent upon their abuser). On the other hand, *battering*, taken to refer to “the systematic use of violence and threat of violence in order to control, subjugate, and intimidate women” (Jacobson, 1994, p. 99) does go some way to convey the broad range of coercive tactics.

While finding terms to adequately describe actions is difficult, so too is finding terms to designate the actors. For example, there has been criticism of the term *victim*. According to Mahoney, (1994), *victim* has strong connotations of passivity such that it is difficult for one to be regarded simultaneously as both a victim and as capable of exercising agency. Applying the term to women who have been battered may perpetuate unhelpful stereotypes of them as helpless and passive, rendering invisible the multiple strategies they employ to minimise or avoid the violence of their partners (cf. Bowker, 1993, Hoff, 1990). For this reason, the term *survivor* has often been preferred (e.g. Hoff).

A slightly different perspective was provided by Kirkwood. She began her study of women who had left battering relationships convinced of the need for a term such as *survivor* to describe “the kind of active, positive action women take to continue functioning within an abusive relationship, or to free themselves from abuse” (1993, p. 135). However, Kirkwood came to recognize that the term *victim* was useful for the women she interviewed to represent the way in which their abuser had eroded the women's personal power. Thus *victim* was used “to convey the feeling of losing control over one's life which occurred as abusers increased their control within the relationship” (p. 136). It simply meant they were unable to change the circumstances, and was applied, for example, when women were physically overpowered or financially deprived. A second use of the term was retrospective, with women using it to describe the depowered perspective and behaviours forced on them. In this sense, victim was often used interchangeably with *martyr*, as in “I'm not a martyr anymore...” or “I felt a victim for a long time....” (p. 136).

Kirkwood argued that it is more useful to use words which describe processes (*victimisation, survival*) rather than ones which label people (*victim, survivor*). Further, she argued that *victimisation* and *survival* are not mutually exclusive and gave the example of a hypothetical woman *victimised* by being assaulted for not having dinner on the table in time who *survives* by making sure that dinner is on time thereafter. In this

example, the very act of *survival* leads to further *victimisation* in that while she watches the clock and cooks in time to meet the abuser's schedule, her attention becomes more focused on his desires. At a minimum, Kirkwood's discussion of terminology reminds us that just as *victim* may render women's coping invisible, *survivor* may trivialise the oppression they experience.

Two terms often used are *battered women* and *formerly battered women*. These can be seen as useful markers of experience (Battered/Formerly Battered Women's Task Force, 1992) and are often used in this thesis. However, again there is a caveat. The use of such terms can be disempowering if they encourage women to see themselves only as victims. The Task Force's position was that no one has the right to name someone as a battered or formerly battered woman without her consent.

Because names and labels have such infinite ramifications, both positive and negative, we name only ourselves and not others, and insist that we have the power to reveal or change our names when and as we choose. (p. 3)

Such a position makes good sense when related to specific, individual women within a specified context. I do not think it should be taken as suggesting that terms such as *battered women* should be avoided as a convenient and economic way of referring in a general way to women who have been battered.

A final point is that some terms may send unintended messages about responsibility. In particular, terms such as *violent relationship* or *battering relationship* can be seen as implying joint or mutual responsibility for the violence. At a minimum, such terms can be criticised for hiding the culpability of the perpetrator. Nevertheless, I will use such terms from time to time. They are more practical than writing *a relationship in which a woman is battered by her male partner*. When a term such as *violent relationship* is used, I ask you not to assume that I am implying mutual violence or that anyone other than the perpetrator is responsible for the violence.

The impact of battering

A power and control analysis of battering leads directly to an analysis of who benefits and who loses through the use of violence. The abuser gains control: the victim loses her autonomy. At least at first, "battered women may conclude that full compliance with the directives of the batterer may win his love or respect and stop the violence" (Hart, 1996b, paragraph 14). By leaving work, dressing demurely, agreeing to sex,

cooking and cleaning - in any number of ways a battered woman may modify her behaviour to avoid verbal abuse and physical assault (Myers, 1995; Peterson & Calhoun, 1995). Seeking help may only exacerbate the problem, exposing her to retaliatory beatings (Myers, 1995). The intervention of outsiders (e.g. police, courts and health and social services) may be ineffectual, providing little or no incentive for the abuser to change his behaviour, a point which is amply illustrated in various contexts throughout this thesis. Neither is leaving the relationship necessarily a viable option. Women are particularly vulnerable to lethal assaults following separation (Hart, 1993; Wilson & Daly, 1993). Moreover, homelessness, crowded refuges, poverty and issues involving court-ordered custody and access arrangements are also formidable deterrents (Peterson & Calhoun) and may be less attractive than remaining with an abuser, especially if he appears remorseful, loving and attentive.

The impacts of battering for women can be catalogued in a number of ways but they include social isolation, economic dependence and poverty, and impaired physical and psychological health. Some battered women are forced into crime. Their children are also likely to be affected, both by being directly abused and by witnessing abuse.

It is commonplace to observe that humans are social animals. The isolation typically imposed on battered women vitiates their social nature. They are often discouraged or forbidden from going to work, undertaking education, visiting friends and family and having friends and family visit them (Kirkwood, 1993; Pence & Paymar, 1990). The discouragement may be covert: men can isolate their partners simply by behaving badly when friends and family call (Pence & Paymar). Whatever reasons the batterer uses to justify his isolating behaviour (e.g. "I love you so much I cannot bear to be without you." "They are against me." "They are a bad influence." Pence & Paymar) his chief purpose is to make sure his partner does not have the opportunity to have her view of what is happening in the relationship validated by others (Carlin, 1988) and to make sure that he remains the mediator between her and the external world (Avni, 1991). In particular, if his partner no longer has a job, she will become (more) economically dependent on him (cf. Okum, 1988). His isolating tactics may also mean that it is physically impossible for his partner to leave the relationship. For example, some of the women interviewed in the Domestic Protection Study spoke of their partners disabling the car or moving the family to remote locations (Busch, Robertson & Lapsley, 1992).

There are direct economic repercussions of battering. Batterers typically control the family finances, making their partners financially dependent upon them (Pence & Paymar, 1990). In a survey of 81 battered woman in Duluth, Minnesota, 48% of those who were employed reported that they had lost work time because of physical abuse and 18% had lost their jobs. Twenty one percent said they were discouraged from going to college or university and fourteen percent were forbidden from returning to college or university (Pence, 1989). As well as the loss of income there are other financial costs to women such as medical expenses, legal fees and the costs of relocation. In New Zealand, Suzanne Snively calculated the costs of family violence borne by affected individuals to be a total of \$398.6 million annually (this is in addition to the government-incurred costs referred to earlier.) And it is not as if leaving the abuser will necessarily improve the economic position of women. On the contrary, separation generally means a drop in their standard of living and many battered woman live in relative poverty (Kirkwood, 1993).

Of course, battering has significant health impacts. The assaults battered women suffer often result in significant injuries including broken bones, bruising, burns and head injuries (see American Psychological Association Presidential Task Force on Violence and the Family, 1996, p. 35). A recent study carried out by one of my graduate students found bruising, cuts and black eyes to be the most commonly reported injuries among a small sample of women (Flaherty, 1996). Battering is not only the greatest single cause of injury to women, it also provides the context for many other health problems (Heise, 1993). Common somatic complaints associated with battering include abdominal pain, muscle aches, weight loss or gain, gynaecological problems, chemical dependency and increased susceptibility to minor illnesses such as colds and influenza (Council on Scientific Affairs, 1992; Fanslow & Dehar, 1992; Flitcraft, Hadley, Hendricks-Mathews & McLeer, 1992; Kirkwood, 1993; Mullen, Romans-Clarkson, Walton & Herbison, 1988). Unborn children are affected. McFarlane (1992) concluded that one in twelve pregnant women experiences battering during pregnancy. Some assaults precipitate miscarriages (American Psychological Association Presidential Task Force on Violence and the Family, 1996) and battered women are four times more likely to deliver low birthweight infants (McFarlane).

2: *Battering, women's resistance and community responsiveness*

Common psychological impacts of battering include fear, anger, loss of self esteem, suicidal tendencies, depression and anxiety (American Psychological Association Presidential Task Force on Violence and the Family, 1996; Bowker, 1993; Dutton & Goodman, 1994; Hoff, 1990; Kirkwood, 1993.) Largely through the work of Lenore Walker (1984, 1989, 1991), the battered woman syndrome has been increasingly used to describe the psychological sequelae of battering. Central to the syndrome is the concept of learned helplessness. The concept was first formulated after it was noticed that dogs exposed to inescapable electric shocks lost their ability to learn to avoid painful stimuli in other settings (Lahey & Ciminero, 1980). As applied to battered women, learned helplessness is thought to be a response to the random and unpredictable nature of the violence to which they are subjected. According to Walker (1984), because battered women have little control over what happens to them, they may lose their ability to predict the outcome of choices they make and cannot recognise or take advantage of opportunities to escape the relationship. Walker argues that women's choices narrow as they opt for the strategies which "have the highest predictability of creating successful outcomes" (1991, p. 24), including, sometimes, killing their abuser (Walker, 1989).

The syndrome, particularly its emphasis on learned helplessness, has attracted some criticism, particularly from researchers who have argued that it tends to pathologise women and render invisible the multiple strategies they use to minimise and/or escape violence (e.g. Bowker, 1993; Hoff, 1990; Renzetti, 1992). It has been pointed out that, far from being passive, battered women "frequently demonstrate considerable ingenuity in attempting to alleviate violence" (Russell, 1988, p. 196). Taking a more developmental perspective, Harris and Dewdney (1994) have argued that the idea of learned helplessness is belied by the fact that as the violence against them continues, women are less likely to blame themselves and more likely to locate the problem with their abuser and an unresponsive helping system. Furthermore, while battered woman syndrome and learned helplessness have been used successfully in the defense of battered women facing criminal charges (e.g. see *Ruka v Department of Social Welfare*, 1996, for a landmark New Zealand decision), these concepts have also been used to their disadvantage in custody disputes and in child abuse and neglect investigations to show they are unfit parents (Kjervik, 1992; Meier, 1993). A recent New Zealand decision illustrates this danger. In *E v S* (1997), a woman sought the return of her children. They had been taken into care following

concerns about her ex-partner's violence. His violence, which was well-documented, comprised acts of what could best be described as terroristic behaviour directed against both her and the children, and included intimidating her within the court room. There was no suggestion that the mother had been violent towards the children. Yet the Court, relying in part on evidence of battered woman's syndrome, characterised her as an inadequate protector, and declined her application to have the children returned to her. (See Robertson & Busch, 1997, for an extended analysis of this case.)

E v S (1997) can be seen as illustrating the general gist of Bowker's argument that "a battered woman's problems are social, not psychological" (1993, p. 154). On the other hand, the syndrome has been defended by Walker (1993) and others (Herman, 1992; Root, 1992), who have argued that battered woman's syndrome should properly be considered as a sub-category of post-traumatic stress disorder, in effect, putting battered women in the company of war veterans, former hostages, crash victims and other "innocent victims of tragic circumstances" (Dutton & Goodman, 1994, p. 221). The diagnostic criteria for post-traumatic stress disorder include: cognitive changes such as difficulty in concentration, confused thinking; memory changes such as intrusive memories of the abuse which may occur at rest or in dreams, flashbacks and dissociation, and/or partial psychogenic amnesia; avoidance symptoms such as depression, efforts to leave physically, leaving the situation mentally, minimising the abuse, denial and use of alcohol or drugs; and arousal symptoms or anxiety related symptoms such as eating problems, sleep problems, hyper-vigilance, exaggerated startle response, irritability, angry responses, and physiological reactivity.

Walker argued that

Using the post-traumatic stress disorder/battered woman syndrome category can meet the challenge from feminists to avoid pathologizing the individual woman by taking into account the situational context that affects her behavior, yet also can acknowledge the honesty of the serious psychological effects that violence has upon her ability to function. It is not victim blaming, in that the woman is expected to be just like other women and not somehow provoking or seeking out her own abuse. It also helps lead to the design of effective treatment programs that emphasize changes in the environment, so that she is safe and the violence stops, rather than changes in her behavior. (1993, p. 146)

Whatever one's position on the use of battered woman syndrome, Bowker's (1993) caution seems sensible: that is, that it would be unwise to assume that all battered women suffer from it.

One little-discussed consequence of battering is the increased risk battered women face of being charged with criminal offences. While some attention has been paid to those women who kill their abuser (e.g. Browne, 1987), largely ignored is the fact some battered women are coerced by their abusers into criminal conduct: they are forced to write bad cheques, deal in drugs, and complete fraudulent loan or benefit applications. Abusers' control of family's finances may mean that battered women have little choice but to steal to clothe and feed their children (Hart, 1995; *Ruka v Department of Social Welfare*, 1996). And in many jurisdictions, the failure of police to correctly identify the primary aggressor has meant some battered women are arrested for assaults committed in justifiable self-defence (e.g. Kjervik, 1992). (In Chapter 10 I provide an analysis of local data on the arrest of women who have been battered.)

While the focus of this review is on adult women, no discussion of the impact of battering would be complete without consideration of the effects on children. For those battered women who are mothers, the interests of their children are inextricably linked to their own. For a significant proportion of battered woman, perhaps over half (see Bowker & Maurer, 1985), pregnancy marked the onset of battering. Later, it is often the realisation that their children are suffering that leads women to begin the process of resistance to the batterer (Hart, 1996b) and to contemplate leaving the relationship (Kirkwood, 1993).

I do not propose to provide an extensive review of the literature on the effects of battering on children (see reviews by Henderson, 1996; Robertson & Busch, 1994.) However, there is widespread agreement that the children of battered women almost inevitably witness the violence against their mothers and/or see the effects of that violence (e.g. Jaffe, Wolfe, & Wilson, 1990; Maxwell, 1994). Similarly, there is agreement that a large proportion, perhaps between 40% and 70%, are themselves directly abused (e.g. Bowker & Maurer, 1985; Carlin, 1988; McKibben, De Vos, & Newberger, 1989; Stark, & Flitcraft, 1984). And while it has proved difficult to disentangle the effects of direct abuse from the effects of "merely" witnessing abuse (Henderson) there is remarkable consistency in the research findings: compared to children from non-violent homes, children exposed to violence have been found to

be more anxious, to have lower self-esteem, to perform poorly at school, to have a higher incidence of both internalising problems (e.g. clinging, complaining of loneliness, worrying) and externalising problems (e.g. disobedience, cheating, lying, destroying things), and to be more likely to exhibit psychosomatic symptoms (e.g. stomach aches, diarrhoea, asthma, enuresis and nightmares) (Henderson; Robertson & Busch). While much of this research comes from overseas, the findings of a New Zealand study confirm the pattern (Pocock, 1994).

Women's resistance to battering

Despite the stereotype of helplessness, there is strong evidence of the ingenuity and resourcefulness employed by battered women in resisting, escaping or otherwise ending the violence and other controlling behaviour to which they have been subjected (e.g. American Psychological Association Presidential Task Force on Violence and the Family, 1996; Bowker, 1993; Hart, 1996b; Hoff, 1990; Kirkwood, 1993).

Resistance is not an automatic reaction. Initial reactions are more likely to be of shame and a sense of failure (Pahl, 1981, cited in Borkokowski, Murch & Walker, 1983). This is not surprising considering that both their abusers and the wider community will likely encourage women in the view that the health of their relationships is primarily their responsibility and that the violence is evidence of their failings as mothers and wives (Hoff, 1990; Pence & Paymar, 1990). Moreover, as Barbara Hart has pointed out, "many battered women may initially conclude that full compliance with the directives of the batterer may win his love or respect and stop the violence" (1996b, paragraph 13). Women may become more focused on their abusers' needs (Kirkwood, 1993).

While resistance may be immediate, as when women defend themselves and/or their children (Bowker, 1993; Hart, 1996b), it can also be much more considered. Hart has described a process of "strategic rule resistance" (1996, paragraph 14) in which women engage once they realise that compliance is not achieving safety.

She considers some of the following questions: Do I care enough to resist? Is it safe, practical or important to resist? Is this a rule that must be broken to retain my integrity and self-worth? Is this a demand that will fundamentally endanger my children or myself? Is there a way around the rule? Is it possible to trick the batterer into believing I've complied when I've not? Can I live with this duplicity? Can I negotiate a modification that is less onerous? How can I mitigate the

consequences of compliance and of resistance? Which is better in light of all the circumstances of my life and the consequences? Can I resist at a time and in a place where others will support me and prevent the violence? How, then, can I avoid retaliation once these potential intervenors are not around? How can I change my daily routines to avoid contact with the abuser? To protect the children when they have contact with the batterer? How can I improve the other circumstances of my life so that the violence and coercive controls don't defeat me? Who can I enlist as allies in support of me or to intervene with the batterer? What do I want them to do? Is it ethical to ask others to help me? Aren't I betraying the batterer in disclosing his violence and coercion? Is the violence worse than any betrayal from disclosure? Can I stop him myself or do I have to involve others? What can I do or ask others to do to convince this man that he has to change or he will lose this relationship? What will work? (1996, paragraph 14)

Strategies of resistance can be usefully thought of as those involving people outside the relationship and those women employ without breaching the privacy of the relationship. Almost by definition, the latter remain largely hidden. However, the 1,000 women who responded to Bowker's (1993) survey (recruited through a women's magazine) reported a wide variety of strategies they had used within their relationships. Most commonly mentioned were (in order of frequency): avoiding the men and/or certain topics of conversation (mentioned by 87% of the women); covering faces and vital organs (86%); threatening divorce or to call the police (76%); trying to extract promises not to batter again (75%); trying to talk men out of battering them (72%); fighting back (67%); and hiding or running away (65%). While fighting back was reported to be the most dangerous strategy, it is important to note that *all* strategies led to increased violence against some of the women.

More open-ended research has identified other "private" strategies not mentioned in Bowker's questionnaire: superficially complying with the batterer's demands; "being nice"; keeping information from the batterer; and obtaining a gun or other weapon (American Psychological Association Presidential Task Force on Violence and the Family, 1996). Several of the women interviewed by Hoff (1990) said that they contemplated killing their spouse. Some battered women do (Browne, 1987). In New Zealand, Gay Oakes is the most recent example (Bell Gully, 1999).

When women seek help from outside the relationship, they characteristically turn to informal sources of help (friends, family) before formal sources (such as the police) and seek solutions which enable them to stay in their own homes before accepting solutions which involve leaving (Borkokowski et al., 1983; Bowker, 1993). The informal help sources most commonly used by women in Bowker's (1993) study were their own families (used by 63%), friends (62%) and neighbours (29%), all of

whom are important sources of physical shelter (Bowker & Maurer, 1985). The women interviewed by Hoff (1990) reported that the response from such informal help sources varied from very helpful (e.g. providing refuge, helping to move and giving emotional support) to very unhelpful (e.g. blaming, ignoring and other responses reflecting a philosophy of "You made your bed, now lie on it."). A common pattern among family members was to keep aloof during the battering but to be supportive once the woman left.

There are a range of formal help sources to which battered women turn. The respondents in Bowker's survey reported using (at least once) police (53%); social services or counselling agencies (50%); lawyers (43%); doctors, nurses and other health professionals (33%); shelters (women's refuges) 22%; and women's groups (21%). Although used the least frequently, these last two were rated by respondents as the most effective. Evaluations of the effectiveness of several of these sources of intervention are reviewed in the following chapters. However, it is worthy of note here that these formal sources of help are invoked relatively rarely. For example, the best estimates suggest that fewer than one domestic assault in ten are reported to the police (Buzawa & Buzawa, 1993a; Pagelow, 1993b).

Perhaps most attention has been paid to what the uninformed observer may see as the most obvious strategy, reflected in the oft asked question, "Why doesn't she leave?" (e.g. *Why battered women don't leave home*, 1983). The question is problematic in at least two ways. Firstly, it takes attention from an arguably more valid question: Why is he allowed to stay? (Hoff, 1990). Secondly, it seems to assume that women will be safer if they leave the relationship. The facts suggest otherwise. Separation may *increase* the level of violence as the batterer attempts to reassert his authority (Carlin, 1988; Hart, 1996a; Liss & Stahly, 1993). For wives, separation increases the risk of being killed by their husbands by a factor of four (Wilson & Daly, 1993). Nearly three quarters of the domestic assaults which come to the notice of police and emergency medical services involve estranged partners (Hart, 1993; Walker, 1993) and 50% percent of all women murdered in the United States are killed during the process of leaving or after they have left a relationship (Wilson & Daly). Comparable figures in New Zealand are not available but my file of newspaper cuttings covering domestic murders suggests that at least half the women killed in this country had recently separated from their killer.

Post-separation violence often involves the children of battered women: 34% of women in Californian shelters reported their batterer had threatened to kidnap their children, and 11% that their children had been kidnapped (American Psychological Association Presidential Task Force on Violence and the Family, 1996). In New Zealand, the murders of the Bristol and Ratima children by their fathers bears witness to the dangers to children of post-separation violence (Busch & Robertson, 1994a).

Quite apart from threats to the immediate safety of themselves and their children, battered women leaving a relationship face formidable hurdles. Some of these are summarised in Bowker's list of six things which are "worse than battering" (1993, p. 158-159):

- (1) worse battering (if she tries to leave);
- (2) harm to her children (and battered women frequently have fears, often realistic, that their partners will gain custody of their children);
- (3) retaliation against their parents or other close relatives;
- (4) starvation and homelessness;
- (5) the shame of having to admit to the failure of one's relationship (and in certain religious communities, a battered woman's actions in leaving may be equated with sin); and
- (6) loss of social identity and one's entire way of life, especially if one has to go underground.

Other losses commonly suffered by battered women in leaving include the loss of: everyday routine; living in a home (as opposed to a shelter or other accommodation); personal possessions; self-esteem; a father figure for the children; love and caring from a spouse; hopes and dreams; status; and a social support system (Barnett & LaViolette, 1993). Many of these losses are exacerbated if women attempt to escape their abuser by becoming, in effect, invisible. By adopting aliases to pay phone and gas bills, removing themselves from telephone directories, asking friends and family to deny knowledge of their whereabouts or by creating distractions (e.g. by telling false stories about their whereabouts) (Kirkwood, 1993) women may escape detection by their abuser but at the cost of major dislocation to their social support systems.

The problems associated with leaving do not arise in a social and cultural vacuum. They arise in the context of phenomena such as the monopolisation of economic resources by men, discrimination against women in the work force, the inequity of responsibility for supporting and caring for children and specific problems in community and institutional responses to battering. Furthermore, as Barnett and LaViolette have noted:

The fundamental principle underlying female sex-role socialization is that female identity rests upon a woman's attachment and affiliation with a male partner, chiefly through marriage. (1993, p1)

Thus, a decision to stay in a relationship with a batterer can be seen to follow logically from cultural rules about heterosexual marriage, about family and about women's role in keeping families together (Hoff, 1990). On the other hand, Barbara Hart has argued that

The resistance strategies of battered women work best when supported by a community that is intolerant of the violence, acts to safeguard battered women and children, rejects notions of men's authority over women, intervenes to stop the violence and helps men choose to forsake violent, degrading and coercive practices and the beliefs that rationalize domestic terrorism. (Hart, 1996b, paragraph 15)

The needs of battered women

Another way of viewing the *Why doesn't she leave?* question is to recognise that it assumes an ability to choose but fails to recognise that to exercise choice often requires access to resources. Leaving is not a realistic choice if women do not have the resources to adequately feed, clothe, house and protect themselves and their children. Instead of asking *Why doesn't she leave?* we might ask, *Why doesn't the community provide the resources she needs to leave?*

By reviewing what is known about the nature and impact of battering and about the strategies employed by women to respond to or escape from battering, it is possible to develop a tentative list of the resources battered women may need to effectively resist the batterer and/or leave him. Any such list must be tentative; while much has been written on the subject of what battered women need, few systematic needs assessments have been conducted. (Kirkwood's (1990) study of 30 British and North American women is an exception.) Also, it is unlikely that such a list will adequately describe the needs of all battered women, who vary in their needs and in the resources at their disposal. However, unless some attempt is made at understanding

the totality of battered women's needs, it is likely that attempts at intervention will often be ineffective because crucial needs go unmet.

Safety and autonomy: A corollary of a power and control analysis of battering is that its victims are being denied safety and autonomy. On a philosophical level, these are basic human rights (United Nations, 1998). On a more practical level, the safety and autonomy of women become fundamental aims of intervention (Pence, 1989) and the standards by which effectiveness should be judged. As Chapters 5, 6 and 7 show, many aspects of institutional responses to battering fail this test by either failing to protect women from further violence or by compromising their autonomy, sometimes in ill-considered attempts to take action against their batterers.

Financial resources: In a capitalist economy, there can be no autonomy without financial independence. Exercising economic power is an important tactic of control available to many abusers (Pence & Paymar, 1990). Financial independence has been identified as crucial to women leaving abusive partners (Kirkwood, 1993; Okum, 1988; Sullivan, Campbell, Angelique, Eby & Davidson, 1994). Welfare assistance, adequately paying jobs and access to training opportunities are all important factors in women's attempts to live violence free lives (Battered/Formerly Battered Women's Task Force, 1992; Bowker & Maurer, 1985; Carlin, 1988; Morris, 1993). Conversely, some interventions will destitute women, as may be the case when a batterer is incarcerated without providing his family with adequate income support (Corsilles, 1994).

Housing: Women fleeing abusers are, almost by definition, a highly mobile population (Sullivan et al., 1994) and securing adequate housing for themselves and their children is a major problem (Battered/Formerly Battered Women's Task Force, 1992; Hoff, 1990; Kirkwood, 1993). Entering a shelter and medium-term transitional housing (where such is available) generally involves a decline in the standard of living, which, as Hoff points out, should be seen in the context of women's strong socialisation into domesticity. To discount the importance of "a nice home" in a materialistic society is, in Hoff's view, like asking one to shed one's culture (1993, p. 154).

Social support: A woman living with a batterer typically lives within the limits his isolation tactics have imposed (Avani, 1991; Pence, 1987). Leaving may mean she

remains isolated (Kirkwood, 1993) and/or faces the condemnation of others. The lack of support of significant others is a major factor in women reuniting with abusers (Hoff, 1990) or failing to persevere with protection orders (Fischer, 1992) and other legal processes ostensibly designed to help them (Hart, 1996a). On the other hand, the support of others can help women discover the fallacy of their batterers' rationalisations for their behaviour (Carlin, 1988; Pence).

Physical and psychological health: Medical advice and attention featured highly in Kirkwood's (1993) analysis of needs. Women in her study needed treatment not only for injuries suffered in assaults, but also for chronic conditions associated with abuse. For some women, required health services will include help in dealing with psychological problems stemming from the trauma they have experienced (Walker, 1993) or emotional adjustment issues associated with separation and living independently of their abuser (Hoff, 1990). More generally, women may need help in what Kirkwood described as "the long term reconstruction of their identity and self-esteem... (involving) a continual recognition and rejection of the damaging messages about themselves instilled by their abusers" (1993, p. 114).

Child-related needs: Pregnancy, child care responsibilities and fear of losing custody of their children are all significant factors in discouraging women from leaving abusers (Corsilles, 1994; Hoff, 1990). The unavailability of affordable child care may lead women to reconcile with their abuser (Carlin, 1988). Following separation, gaining (or retaining) custody of children is a major concern for women (American Psychological Association Presidential Task Force on Violence and the Family, 1996), especially as abusers may use custody and access applications to exercise control over their partners (Pagelow, 1992). The safety of children becomes an issue if the abuser is to have access to them (Robertson & Busch, 1994) and access changeovers can provide significant risks to the women themselves (Busch & Robertson, 1994a).

Information needs: Women need information about a range of matters such as managing the immediate circumstances of battering, personal safety, understanding the batterer's motivation, the impact on children, the implications of leaving, legal options and the services available to them (Harris & Dewdney, 1994). Yet it is clear that information about resources is not readily available and few agencies make referrals to appropriate sources of help (Kirkwood, 1993).

Advocacy: Finally, accessing resources is not necessarily straight-forward. For example, accessing legal remedies is usually impossible without the help of a legal practitioner (Seuffert, 1996). Even accessing housing and income assistance may be difficult without the support of an advocate (Sullivan 1991).

Given the range of needs described above, it seems unwise to expect single interventions to make a significant difference to the lives of battered women. Barbara Hart has commented:

Data on the question of when battered women will seek outside intervention suggest that the more resources and apparent options a woman has for ending the violence, the more likely she is to act to seek intervention, to achieve protection or to leave the abuser. Thus, where a community offers multiple, viable options, it appears that the safety requirements of battered women will be better met than when a singular intervention is employed. If one defines co-ordinated community response in terms of comprehensive, or at least multiple, options in the justice and human services systems, this appears to advance the goal of social justice for battered women. (1995, paragraph 24)

In other words, if one takes an ecological approach, it quickly becomes apparent that battered women are typically enmeshed in a complex and comprehensive system of oppression – a *total institution* to use Avni's (1991) metaphor – and that that total institution may be quite robust enough to resist single interventions. If women are to have meaningful choices, multiple interventions providing access to multiple resources are likely to be needed. In the next five chapters I discuss community and institutional attempts to intervene. To extend the metaphor, I am referring here to interventions which breach the walls of the total institution. But first, it is useful to consider the question of how one should evaluate the effectiveness of such interventions.

Evaluating intervention

Varying stances have been taken on this important question. In part, this is a reflection on a lack of consensus on the goals of intervention (Roesch, Hart & Wilson, 1993). Moreover, while the goals of intervention vary from organisation to organisation, the measures used to assess the extent to which they have been attained add further diversity. For example, the empowerment of battered women is a commonly cited goal for women's advocacy services and to assess it, evaluators have used various measures such as separation from the abuser, indices of psychological health, battered women's success in accessing community resources and freedom

from further assaults (e.g. Battered/Formerly Battered Women's Task Force, 1992; Brown, 1993; Russell, 1988; Sedlak, 1988; Tan, Basta, Sullivan, & Davidson, 1995). In contrast, the stated goals of intervention for police have included the reduction of violence and the conservation of police resources by reducing repeat calls to domestic violence incidents. Outcomes studied in evaluations have included recidivism of offenders as measured by repeat calls, repeated arrest, reconviction, and, occasionally, victim report (see Chapter 5). For batterer programmes, goals have included the reduction and/or cessation of violence (measured in various ways), improved psychological adjustment of participants, lower levels of anger and the changing of batterer's beliefs about women (see Chapter 4). An added complexity is that some interventions have goals beyond positive outcomes for individuals: that is, they seek system-level changes such as improvements in institutional practices and procedures and changes in public attitudes regarding violence against women (Hart, 1995).

Which of these diverse and sometimes conflicting goals are given priority and how one measures them are complex questions of epistemology and methodology. They are also inherently political questions about what things should be valued. The answers are inevitably shaped by how one views battering. The stance I have taken is that battering is inherently about power and control and that it is supported by certain cultural values and practices which condone the use of violence. The logical extension of this position is that the aim of intervention should be to restore the safety and autonomy of battered women and to hold batterers accountable for their use of violence.

From this perspective, the aim of intervention should be more than simply stopping violence. Among other things, battering is a denial of women's civil rights (Heise, 1993; Stark, 1993). The mere absence of violence *may* mean greater equality. Alternatively, it may mean greater dominance: the batterer may be able to achieve the control he desires by merely invoking the memory of previous violence and the tacit approval of his behaviour by others. Thus Barbara Hart argued for "evaluating our work in light of its impact, beneficial or adverse, on safety, autonomy and social justice for battered women" (1995, paragraph 36).

As will become very clear, there are a wide variety of players in the interventions I discuss: battered women, batterers, police officers, women's advocates, health and

social service professionals, prosecutors, lawyers and judges. As researchers, my colleagues and I, together with the authors of the other studies I mention, are also players. Each player has potentially different goals, aspirations and analyses. It is little wonder that there is dissension over what outcomes should be seen as desirable and how those outcomes should be defined. Some of this dissension will be discussed later. For the moment, it is worth noting Bowker's (1988) point that the definitions battered women have of their situations should be assumed to be more important than the definitions held by other classes of individuals, including social scientists.

If the phenomenological experience of a battered woman leads her to conclude that something works in terminating the violence, it is difficult to see why we should reject her definition unless there is overwhelming evidence against her. (1988, p. 81)

Following Bowker's lead, whenever possible, I give emphasis to evaluations which incorporate the perspectives of battered women in assessing the effectiveness of interventions. In the next two chapters, I focus on what I have termed community interventions; essentially those services outside the justice system which focus on women (Chapter 3) or batterers (Chapter 4), before beginning a detailed analysis of the impact of interventions within the justice system (Chapters 5, 6 and 7).

Chapter 3

Services for women

As has been noted in the previous chapter, there are a number of potential sources of help to which battered women may turn for assistance in coping with, and/or escaping from, a battering relationship. These include both informal sources of help, such as friends, family and neighbours, and formal services such as the police, lawyers, medical practitioners, social services, refuges and counsellors. Each of these is a site at which the enforced privacy and secrecy of the battering relationship may be breached and external intervention becomes possible. However, as will become clear in the following discussion, oftentimes these help sources trivialise the violence, collude with the batterer and adopt a victim-blaming stance, thereby serving to reinforce the batterer's power, to perpetuate the violence and to undermine women's safety and autonomy.

Thus, the discussion now turns to the effectiveness of *formal* interventions. This is not to suggest that informal help sources are unimportant. Indeed, as has already been pointed out, when battered women seek help, they typically turn first to informal sources of help before seeking out formal interventions (such as the police and social services) (Borkokowski et al., 1983, Bowker, 1993). Moreover, the work of Hoff (1990) and Bowker (1993) suggests that battered women find informal sources of help more effective than formal interventions. However, with the partial exceptions of Hoff (1990), Bowker (1993) and Kirkwood (1993), little research has been conducted into the effectiveness of informal sources of help.

In discussing formal responses to battering, it is useful to distinguish responses which can invoke the power of the state to hold batterers to account for their use of violence and those non-statutory responses which do not have that ability. The former I refer to as institutional responses: that is, police, courts and correctional agencies. The latter I refer to as community responses: refuges, health services, and social services generally.¹

¹ In fact, the distinction is not as clear cut as this may suggest. Some of the services I discuss under the heading "community" do have statutory powers. For example, the Children, Young Persons and Their Families Agency (CYPFA) is the statutory child

In this chapter, I examine the effectiveness of women's refuges, advocacy services, health services and social services in assisting battered women. In the following chapter, I examine the effectiveness of programmes for men who batter.

Women's refuges and advocacy for battered women.

Nowadays, women's refuges are the most well-known source of help for battered women (Harris, & Dewdney, 1994). It has not always been so: the first New Zealand refuge was established in Christchurch in 1974 (Glover & Sutton, 1991), three years after the establishment of Chiswick Women's Aid, the first refuge in Britain (Pizzey, 1977), and nine years after the establishment of Haven House (Pasadena, California), believed to be the first women's shelter in North America (Pagelow, 1977)¹. While the Christchurch refuge was established specifically for battered women, that was not the case for either Chiswick Women's Aid or Haven House. Both of these earlier initiatives were originally in response to other identified needs of women. In the British case, the house in Chiswick was established to counter the sense of isolation Erin Pizzy identified as common among Chiswick women, many of whom subsequently identified as being battered. Haven House was founded by women members of Al-Anon (Pagelow) following a support group meeting at which first one, and eventually all the participants, identified as being battered by their alcohol-abusive partners (Carlin, 1988).

Refuges are considered to be an effective response to battering because they provide not only safety from immediate danger, but also time to heal, both physically and mentally, and an opportunity for women to be independent. Free, not only of the abuser, but also of the influence of others who may urge reconciliation, women may be able to gain a more balanced perspective of what has been happening to them. With the support of other women and the role modelling of staff, many of whom have been successful in freeing themselves from violence, residents have a chance to plan how to free themselves from violence (Bowker & Maurer, 1985). As Bowker

protection service in New Zealand. However, the point remains that CYPFA and the other organisations I discuss do not have statutory authority over batterers.

¹ Although these are the first recorded women's refuges, as Ritmeester (1993) points out, the battered women's movement has earlier origins in the suffrage movement. Suffragettes' support of temperance stemmed largely from the recognition that alcohol was a significant factor in violence against women.

and Maurer have pointed out, “Sheltering strikes at the heart of the batterer’s isolation strategy by suddenly immersing his wife in communal living” (1985, p. 7).

In New Zealand there are 48 local refuges affiliated to the National Collective of Independent Women’s Refuges and a small number of independent refuges (Bradshaw & Moore, 1995). At any one time, there are approximately 2,500 women and children resident in safe houses (Bradshaw & Moore). In addition, refuges provide support groups, educational programmes, and, in some areas, therapeutic groups for the children of battered women. While most refuges have one or two paid workers, often part-time positions, the bulk of this work is undertaken by volunteers.

Refuges also see themselves as advocates for battered woman to government, to the judiciary and to the community as a whole (Bradshaw & Moore, 1995). One consequent of this has been the development of closer working relationships with the police. In most areas, police refer victims of domestic assaults to refuges (Police Commissioner, 1993). In some areas, refuges operate a crisis call out service in conjunction with the police. Police telephone the crisis line as soon as possible after they make an arrest for a domestic assault giving the names and addresses of victims so that advocates can provide them with support, both immediately after the assault and during subsequent court procedures (e.g. Domestic Violence Education Trust, 1993). Such developments have meant that the work of refuges has broadened from the provision of safe housing and the support of residents to advocacy for battered women who are not resident in refuges. This was certainly the case in Hamilton. We found that the implementation of new protocols between the police and refuge led to a huge increase in the number of women helped by local refuges, this growth being almost entirely among women who did not become refuge residents (Robertson, Busch, Glover & Furness, 1992).

Similar developments are evident in other parts of the world. For example, in the United States, shelters typically provide counselling, support groups, transitional housing, legal aid, assistance with job training and practical assistance in establishing a new home (Battered/Formerly Battered Women’s Task Force, 1992; Carlin, 1988). Demand for shelter services, especially advocacy, has increased as criminal justice agencies have become more prepared to intervene in domestic assaults (Hart, 1995). In Britain, recent developments include greater co-operation between police and refuges (Edwards, 1989).

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The work of refuges has implications beyond the lives of those who use the services. What has been variously called the women's refuge movement (e.g. Glover & Sutton, 1991), the battered women's movement (e.g. Battered/Formerly Battered Women's Task Force, 1992) and the shelter movement (Carlin, 1988), has brought about a fundamental change to the way battering has been understood. Before the advent of the movement, the characteristic response to battering focused on presumed provocation by the victim, encouraged women to think themselves responsible for the violence and enveloped the victim in shame and secrecy. The battered women's movement has turned that process around, establishing the right of women to be free of violence and drawing attention to the failure of society to hold the batterer accountable for his violence (Carlin, 1988).

In common with other social change movements, the battered women's movement has adopted an explicit political and philosophical position which can be identified in much of its work. At the individual level, battering is recognised as an issue of power and control which occurs in a particular social and political context. The empowerment of women is a key objective. Battering is also held to be a crime which should be treated as such. Interventions are expected to prioritise the safety of individual women and agents of intervention are expected to be accountable to battered women (Battered/Formerly Battered Women's Task Force, 1992).

On a broader level, battering is seen as one part of a system of oppression by which patriarchy maintains the privileged position of men. Links are drawn between battering, sexism in general and other forms of oppression such as economic exploitation and racism. Collective action and the accountability of members to the collective are valued. So too is cultural diversity and peer support. Networking with other groups of women is encouraged (Battered/Formerly Battered Women's Task Force, 1992).

An important feature of the New Zealand refuge movement is its policy of parallel development which Linda Waimarie Nikora and I have described as

...an attempt to end Pakeha hegemony by explicitly addressing issues of power and control in organisational structures and by respecting the right of Maori to be self-determining. Inspired and legitimated by the Treaty of Waitangi, parallel development attempts to establish a genuine partnership between Maori and non-Maori and to incorporate this into organisational structures and decision making processes. (1995, p. 1-2)

In some areas, parallel development has led to the establishment of separate Maori and non-Maori refuges. In others, Maori and non-Maori women share a common refuge but have parallel caucuses. Both separate and joint meetings are held in “an ongoing process of negotiation involving consultation, co-operation, and compromise” (Glover & Sutton, 1991, p. 20).

How effective are refuges in meeting the needs of battered women? There have been relatively few formal evaluations (Hart, 1995). Battered women themselves seem to rate refuges more positively than other agencies from which they seek help, such as police, lawyers, counsellors and social services (Bowker & Maurer, 1985; Kirkwood, 1993). Nevertheless, the experience of living in a shelter can be problematic. As Hoff (1990) points out, for most women, entering a refuge involves a decrease in their standard of living. They have to share sometimes crowded accommodation with a number of other women and their children, all of whom can be expected to be in emotional crisis. The normal hassles of getting all members of a family to contribute to household tasks and to conduct their relationships in an open, healthy and respectful way is compounded when the “family” is large, transitory, experiences high turnover and its members are under stress. Indeed, the major criticism of shelters from women interviewed by Hoff concerned bickering and conflict among residents. Moreover, Hoff found that the goal of modelling feminist values and modes of decision making was not always achieved. Some residents were very traditional and uncomfortable with feminist ideology. Most were prevented from participating fully in shelter decision making by the urgency of their own problems, lack of prior experience of such groups, and the lack of concrete mechanisms to encourage active participation. As Hoff pointed out, shelters have to balance their commitment to fostering women’s self determination with the need to ensure the house’s continued functioning beyond the residency of current residents. Some residents’ immediate desires (alcohol, entertaining men on the premises) may conflict with long term goals of preventing chaos and providing a safe environment for other residents.

The outcomes of shelter residency have typically been evaluated according to the rate of return to the abuser. Such evaluations show that between one-third and two-thirds of women leaving refuge reconcile with the man who has battered them (Brown, 1993; Russell, 1988). However, as Sedlak (1988) has argued, this is an

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inadequate measure because it overlooks other benefits of refuges such as psychological progression towards separation. Sedlak's own evaluation of a Connecticut shelter showed shelter residence to produce improvements in depression and psychological independence from the abuser.

The role of shelters in reducing or ending violence was assessed in Bowker and Maurer's postal survey of 1,000 battered women. On a five-point scale, 44% of the respondents rated shelter as "very effective" in reducing or ending the violence. Comparable figures for other agencies were: lawyers 30%; women's groups 27%; social services and counsellors 20%; police 19%; clergy 12%; and doctors and nurses 8%. On the other hand, 6% of respondents said that their partner's violence towards them had actually increased because they had gone to a battered women's shelter.

Perhaps the most comprehensive evaluation of shelters and shelter-based programmes was that conducted by Cris Sullivan and her colleagues (Sullivan, 1991; Sullivan et al., 1994; Sullivan et al., 1992). This was an experimental evaluation of advocacy services to battered women leaving a shelter. One hundred and forty-one shelter residents were randomly assigned to either a free advocacy service provided by trained undergraduate students or to a control group. Over 10 weeks, the advocates helped women access needed services and resources in the community, typically meeting with their client twice a week and having regular telephone contact. The comparison was thus between shelter plus advocacy (experimental group) and shelter only (control).

Interviews upon leaving the shelter, 10 weeks after leaving (Sullivan et al., 1992) and 6 months (Sullivan et al., 1994) after leaving provided a comprehensive analysis of post-shelter experience, including data on separation. Almost two thirds of the women (65%) left the shelter intending not to return to the abuser. Of these, 12% had become reunited with the abuser by the time of the 10-week follow up. No more reconciliations were recorded between then and the 6-month follow up but almost a third of those who were involved with their abuser at the 10-week follow up had separated by the 6-month follow up. Thus, 6 months after leaving the shelter, two thirds were no longer involved with their abuser. Having the benefit of student advocates had no impact on the rate of separation. Economic factors did: women who were dependent upon their abuser before entering the shelter were less likely to have separated (22%) than women who were not (78%). Separated women were

more likely to be living under the Federal poverty line than those living with their abuser.

The follow up interviews collected information about the women's exposure to violence. At the first follow up, 70% of those involved with the abuser reported further assaults. By 6 months, this had increased to 74%. Two women were believed to have been killed by their abuser. Almost a third (29%) of those who had separated also reported further assaults by 10 weeks. There was no difference in the rate of re-victimisation between the experimental and control groups.

Compared to the time they entered the shelter, at the 10-week follow up, both experimental group women and control group women reported: lower levels of depression, fear, anxiety and emotional attachment to the abuser; higher levels of social support; increased feelings of personal control and mastery; and improved quality of life. These improvements persisted at the 6-month follow up interviews. Three experimental effects were noted. Compared to the control group women, those women who received the assistance of advocates were more likely to report being effective in accessing community support, had a better quality of life and had higher levels of social support. These differences between the groups had largely eroded by the 6-month follow up.

Sullivan and her colleagues (1994) concluded that their study provided experimental evidence that advocacy resulted in short term positive results but that this, by itself, was insufficient to create long term change. As they pointed out, there were system level problems (e.g. lack of housing and poor enforcement of protection orders) which advocates were not able to change. They noted that while shelters are "a vital and necessary community service, (they) do not always in and of themselves reduce the amount of intimate violence a woman will experience" (p. 119) and argued for "a larger, comprehensive package that co-ordinates community response to batterers and their victims" (p. 119).

This last point is an important one. It articulates a theme which will become more evident in the other research reviewed in this chapter: the folly of expecting any single intervention by itself to make a significant difference in the lives of battered women. Indeed, many interventions, undertaken in isolation, may simply make things

worse. This includes refuges; recall Bowker and Maurer's (1985) finding reported above that 6% of women who used shelters felt that it led to an increase in violence.

The call by Sullivan and her colleagues (1994) for a comprehensive, co-ordinated community response to battering has important methodological implications. There may be limited point in evaluating single interventions in isolation. Certainly, any evaluations of specific interventions should include careful consideration of the community context in which those interventions occur, paying particular attention to the responsiveness of other services. For example, refuges might be found to be much more effective if protection orders were readily available and effectively enforced, if the domestic purposes benefit provided a good standard of living for women separating from abusers and if abusers were held accountable for their violence. Indeed, one might abandon a reductionist interest in evaluating the effectiveness of single interventions in favour of a more ecological view in which the inter-relatedness of various interventions becomes of greater interest. In the case of women's refuges, one might assess not only the impact of sheltering and advocacy on individual women but also the contribution those services may make to the effectiveness of other interventions. Some researchers are beginning to do this. For example, it is becoming increasingly clear that the prosecution of abusers can be considerably enhanced by the provision of victim advocacy (Corsilles, 1994; Hart, 1996a). Certainly, this has been the experience in Hamilton (see Chapter 10).

Other services used by battered women

Women's refuges and their associated services have been developed specifically for battered women. However, there are a wide range of other, generic, services which battered women often use, including health services, mental health and counselling services, social services and churches. Over recent years, researchers have evaluated the responsiveness of some of these services to battered women.

Health services

Health professionals are frequently consulted by battered women. Various studies have suggested that between 42% and 80% of battered women seek medical help for injuries sustained as a result of partner violence (Cox & Irwin, 1989; Dobash & Dobash, 1979; Pagelow, 1981). While emergency rooms have been studied quite

intensively, there are a number of other sites in the health system where interventions may occur. For example, Church (1984) reported that 63% of the battered women in his Christchurch study discussed their relationship problems with their family doctor. Other relevant sites include ante- and post-natal services, substance abuse clinics, health visitors, psychiatric services and dentists (Flaherty, 1996; Hoff, 1990). Health professionals are clearly in an excellent position to intervene (Heise, 1993). Yet, as rated by battered woman, they are the least effective source of professional help (Bowker & Maurer, 1985).

Too often, partner abuse goes undetected by health professionals. For example, while battered women account for between 10% and 25% of women using medical emergency services, few are identified as such (Campbell, 1992a; Stark et al., 1981). This is despite the fact that battered women are quite prepared to disclose abuse when questioned in private (Heise, 1993). Instead, the implicit message is that talking about violence is taboo (Nechas & Foley, 1994). Health workers implicitly become “agents of social control” (Bowker & Maurer, 1987, p. 28) as women’s silence and isolation is reinforced. An unhealthy cycle may be established when women who return for treatment for physical symptoms and psychosomatic complaints associated with battering are treated without the underlying problem being identified. Frustrated professionals may come to see the women themselves as the cause of the problem and apply pejorative and psychiatric labels (Warshaw, 1994). Women’s sense of entrapment may increase, along with self-abusive behaviour (drug and alcohol abuse; suicide attempts), leading to further labelling and inappropriate treatment (Stark et al.).

Even when battering is identified, the response of health professionals may be inadequate. An example was given by one of the women interviewed by Lee Ann Hoff. The woman was receiving treatment from a dentist who asked when her tooth hurt. She replied, “When I am hit in the mouth” (1990, p. 104). The dentist totally ignored the reply. Such a response is an example of the way battering may be rendered invisible by professionals who do not want to confront the reality of such violence. According to Carole Warshaw (1994), this may particularly be an issue for privileged women receiving treatment from white, middle class professionals. Minority group women, on the other hand, may have to contend with health professionals who regard violence as being normal behaviour within the relevant

group. More generally, health professionals may share common victim-blaming stereotypes of battered women as masochistic, hysterical, bad housewives or women who seek out and provoke violence (Dobash, Dobash & Davanagh, 1985; Pagelow, 1992). Such views may lead to inappropriate psychiatric referral (Family Violence Professional Education Taskforce, 1991; Stark, Flitcraft, & Frazier, 1979).

The overwhelming impression from the international literature is of inadequate responses from health professionals. Local research suggests that there are similar concerns about the responsiveness of New Zealand health workers. A nation-wide series of consultations involving service providers, survivors of partner violence, policy makers and researchers produced general agreement that there was a need for training to improve health professionals' ability to identify, assess, treat and appropriately refer women who had been battered (Fanslow & Norton, 1994). Elizabeth Flaherty's (1996) case studies of seven Waikato women identified a number of problems in health professionals' practice including ignoring obvious signs of abuse, failure to ask direct questions about abuse, collusion with the abuser and inadequate follow up. On the other hand, good practice identified by the women included health professionals who: listened carefully to what the women said and believed them; carefully documented the impact of abuse for later use in legal action; provided appropriate referrals; placed priority on the women's safety; and generally communicated support.

Recent years have seen various attempts at enhancing the response of health services to battered women. These have included the development of protocols for the identification of battering, staff training and the introduction of guidelines on treatment and referral (e.g. Fanslow & Dehar, 1992; Hart, 1995; Heise, 1993; Pagelow, 1992). In the United States, training and protocols on family violence are now part of the accreditation requirements for hospitals (Heise). In at least one hospital system, a battered women's advocacy service has been established which not only provides support to women referred to it, but also works on a systems level to influence hospital policies and protocols (Hadley, Short, Lezin & Zook, 1995). Locally, the Ministry of Health (1998) has, after a series of public consultations, published guidelines for the preparation of site-specific practice protocols to help health workers identify and respond appropriately to cases of family violence. It is too early to assess whether these ameliorate some of the problems discussed earlier.

Mental health and counselling services

As stated by the American Psychological Association Presidential Task Force on Violence and the Family, “Psychological treatment programs are important responses to the epidemic of family violence” (1996, p. 61). The Task Force noted that such treatment programmes can (a) provide crisis intervention which helps address victims’ safety and responds to the immediate effects of abuse, (b) help victims understand their victimisation in the broader social context, and (c) help victims heal and get on with their lives in ways which may reduce the risk of further victimisation. A decade ago, Lenore Walker (1989) argued for the integration of a feminist analysis into clinical practice to better address the needs of women battered by their male partners. The use of feminist therapies, trauma therapies and survivor therapies are recognised as appropriate interventions for battered women, many of whom may experience clinical symptoms (e.g. intrusive memories, physiological reactivity) which significantly impair their quality of life (Walker, 1993). The availability of appropriate clinical interventions for those women who need them is an important part of the community’s responsiveness to the needs of battered women.

Not all mental health interventions are so benign. Particular problems may arise when battered women come under the aegis of mental health professionals, either by self-referral or referral by other health professionals. Like women generally, battered women may be disadvantaged by masculine-based assumptions about what behaviours are healthy and what behaviours are deemed to be “crazy” (Kaplan, 1983) - a process which has been termed the pathologising of feminine characteristics (Dyehouse, 1992). Like women, generally, battered women may be directly abused in mental health settings through sexual abuse by male therapists or chemical abuse through over-prescribing of tranquillisers (Dyehouse, 1992). Like women generally, battered women may experience non-drug therapies which are blind to issues of power, hold women disproportionately responsible for the health of relationships and blame them for problems within their families (Battered/Formerly Battered Women’s Task Force, 1992; Carlin, 1988; Dyehouse, 1992; Walker, 1989). And Maori women may be particularly disadvantaged by the lack of culturally appropriate counsellors (Busch, Robertson & Lapsley, 1992).

These general processes have particular implications for battered women. One is the inappropriate and negative labelling which results from some diagnostic procedures.

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The Minnesota Multiphasic Personality Inventory (MMPI) is one example. As Lynne Rosewater (1988) has noted, the MMPI includes sub scales for depression, repression of feelings, anger, fearfulness or paranoia, anxiety, and confusion. All of these are likely outcomes of sustained battering (American Psychological Association Presidential Task Force on Violence and the Family, 1996; Bowker, 1993; Dutton & Goodman, 1994; Hoff, 1990; Kirkwood, 1993; Walker, 1989, 1991). According to Rosewater, common errors using the MMPI and other instruments are that the extreme fearfulness and confusion created by repeatedly experiencing violence are misdiagnosed as psychiatric symptoms such that battered women are often incorrectly identified as masochistic and as having personality disorders. Rosewater's own clinical research suggests that the MMPI profiles for chronic female schizophrenics and battered women are indistinguishable. In summary, the application of misogynist diagnostic procedures may mean that the consequences of battering are taken to be permanent character traits. Among other things, this has implications for battered women's efforts to retain custody of their children (e.g. *E v S*, 1997, discussed in the previous chapter).

Regardless of whether or not battered women are identified as such, they may be subject to inappropriate psychiatric referral and treatment (Family Violence Professional Education Taskforce, 1991: Stark, Flitcraft, & Frazier, 1979), including the over-prescription of psychotropic drugs (Bowker & Maurer, 1987; Dyehouse, 1992). The latter may be particularly dangerous as medication may interfere with a woman's ability to assess the danger she faces and take appropriate action to ensure her safety (Heise, Pitanguy, & Germain, 1994).

One intensely debated issue is the role of couples therapy in cases of domestic violence (Berliner, 1996). This debate reflects differing underlying assumptions about the nature of spousal violence. Proponents of couples therapy (e.g. Neidig, Friedman & Collins, 1985; O'Leary, 1996) tend to view spousal violence as a relationship problem, "an interactive, dynamic process" (Zelas, 1995, p. 210) in which both parties are seen as contributing to a spiralling pattern of escalating conflict (e.g. Deschner, 1984, p. 83). On the other hand, critics of couples therapy tend to hold a feminist analysis in which gender roles, power issues and the meaning and consequences of violence for aggressor and victim are emphasised (e.g. Adams, 1988; McMahon & Pence, 1996). In the Domestic Protection Study, we found the use of

couples counselling to have: exposed battered women to immediate danger; minimised or colluded with power differences between abuser and victim; reinforced misogynist assumptions about women's primary responsibility for relationships, including responsibility for violence; failed to make stopping violence the prime objective; obscured the intimidation victims of violence experienced; and failed to expose the full nature of violence (Busch, Robertson & Lapsley, 1992. See also Battered/Formerly Battered Women's Task Force, 1992; Dyhouse, 1992; Eisikovits & Edleson, 1989; McMahon & Pence, 1996; Peterson & Calhoun, 1995; Pressman & Sheps, 1994; Tift, 1993). As McMahon and Pence have noted,

Women (or men) who have been physically, emotionally, economically, or sexually coerced cannot engage in an assessment of their experiences either quickly or in conjunction with their abuser. She or he needs space free from fear in which to think and reflect" (1996, p. 455).

McMahon and Pence are not implacably opposed to couples therapy. They acknowledged that non-sexist couples therapy may have its place - but only after the full extent of violence has been assessed and only after the violence has stopped. Moreover, they cast doubt on the efficacy of screening procedures some advocates of couples therapy have used to eliminate inappropriate cases. For example, when Pence interviewed therapists who were making referrals to couples groups, she found that none were screening clients for abuse or indicators of lethality. Moreover, she found that therapists had labelled a third of the couples as cases of mutual violence. When offered a chance to reassess these cases using an extensive assessment of abuse history, the therapists re-categorised all but 3% of the original third as *non-mutual*.

While the general efficacy of many psychological, psychiatric and counselling interventions has been assessed, few have been formally evaluated specifically as to their effectiveness for battered women (Peterson & Calhoun, 1995). The failure of the evaluation research to take account of the particular needs of battered women lends support to the view that such interventions have not served this group of clients particularly well. Just as battering has remained largely hidden in general society, so too within the mental health sector. To rectify this, routine screening of clients for a history of abuse has been recommended (e.g. American Psychological Association, 1996; Walker, 1989).

Other social services

There are, potentially, many social services which may have an impact on the lives of battered women. Three of the more obvious examples are housing, income support and child protection services. The response of each of these may be problematic.

Housing

Unless battered women who separate from their abuser can gain occupancy of the marital home (for example, through court orders, discussed in Chapter 7), they are likely to experience difficulties obtaining housing. Battered women are therefore relatively frequent users of housing assistance. Such services are not always helpful. Hoff (1990) described a case in which a battered woman who had left her abuser was ruled ineligible for emergency housing because the agency's policy limited assistance to those homeless through no fault of their own.

The vast majority of the women interviewed by Kirkwood (1993) experienced significant problems in securing housing, including degrading negotiations with housing authorities, interrogation by private landlords over their ability to pay and having to put up with small, poorly maintained properties. The one woman in Kirkwood's sample who regretted leaving her abuser attributed this entirely to her problems in finding suitable accommodation. A lack of alternative housing may be a particular problem for rural women (Hart, 1995). In New Zealand, during the early 1990s, the increase of state house rentals to match those prevailing in the private sector, has been described as one factor discouraging women from leaving abusive relationships (Robyns, 1992).

Income support policies

Adequate income support is often crucial to women leaving abusive relationships. This is particularly important if there are children to provide for.¹ In New Zealand, unemployed, sole parents with dependent children are eligible for the Domestic

¹ There is an interesting gender asymmetry here. In the course of their evaluation of Family-Court ordered counselling, Maxwell and Robertson (1993) collected information about income levels post-separation. Compared to their income prior to separation (assessed as half the joint income), men who had custody of their children experienced, on average, a 33% increase in their income, while women who had custody of their children experienced, on average, a 5% decrease.

Purposes Benefit (DPB). The importance of the DPB to battered women is suggested by the observation of women's refuge workers that the reduction in benefits levels introduced by the New Zealand government in 1990 led to more women staying in abusive relationships (Robyns, 1992). But quite apart from the level of the benefit, its administration can be problematic. This was evident in our earlier work (Busch, Robertson & Lapsley, 1992). For example, when "Pam" left her partner and applied for the DPB, she faced a stand-down period of 6 weeks before receiving any money.¹ "Karen" faced demeaning questioning by a welfare official. Because "Jane" fled the marital home without taking passports or birth certificates, she was unable to complete her application and had to return to her abuser.

Some practices directly compromise the safety of battered women. For example, eligibility for the DPB is dependant upon the applicant providing details of the other parent, who may be levied to defray the costs of the benefit (Liable Parent Contribution). Battered women who have gone underground to avoid being tracked by their ex-partner may be endangered by having personal details such as assumed names and addresses disclosed in official papers given to the liable parent (Busch, Robertson & Lapsley, 1992; see case study "Pam"). Moreover, women may come under pressure from officials to cancel their benefit and resume cohabitation with men who have beaten them (*Fraud investigators turn into love brokers*, 1993). More positive is a recent decision of the Court of Appeal which has led to significant changes in the interpretation of the eligibility rules (*Ruku v Department of Social Welfare*, 1996). In this decision, the Court of Appeal upheld the acquittal of Isobel Ruku, who had been charged with benefit fraud by failing to disclose a live-in relationship with a man. Evidence had been given that Ruku was a battered woman and that her abuser had not supported her financially. The decision appears to clear the way for women to claim the DPB, even if they are in a live-in relationship, if their partner is not supporting them financially.

Child protection services

A significant proportion of battered women come to the attention of child protection services. This is not surprising considering the large overlap between wife

¹ The requirement for a stand-down period has since been removed.

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abuse and child abuse (Bowker & Maurer, 1985; Carlin, 1988; McKibben, De Vos, & Newberger, 1989; Stark, & Flitcraft, 1984). Unfortunately, practice does not yet reflect this fact. Most child abuse risk assessments do not include consideration of the mother's safety (Magen, Conroy, Hess, Panciera, & Simon, 1995). My own experience tends to confirm this: as a member of a panel reviewing cases referred to the Children, Young Persons and their Families Agency, I regularly sight files in which there are strong suggestions that the mother is herself being abused but there is no indication that this has been investigated. A graphic example of the sort of problems which can occur was a Family Group Conference held in the Waikato recently. Both parents were present but the mother, a battered woman, played very little part in the decision making. One can only surmise the level of intimidation to which she was subjected: it apparently went unnoticed or unacknowledged by other participants and his violence towards her was never discussed. Subsequent events suggest she would have been severely intimidated by presence of the children's father: a few weeks later, he killed her (Personal communication from a social worker promised anonymity).

Whether or not they are identified as such, battered women are often held to be complicit in allowing children to be abused, neglected or witnesses to their own abuse (Stark & Flitcraft, 1988). Local research tends to confirm this. All of the battered women Lorraine Corbett (1999) interviewed reported feeling blamed by social workers for failing to protect their children. Maori women reported particularly judgemental attitudes on the part of Pakeha social workers. One consequence is that child protection services, in pursuing what they regard as the best interests of children, may issue an ultimatum: separate from the batterer or face losing the children. Given the legitimate fears some battered women have that their abuser will track down and kill them, the result may be that children are taken into care while their mothers become more isolated and face greater risks of being further abused (Magen, Conroy, Hess, Panciera, & Simon, 1995). This is exactly what happened in the case of *E v S* (1996) discussed earlier.

Such scenarios reflect an assumption, common among child protection workers, that there is a conflict between the needs of battered women and those of their children (Magen et al., 1995; Schechter & Edleson, 1994). Such an assumption is questionable. It is clear that most battered women are very concerned about the welfare of their

children (e.g. Hilton, 1992) and that it is a major factor in decisions to remain with or separate from the batterer (Corsilles, 1994; Hoff, 1990). It is increasingly argued that keeping mothers safe is generally the best way to protect abused children from further violence (e.g. Magen et al.; Schechter & Edleson, 1994).

All of these services - general health, mental health, counselling, housing, income support, child protection and other services - are important to battered women. But unlike refuges, they tend not to be services which focus exclusively on the needs of battered women. To varying degrees, they share misogynist values and practices which disadvantage women. What is evident from the research reviewed above is that they provide particular barriers to battered women's attempts to leave battering relationships and, in some cases, actively endanger their lives.

Unfortunately, the same theme is evident in the next group of services to be discussed; programmes for men who batter.

Chapter 4

Programmes for batterers

The first women's refuge was established in New Zealand in 1974 (Glover & Sutton, 1991). For the next decade and more, efforts to end battering focused on battered women. In more recent years, the focus has moved somewhat to the batterer. The police introduced a pro-arrest policy in relation to domestic assaults in 1987. Various groups throughout the country have established stopping violence or anger management programmes. Increasingly, the courts have been prepared to make referrals to such programmes. Indeed, under the Domestic Violence Act 1995, referrals are now routine when a protection order has been made (section 32). Moreover, our analysis shows that since the 1995 Amendment to the Guardianship Act introduced a rebuttable presumption against a violent parent having the custody of or unsupervised access to a child, completion of a stopping violence programme has sometimes been used to support applications for custody and access (Busch & Robertson, 1997).

It is timely, therefore, to reflect on what is known about batterer treatment programmes. How effective are they in promoting the safety of battered women and their children? The answer is far from clear. While evaluations have become increasingly sophisticated, the debate about the efficacy of treatment programmes is far from resolved. Underlying this debate are conflicting assumptions about the nature of battering and preferred interventions; differing stances on what constitutes "success" and how it should be measured; and significant methodological problems. In this chapter, I discuss these issues and outline a preferred role for treatment programmes. In doing so, I will draw on both the research literature and my own experiences as a facilitator of stopping violence programmes for over 10 years.

The problem

One thing is clear: changing the behaviour of batterers is difficult. For one, batterers are rarely self-motivated to change (American Psychological Association Presidential Task Force on Violence and the Family, 1996). They typically receive immediate positive reinforcement for their use of violence (e.g. compliance, chores done, availability of partner for sex), while negative consequences are rare, and when they do occur, usually occur well after the battering (Myers, 1995). Through their use of

violence, batterers typically succeed in controlling their partners and no-one intervenes to require them to stop (Lerman, 1992). There are powerful cultural values and beliefs which support men's privileged positions within their families and which condone their use of violence (Russell, 1988). Batterers may explicitly invoke these values and beliefs (e.g. "A man's home is his castle") to legitimate their position (Adams, Towns, & Gavey, 1995). There is a continuity between their personal reality and what Adams (n.d.) calls "an overarching super-reality" (history, social norms, institutions, culture) which makes them particularly resistant to understanding alternative realities. If they do recognise that there is a problem, it is likely that they will see it lying in their partners' behaviour, not their own (Currie, 1988; Pence & Paymar, 1993).

Language plays an important part in maintaining the batterers' position. They have at their disposal certain rhetorical devices by which they can maintain their privileged position and impose their reality on others (Adams, Towns, & Gavey, 1995). For example, by the use of plural pronouns they can assume authority over their partners' experience (as in, "We shouldn't be arguing") (Adams, n.d.). By the use of axiomatic statements, batterers can reinforce their privileged position (e.g. A man's home is his castle. *That's it. Pure and simple*). By the use of synecdoche¹ (e.g. "Did you see those *tits* walking by?") and metonymy² (e.g. "Her problem is her *tongue*") they can maintain the subordinate status of women (Adams, Towns, & Gavey, p. 393-399).

But while ending battering requires confronting the power of the batterer, paradoxically, batterers in treatment will often feel relatively powerless, further reducing their openness to change. Such feelings may relate to: being subjected to court orders; fears about the loss of their relationships; a perception that they are less able than their partners to identify and express feelings; experiences of being abused themselves; or loss of control over substance abuse (Adams, n.d.; Currie, 1988; Pressman & Sheps, 1994).

1 A figure of speech in which a part is named but the whole is understood (or the whole is named but a part is understood).

2 A figure of speech in which the name of an attribute is substituted for the name of the person or thing.

Thus facilitators of programmes for batterers face a formidable task: using language which is often appropriated by attempts to maintain male hegemony, they must challenge the power of the batterer, even though he may simultaneously deny that power and call on prevailing cultural norms to maintain it.

Treatment models

Reviews of treatment programmes have found that they vary widely on a number of dimensions (e.g. Eisikovits & Edleson, 1989; Fagan, 1996; Tolman & Edleson, 1995). Perhaps most fundamentally, they vary in their underlying theoretical models. Providing programmes for men is not a neutral endeavour, but invariably reflects the ideology and background of the organisers and their beliefs about the nature of battering (Pence & Paymar, 1993; Ritmeester, 1993). Five theoretical models are commonly identified: ventilation models; insight oriented therapy; systems or interactional approaches; cognitive behavioural therapy; and pro-feminist educational programmes (e.g. Adams, 1988).

The *ventilation* model views partner violence “as symptomatic of suppressed anger that needs to be expressed through some other cathartic means” (Hamberger & Hastings, 1993, p. 196). Such a view has developed from the frustration-aggression hypothesis (Philipchalk, 1995), rather than a close analysis of battering (Adams, 1988). Because violence is seen merely as a symptom of repression, specialist interventions for batterers have not been developed. Instead, perpetrators and victims have been included in programmes which address repressed feelings and dishonest communication by teaching them to fight fairly and cathartic exercises such as hitting one another with styrofoam bats (Adams, 1988; Hamberger & Hastings, 1993).

However, research does not support the view that the expression of angry feelings reduces the likelihood of physical violence (e.g. Berkowitz, 1973). Batterers are already adept at venting their rage (Pence, 1989) and hardly need experts to give them permission to do so (Adams, 1988). Ventilation therapies address neither the gendered expectations about what one can legitimately become angry over (Tavris, 1982), nor the intimidatory effect of strong expressions of rage.

Insight-oriented and other *psycho-dynamic therapy* is premised on the belief that violence is symptomatic of underlying internal conflicts or other intra-psyche problems, such

as: unresolved issues from the perpetrator's childhood (e.g. abuse, rejection, dependency needs); personality disorders; failure in appropriate development attachments; fear of intimacy; poor self-concept; and obsessive-compulsive behaviours (Adams, 1988; American Psychological Association Presidential Task Force on Violence and the Family, 1996; Carden, 1994; Hamberger & Hastings, 1993). Implicit in such approaches is the notion that batterers are fragile individuals who "must be therapeutically bolstered before they can be expected to give up violent and other 'overcompensating' behaviors" (Adams, p. 179).

Insight and other psycho-dynamic therapy has been strongly criticised as inappropriate for the majority of batterers. It has been argued that only a small percentage of battering can be attributed to the psychopathology of the batterer (Tifft, 1993). Moreover, while a proportion of batterers may be observed to experience problems such as depression and low self-esteem, it has been argued that these should be seen as a consequence of battering, not a cause (Adams, 1988). By concentrating on the resolution of presumed causes of battering, such therapies ignore the functional value of violence in maintaining the batterer's control over his partner, obscure the criminal nature of the violence and ignore the continuing threat he presents to his partner (Adams; Hamberger & Hastings, 1993; Pence & Paymar, 1993). As Kathleen Carlin has noted:

In the same way that the mugger could probably benefit from psychotherapy, one could make the case that many people who engage in abuse of their partners could benefit from psychotherapy. But when a mugger is apprehended, sending him to a counseling center is not the first course of action. (1988, paragraph 27)

Systems or interactional approaches have their origins in family systems therapy (Adams, 1988). Battering is seen as an interactive, dynamic interpersonal transaction (Zelas, 1995), a series of

coercive exchanges building up to aggression by one party and forced submission by the other partner... It hardly matters whether the husband or the wife initiated the first unpleasant event, for they both respond by trying to control the other person via escalation of negative remarks and threats, until one of them loses control and resorts to physical force to make the other one submit. (Deschner, 1984, p.83)

In such an approach, there are no longer batterers: just battering couples (Deschner's book is titled *The hitting habit: Anger control for battering couples*). Both parties are held to be responsible for stopping the violence (Carden, 1994; Zelas, 1995). Intervention focuses on helping each identify their role in the pattern of escalation and in bringing

it to an end (Hamberger & Hastings, 1993). From this perspective, a woman's refusal to have sex, her "nagging" or her "over-involvement with the children" make her as culpable as her attacker (Adams, 1988). Such an approach risks seriously jeopardising the safety and autonomy of battered women.

Cognitive behavioural approaches are based on social learning theory (Bandura, 1977). Battering is considered to have been learned via the observation of role models (especially parents) and trial and error learning experiences in which the behaviour is rewarded (Hamberger & Hastings, 1993). Cognitive behavioural intervention includes: teaching men the damaging and ultimately self-defeating consequences of their violence (e.g. loss of love, trust, and the relationship itself); helping men recognise the physical, emotional and cognitive cues to their violence; cognitive therapies, which challenge justifications for violence and rigid, irrational or anger-arousing thought patterns; and training men in alternative behaviours and relationship skills (Adams, 1988; Eisikovits & Edleson, 1989; Hamberger & Hastings; Pressman & Sheps, 1994; Tifft, 1993).

The model has considerable advantages over those discussed above because it recognises the functional value of battering to the batterer (e.g. in releasing tension, avoiding unpleasant situations and enforcing victim compliance) and places responsibility for the violence on him alone (Hamberger & Hastings, 1993). But it has its critics. Adams (1988) has argued that cognitive-behavioural approaches are value-neutral and fail to incorporate gender power issues. On the other hand, it is clear that gender analyses can be easily integrated into cognitive-behaviour programmes (see Pence & Paymar, 1993). More controversial has been the inclusion of skills training into cognitive behavioural programmes. For example, the teaching of assertiveness and conflict management skills has been criticised as providing batterers with a greater armoury of skills with which to manipulate and control their partners (Adams, n.d.; Ritmeester, 1993). Skills training has been held to focus on violent acts in isolation rather than seeing them linked to a system of oppressing and colonising partners, thus de-politicising violence against women and failing to address issues of power (Adams, n.d.) The very assumption that batterers lack interpersonal or self-management skills has been challenged (Adams, 1988; Adams, n.d.; Gondolf & Russell, 1986). This is particularly the case in relation to anger management skills, a common component of many treatment programmes (Jacobs,

1995; Sonkin & Durphy, 1982). While many of the batterers I have worked with described their violence in terms of loss of control (e.g. “I just lost it” “I snapped” “I just blew”) the experience of many women is that their assailants, far from being out of control, have acted in a very deliberate way (Gondolf & Russell, 1986). Typically, women are not hit in public (the batterer waits until he can use his violence in private) and are hit on parts of the body where the marks will not show (Toone, 1992). A gender analysis of how and when men choose to vent their anger is needed (Adams, 1988). For example, why do batterers rarely act abusively towards male bosses or colleagues? How is it that a man who has “lost it” with his wife can act in a conciliatory manner towards police who attend the scene?

The feminist insight that battering serves to control women partners is fundamental to *pro-feminist* treatment models (Adams, 1988). Battering is seen as a socio-political issue, rooted in (and contributing to) a socially-sanctioned inequality of power. Because men are recognised as having greater political and physical power than their women partners, not only are they more likely than women to terrorise, injure and kill their partners: by virtue of their gender, their violence is more likely to be condoned (Adams, 1988; Adams, n.d.; Hamberger & Hastings, 1993; Pence & Paymar, 1993). Violence is broadly defined to include psychological abuse, intimidation and other controlling tactics. Intervention becomes more a matter of education than therapy (Gray, 1994), as men are re-socialised into new, non-sexist, non-controlling roles. It makes the safety and autonomy of women the first priority of treatment (for example, safety of victims takes precedence over client confidentiality), expects men to take responsibility for their violence, emphasises safety planning, questions beliefs which condone violence and male dominance, and helps men develop a critical analysis of patriarchal, social norms (Adams, 1988; Adams, n.d.; American Psychological Association Presidential Task Force on Violence and the Family, 1996; Hamberger & Hastings, 1993; Pence & Paymar, 1993).

The pro-feminist approach, too, has had its critics. It has been claimed that it is biased, based only on the experiences of victims (e.g Neidig, Friedman, & Collins, 1985). The view that men’s violence towards women is caused by social structures has been held to suggest that batterers are not responsible for their behaviour (Island & Letellier, 1991). On the other hand, Pence and Paymar (1993), leading advocates

for pro-feminist programmes, point out that not all men batter despite the powerful supports for battering: ultimately, individuals can make choices about their behaviour and must be accountable for those choices.

Indeed, accountability is an important feature of pro-feminist approaches. This takes a number of different forms. Individual men are expected to be accountable for their use of violence. Participation in treatment programmes typically occurs under legal mandate. Participants are monitored through checks with partners or ex-partners. Further violence is treated as criminal and may be reported to the relevant justice system authority (Hamberger & Hastings, 1993; Hart, 1992b; Pence & Paymar, 1993).

Facilitators are expected to be accountable. There is always a risk that facilitators, especially male facilitators, will collude with batterers (Pressman & Sheps, 1994). After all, they share with batterers exposure to the wider cultural supports for violence and male dominance (Pence & Paymar, 1993). Thus co-gendered facilitation is a preferred model. This and monitoring of group process by battered women's advocates provides a measure of accountability to battered women (Pressman & Sheps, 1994; Ritmeester, 1993). Pence and Paymar advise facilitators to imagine a circle of battered women seated around the edges of the room observing the group as one way of ensuring "that women's reality and women's experiences (are) always a part of the group content" (1993, p. 29).

Criminal justice personnel are expected to be accountable. As noted, pro-feminist programmes typically work within the context of the criminal justice system. The processing of batterers through the system is closely monitored to ensure that decision-makers are working in a consistent manner, giving clear messages about the unacceptability of violence and prioritising victim safety (Hart, 1992b, Pence & Paymar, 1993).

By and large, the treatment literature has been remarkably silent on the question of culture. Yet in the New Zealand context, programmes which are appropriate for Pakeha will not necessarily be appropriate for Maori, for Pacific Island men or for men from other minority groups. For example, the recent report by Roma Balzer and her colleagues (Balzer, Haimona, Henare & Matchitt, 1997) argues strongly that Maori family violence needs to be understood within the context of colonisation,

including: the loss of Te Reo¹; loss of traditional beliefs, values and philosophies; the loss of identity; educational failure and unemployment. A particular problem has been the breakdown of whanau and hapu² structures within which incidents of family violence were traditionally resolved. While the informants Balzer and her colleagues interviewed made it clear that none of these factors excused individual batterers, they did need to be taken into account in fashioning a contemporary response to violence within Maori families. That response needs to revolve around Maori infrastructure – kaumatua, kuia, hui and marae.³ Work with batterers needs to emphasise accountability to the whanau, making the offender's violence public and involving all members of the whanau in decision-making.

Treatment Format

Programmes vary not only in their underlying theoretical assumptions, but also on a number of other dimensions related to the mode of delivery, length, structure and the extent to which they are integrated with the criminal justice system.

On one issue, there is strong consensus: while batterers typically favour individual or couples therapy (Pressman & Sheps, 1994), most practitioners believe group programmes are more effective (e.g. Carden, 1994). Practical considerations play a part: it is more economic to deal with men in groups (Hamberger & Hastings, 1993). But there are also theoretical considerations. Battering is not learnt in a vacuum but in the context of social settings which support batterers' women-dominating strategies and beliefs. Group programmes can provide an alternative setting in which consciousness-raising is encouraged. New, non-sexist group norms can be established, including an expectation of self-disclosure about use of violence. Men learn that they are not alone in their struggle and their emotional isolation may be reduced. Group members can challenge their peers when group norms are not met, and support and affirm them in their efforts to change (Carden; Eisikovits &

¹ (The Maori) language.

² Extended family and sub-tribe, respectively.

³ A kaumatua is a male elder while a kuia female elder. Both are important leadership roles. A hui is an assembly, gathering or meeting. Strictly speaking a marae is the courtyard in front of a meeting house but often it used to refer to the complex of building around the marae as well. It is the site of significant community discussions.

Edleson, 1989; Hamberger & Hastings, 1993; Pence & Paymar, 1993; Pressman & Sheps, 1994).

While there has been a strong preference for group programmes over individual or couples treatment, there has been more debate about a second dimension of batterers' programmes; the extent to which they should be structured. At one extreme, some batterer group programmes have been relatively unstructured, open-ended groups run on a self-help (e.g. Edleson & Syers, 1990) or therapy model (e.g. Jennings, 1987). At the other extreme are highly structured educational programmes which follow a set curriculum; for example, the programme developed in Duluth, Minnesota (Pence & Paymar, 1993). Such structured programmes have been criticised as rigid, lacking spontaneity and assuming men are incapable of insight (Jennings). On the other hand, such criticism may misrepresent the reality of well-run psycho-educational groups (Hamberger & Hastings, 1993). As Pence and Paymar (1993) make clear, their curriculum is intended not as a rigid straight-jacket but as a framework within which groups can explore personally relevant issues in pursuit of the goal of living violence-free lives. As a facilitator in a programme which uses the Duluth curriculum, I find that there is plenty of room for flexibility and exploring the issues which men bring to the group.

Programmes also vary in the amount of time involved. Most are relatively short term (6 to 32 weeks; Tolman & Edleson, 1995), although the Emerge programme in Massachusetts considers that men need to participate for at least a year in order to make lasting changes (Salzman, 1994). Typically, one session of 2 to 3 hours is held each week (e.g. Edleson & Syers, 1990) but more regular and/or extended attendance is a feature of some programmes (e.g. Dixon & Wikaira, 1988, have described a 10-week residential programme).

An important distinction made in the literature is whether programme attendance is voluntary or mandated by criminal justice agencies. Few batterers are internally motivated to enter treatment (Hamberger & Hastings, 1993). Even so-called voluntary clients typically attend only under some extra-legal duress such as partners' threats to end the relationship (Furness, 1994: see case studies "Julia," "Stephanie" and "Jill"). Attrition is typically high: surveys of American treatment programmes estimated that up to a half of the men who begin treatment prematurely drop out (Edleson, 1995; Tolman & Bennett, 1990). Pre-programme attrition is even higher:

the vast majority of men who enquire about a programme do not even start (Gray, 1994).

It is hardly surprising that, increasingly, programme attendance is being legally mandated. The form of the mandate varies. Police diversion¹ schemes, court diversion¹ schemes, sentences imposed by the criminal courts, treatment in lieu of suspended jail time, directions to treatment as part of protection orders: all have been used in one or more jurisdictions (Hamberger & Hastings, 1993; Morris, 1993; Pence & Paymar, 1993; Police Commissioner, 1993; Robertson & Busch, 1992). However, even with legally mandated attendance requirements, attrition can be high. In their review of 23 court-mandated treatment programmes, Hamberger and Hastings recorded attrition rates from zero to over eighty percent.

Evaluation of treatment outcomes

It is important to appreciate the diversity of approaches to batterers' treatment programmes because it goes some way to understanding the conflicting evidence in the literature as to their effectiveness. Unfortunately, a major problem evident in evaluations published to date is that the form of the intervention is often inadequately specified: that is, it is often difficult to know exactly *what* was evaluated (Carden, 1994; Fagan, 1996; Hamberger & Hastings, 1993).

Apart from inadequate programme specification, there are a number of other significant limitations evident in the evaluations of treatment programme outcomes. Perhaps the most important is that there are conflicting conceptions as what constitutes success and how it should be measured.

Reviews of treatment-outcome evaluations illustrate the variety of approaches to defining and assessing treatment outcomes. Measures which have been used include: reductions on scores on the Conflict Tactics Scale as completed by participants, by their partners or by both; records of participants' post-treatment contact with police; court records of post-treatment convictions; participants' self reports on attitudes to

¹ Typically, diversion schemes "divert" offenders from the criminal justice process either prior to prosecution or prior to conviction. Thus offenders referred to programmes under diversion schemes will not be prosecuted if they complete their programme, or if prosecuted, will not be convicted.

women, jealousy, anger, assertiveness, hostility, coping methods and depression; and self-reports and/or partner reports of further physical violence. (Edleson, 1995; Eisikovits & Edleson, 1989; Hamberger & Hastings, 1993; Rosenfeld, 1992; Tolman & Bennett, 1990).

There are significant problems with many of these measures.

Firstly, participant self-reported data is clearly unreliable. Comparisons of self-report and partner-report regularly show that men under-report their violence (e.g. Dutton, 1986; Tolman & Bennett, 1990; Tolman & Edleson, 1995). Moreover, when partner reports are part of the evaluation design, usually only partners living with the abuser are included (e.g. Dutton), presumably on the assumption that ex-partners are not at risk of further assault. This ignores what is known about separation violence which accounts for three-quarters of the domestic assaults which come to the attention of police and emergency services (Hart, 1993; Walker, 1993). For wives, separation increases the risk of being killed by their partners by a factor of four (Wilson & Daly, 1993). Clearly, ex-partners, as well as current partners, should be included in evaluation studies. It is also important to consider the context within which partner and ex-partner reports are obtained. It would be naive to assume that battered women will necessarily feel safe to disclose to researchers the full extent of their partner's violence. The gender of interviewers, the level of rapport they establish with interviewees, whether information is obtained in person or by telephone, and the proximity or otherwise of the batterer - each of these is likely to influence the accuracy and completeness of partner reports (Hart, 1988a; Lerman, 1992).

Secondly, official recidivism data, such as that available in police or court records, is limited because many assaults are not reported (Hamberger & Hastings, 1993) or fail to result in arrest or conviction. Using North American data, Dutton (1987) has calculated that the chance of a domestic assault resulting in an arrest at 1.37% and the chances of a conviction just 0.73%. The overall level of "success" is likely to be massively over-estimated if official recidivism data is used. On the other hand, reliance on official recidivism poses a different problem when used in treatment-control group comparison studies. Here, it is likely that treatment may mean men become labelled and face an increased likelihood of re-arrest compared to their control-group peers (Dutton, 1986).

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Thirdly, some outcomes which have been evaluated are not necessarily related to women's safety: for example, anger levels, jealousy, depression and attitudes towards women (Eisikovits & Edleson, 1989). A commonly used measure is the Conflicts Tactics Scale (Straus, 1979) which, critics have argued, measures only a limited range of abusive behaviour (Edleson, 1995) and, because it fails to consider contextual factors, is blind to the effects that such tactics have on victimised women and children (Dobash, Dobash, Wilson, & Daly, 1992).

Fourthly, some studies have described programmes as successful on the basis of *statistically significantly decreases* in violence (Edleson, 1995) but the extent to which such decreases are meaningful to victims is quite unclear. What does it mean if one is beaten *only once* per week whereas one was previously beaten three or four times a week? Would one be less fearful? Less terrified? Less controlled?

A related issue is that threatening behaviour has generally been ignored by evaluators (Edleson, 1995). Where evaluators have reported threatening behaviour, this has been seen as incidental to the aim of reducing violence, rather than as a crucial element of battering. For example, Eisikovits and Edleson (1989) found that in studies where information on threats was recorded, approximately two-thirds of the nominally *non-violent* men were reported to have been using threats against their partners post-treatment. From a victim's perspective, such men could hardly be rated as being among the successful outcomes.

By focusing on acts of physical violence, many of the measures used in evaluating batterers' treatment programmes fail to adequately assess the ecology of partners' lives and the diverse tactics of abuse to which they may be subjected. In short, the measures marginalise women's experience. This is not always the case. Tolman and Bennett (1990) reported studies which have assessed reductions in women's fearfulness and increases in their comfort in expressing anger. One attempt to develop a broader measure is the Abusive Behavior Inventory (Shepard, & Campbell, 1992). Derived directly from a power and control analysis of battering, the inventory includes both actual and threatened physical violence, intimidation and psychological abuse. Parallel versions of the inventory provide for both self and partner reports of the participant's behaviour.

There are other problems with the evaluation of treatment programmes. Many studies have very small samples (Carden, 1994; Hamberger & Hastings, 1993). Often this is exacerbated by high attrition rates (not always reported), both from the programme itself and from follow up samples. Attrition of both kinds may lead to overly optimistic assessments of programmes. In their review, Eisikovits and Edleson (1989) concluded that programme dropouts tend to be men who have prosecutions against them dismissed or withdrawn or whose wives return home: that is, men who have just had significant motivators for change removed. Similarly, it has been argued that men who are lost from follow up samples are likely to be the most abusive (Rosenfeld, 1992; Tolman & Bennett, 1990). Another problem is that follow up periods are typically quite short (Hamberger & Hastings; Tolman & Edleson, 1995) which may again inflate assessments of programme effectiveness (Carden) as it has been noted that evaluations with short follow up periods have tended to produce more optimistic results than those with longer follow up periods (Tolman & Bennett; Tolman & Edleson).

An important issue in considering the results of programme evaluations is the question: What would have happened if the men had not undergone the programme? For example, on the basis of various surveys, Dutton (1986) estimated that approximately one third of men who assault their partners on any one occasion, will not repeat the assault during the following year. Of course, this may disguise the fact that their partners remain subject to terroristic threats, intimidation and other non-physical form of abuse. Nevertheless, if Dutton is correct, then the risk of falsely attributing freedom from assault to programme effects is very evident. (Dutton's contention also underlines the limitations of evaluations which have short follow up periods and a narrow focus on physical violence.)

Typically, attempts to tease out effects directly attributable to treatment have relied on experimental studies. Certainly, a number of reviewers have bemoaned the paucity of studies which have used randomised assignment to treatment and control groups (e.g. Carden, 1994; Hamberger & Hastings, 1993; Roesch, Hart & Wilson, 1993). However, there are important ethical and practical difficulties (Fagan, 1996). Is it ethical to deny or delay treatment? In the case of court mandated programmes, randomised assignment introduces extra-legal considerations into the disposition of cases. There are other limits to experimental or quasi-experimental designs. The

notion of control groups can be quite problematic if they are thought of as no-treatment groups: invariably they experience some sort of intervention, such as arrest, separation from partner or threatened separation (Berk, 1993; Hamberger & Hastings). The sort of complexity which can arise is illustrated by Dutton's (1986) experience in conducting a quasi-experimental evaluation of a court-mandated treatment programme. He observed that no assaults were committed by treatment group men during the time (up to 3 months) they were waiting to enter treatment, leading him to wonder if surveillance, rather than treatment per se, was the key to effectiveness. Similarly, in court ordered programmes, it may be difficult to tell how much observed changes are due to arrest and prosecution rather than to treatment (Rosenfeld, 1992). Clearly, evaluations, whether experimental or not, must pay careful attention to the context in which participants and their partners (or ex-partners) live (Hart, 1995).

So, bearing in mind the problems discussed above, what do evaluations of treatment programmes tell us? The answer of one set of reviewers was "Not much... We cannot confidently say whether "Treatment works" (Hamberger & Hastings, 1993, p. 220). Leaving aside the question of how it was defined, recidivism in the studies reviewed by Hamberger & Hastings varied from 0 to 50%. If one disregards evaluations which relied solely on self-report and those which had post-treatment follow up periods of less than six months, then recidivism estimates tend to cluster in the 30% to 40% range. However, given the problems discussed here and by the reviewers, this seems to somewhat overstate the ability of treatment to bring about meaningful improvements in the lives of battered women.

Two studies, in particular, provide sober reading. These studies are important because they appear to be the only studies which have followed participants over a significant period of time. Both involved men who had been mandated to treatment. Melanie Shepard (1992) followed up 100 men who had completed the men's education programme at the Duluth Abuse Intervention Project. Over five years, 40% were identified as recidivists on the basis of having been convicted of a further partner assault, having had a protection order made against them or having been the suspect in a domestic assault reported to the police. In the second study, Donald Dutton and his colleagues (Dutton, Bodnarchuk, Kropp, Hart & Ogloff, 1997) followed up 156 men who had completed the Vancouver Assaultive Husbands

Program. Over eleven years, 23% were convicted of at least one further assault. It is not known what proportion of the men in these studies committed further assaults which did not come to official notice, but if one accepts Dutton's (1987) calculation of the odds of an assault leading to a conviction, then it is likely that very few men in these studies could be counted as violence-free.

Nevertheless, some reviewers have been cautiously optimistic about treatment, possibly because they, unlike Hamberger & Hastings, included programmes for voluntary clients in their reviews. Thus, Eisikovits and Edleson concluded that the evaluations they reviewed provided "grounds for optimism" (1989, p. 399). Similarly, in their review of 22 evaluations of groups for men who batter, Tolman and Bennett (1990) concluded that the majority of men stopped their physical violence. But Tolman and Bennett added an important qualification: the research did not clearly support the effectiveness of psychological treatments *alone*. They felt that success was likely attributable to a range of factors such as victim action (separation or threat of it), police contact (especially arrest), prosecution, disapproval of others and "other naturally occurring processes" (p. 111).

Tolman and Bennett have raised an important point. A batterer undergoing a treatment programme simultaneously experiences a number of "other naturally occurring processes," many of which may be influential in stopping or reducing his violence. For example, a partner's threat to leave the relationship, a common trigger for men to "self" refer to treatment, may be an incentive to change. Actual separation may mean the man no longer has access to his victim and/or it may encourage him to re-evaluate his behaviour. He may have been arrested and fears re-arrest. He may have been convicted and faces an increased penalty if he re-offends. He may have had a protection order made against him and faces prosecution if he breaches it. In general terms, what has previously been private behaviour has become public and he may experience a sense of shame as a consequence.

None of these events or processes are determinative of stopping violence. For example, separation often precipitates an escalation in violence, not a reduction (e.g. Wilson & Daly, 1993). Experimental evaluations of arrest policies suggest arrest deters some men but not others (e.g. Sherman, 1992). Similar results have been noted in relation to prosecution of batterers (e.g. Ford & Regoli, 1993). Our research has clearly documented the failure of protection orders to deter some men (Busch,

Robertson & Lapsley, 1992). But equally, events and processes such as separation, arrest, prosecution, issuance of protection orders and the condemnation of others do often serve to deter further violence. Some or all of these may be present in the lives of men undergoing treatment. To attribute observed positive changes solely to the treatment programme is simplistic.

The point is well illustrated by the women interviewed by one of my graduate students. Jane Furness (1994) conducted a victim-focused evaluation of the Hamilton Abuse Intervention Project's (HAIP) men's education programme. She interviewed nine Pakeha women periodically during the six months their partners were attending the programme and again three months later. All five women for whom a complete set of data was obtained reported a decrease in both physical and psychological abuse but attributed the changes to a wide range of factors. Several of the men had been arrested, convicted and placed under supervision for a previous assault, and, according to their partners, knew that they would face a similar or greater penalty for a further offence. In some cases, the attitudes of friends were reported to be influential: these people had made it very clear to the men that they did not approve of their violence. One woman had obtained a non-violence order and said that her partner knew she would action it if necessary. Several others reportedly told their partner that they would leave the relationship if the assaults continued. One woman considered that one of the most important factors was her new-found determination not to accept responsibility for her partner's moods. On the other hand, most of the women thought the men's programme had been beneficial in at least some ways. There was a consensus view that it had increased their partners' knowledge of what constituted abuse and had reinforced the view that abuse was criminal and ultimately self-defeating behaviour. But, in the women's view at least, such changes as the men made were only partly attributable to the men's programme.

One possibility, seldom canvassed in evaluations, is that batterer treatment programmes actually make things worse for battered women. This has been a consistent concern within the battered women's movement as advocates have been perturbed by reports that men have learnt new tactics of abuse from their peers or have employed assertiveness and other skills taught in the programme to maintain control of their partners (Hart, 1988a; Ritmeester, 1993). Even the simple fact that he attends may be misused by the batterer. For example, he may expect his partner to be

more understanding and accommodating of him because he is attending a programme (Pressman & Sheps, 1994). He may make self-serving contrasts between his own behaviour and those of other men in the programme; like the partner of a woman my colleagues interviewed who, after attending an anger management group, pronounced himself as being in the “verbal abuse category” because he had never hospitalised her and asked what she was moaning about (Busch, Robertson & Lapsley, 1992: see case study “Deb”). The batterer may use participation to bargain his way back into the relationship, exploiting false hopes of change (e.g. Currie, 1988; Furness, 1994). There is empirical evidence of this: Gondolf (1988) demonstrated that the batterer’s participation in counselling was a major factor in shelter (refuge) residents’ decisions to resume their relationships. From this perspective, one might conclude that batterers’ programmes are dangerous.

There was some support for this view in Furness’s (1994) evaluation of the HAIP men’s education programme. One interviewee reported her partner learning new tactics of abuse from other men in the programme (see case study “Julia”). Another man minimised his abusive behaviour by making contrasts with other men in the group; “You should see the other guys in the group; they’re much worse than me” (p. 159). Several women reported their partners as adopting the language of the programme for their own purposes. For example, one woman who expressed her disquiet at her partner going out drinking for several hours after group was told that she was “isolating” her partner. Another woman was accused of intimidating her partner when she expressed her anger at being kept waiting three hours for him to pick her up. Two women were further abused after their partners returned from group. In each case, the man invited his partner to talk about her feelings about the abuse she had received, became angry at her response and then assaulted her.

One of the themes to emerge from Furness’s study was what could be called the emotional roller-coaster ride many of the women experienced. Typically, they initially felt positive about their partner’s participation in the programme: at last he was getting some help. However, hopes that the relationship might be salvaged were frequently dented as men relapsed into abusive patterns. On the other hand, some men, apparently in response to their partner’s renewed talk of separation, would begin to behave in a more responsible and considerate manner, again encouraging the hope of positive change. But positive changes were often short-lived and the

“roller coaster” took another dive. At least most of these women had the benefit of support from women’s advocates and all were regularly contacted by the researcher. One can only wonder how they might have fared if they had experienced the isolation characteristically enforced on battered women. As it was, the women were generally positive about the project, but this derived much more from the support they received personally than from any changes their partners made as a result of attending the men’s education programme.

One way of interpreting the conflicting data to emerge from the evaluations of batterers’ programmes is that treatment may work with some men better than others, or that some treatments may work with some men better than others. However, there has been little investigation of the demographic and other individual factors which may be related to positive outcomes. One exception is Shepard’s (1992) five-year follow up of graduates of the Domestic Abuse Intervention programme in Duluth. Recidivists - defined as men who had been a suspect in a domestic assault, had been convicted of a domestic assault or who had had a protection order issued against them - were more likely to have had drug and alcohol problems, to have been abused as children, to have been previously convicted of non-assault crimes and to have had relatively short histories as abusers. Shepard interpreted the last point as suggesting a “hitting (rock) bottom” (p. 175) model of change. On the other hand, her finding is contradicted by Tolman & Bennett, (1990) who concluded that shorter abuse history was associated with more positive outcomes.

While there have been calls for a move away from what has been described as a one size fits all approach (e.g. Fagan, 1996; Russell, 1988; Saunders, 1993; Tolman & Edleson, 1995), attempts to develop typologies of abusers which are relevant to treatment have not progressed very far. Indeed they have been criticised for being overly psychological, ignoring the commonalities of batterers and the cultural supports for battering (Tift, 1993). One recently published typology (Saunders) identified three types of batterers: (1) the generalised aggressor who is violent outside family as well as within, who Saunders believes requires the most intensive and lengthy treatment, including close supervision, alcohol assessment and treatment, cognitive restructuring to improve impulse control, work on his childhood traumas, reducing rigid sex-role beliefs, and learning assertive expression of feelings; (2) the family-only aggressor who typically has less childhood trauma, more liberal beliefs,

lower levels of anger, who suppresses his emotions and is thought to require the less intensive treatment, and (3) emotionally volatile batterers who exhibit extreme jealousy, anger and depression, have an elevated risk of taking their own lives and who are thought to require long-term help but not to be very responsive to legal sanctions. The utility of such distinctions has yet to be tested. However, there is agreement that men entering programmes should be screened for chemical dependency and significant psychological problems so that they may be referred for specialist assistance, either instead of, or in addition to, a standard batterers' programme (e.g. Pence & Paymar, 1993; Russell, 1988; Tolman & Edleson, 1995).

A preferred role for treatment programmes

Evaluated from a victim's perspective, treatment programmes for batterers are, at best, only moderately successful; at worst, they may be dangerous. Moreover, it appears that when treatment is associated with positive changes, those changes may have less to do with treatment per se and more to do with other factors in the lives of batterers and their partners (e.g. arrest, victim advocacy, effective protection orders). If treatment programmes do have a role to play in improving the lives of battered women, their effectiveness may lie in the extent to which they are integrated with other interventions.

It is clear that batterers *can* learn new ways of behaving which are non-violent (e.g. Tolman & Bennett, 1990). But it is also evident that programmes cannot *make* men change: they can only offer men the *opportunity* to change and assistance towards that goal (Jacobs, 1995). In other words, programmes provide men with a choice.

However as Kathleen Carlin has argued,

without clear sanctions against (battering) in the general society, and against the legitimacy of the privilege that underlies it, the message the batterer gets is ambivalent. Until laws and policies make it clear that battering is no longer acceptable, the batterer, when confronted and told, "You have a choice; violence is a choice," will continue to hear the unspoken implication, "but the world doesn't care which choice you make." (1988, paragraph 29)

Carlin's position is consistent with the weight of evidence from evaluations of batterers' treatment programmes: that is, the provision of programmes, of itself, is unlikely to lead to significant changes in the behaviour of most batterers. Thus, in recent years, there has been a strong move away from what might be called stand-alone batterers' programmes and towards programmes which are integrated into the

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criminal justice system: that is, programmes in which attendance is mandated by the courts (or, in some cases, the police), with consistently enforced consequences for non-attendance (e.g. Hamberger & Hastings, 1993; Pence & Paymar, 1993; Tolman & Edleson, 1995). Moreover, treatment programmes are increasingly being seen as an adjunct to prosecution and sentencing (such as probationary supervision) and not as an alternative to such criminal consequences (e.g. see the model protocol for batterers' classes prepared by the Georgia Commission on Family Violence, 1997).

A slightly different perspective was offered by the Maori key informants interviewed by Roma Balzer and her colleagues (1997). They argued that the criminal justice system was not necessarily the best way of ensuring the accountability of Maori men who batter. Maori women who reported male partner violence were sometimes blamed for exposing their partners to a racist justice system. Moreover, the system "removed offender accountability away from the community most directly affected" (p. 37) and decisions were made without the participation of the victim or whanau. As one interviewee commented,

If you take it to the Pakeha system, the person gets charged, processed, gets locked up, goes through the courts and in the normal process he might be found guilty or he might be found not guilty... nobody really has an input into it except the people who are processing the perpetrator. (p. 37)

It is a system which fails to instil in Maori offenders "a sense of responsibility and accountability to and for their own community" (p. 37). On the other hand, in some communities, the Department of Corrections is encouraging Maori groups to take responsibility for Maori offenders. Providing such groups are adequately resourced, they may be able to monitor offenders more effectively than the "present impersonal justice system" (p. 42).

In arguing the need for specifically Maori processes, the key informants interviewed by Balzer and her colleagues seem to be setting out a position which is broadly compatible with that of Carlin (1988) and others who have called for meaningful sanctions against battering. The precise mechanisms may vary from community to community, but the bottom line is ensuring accountability of batterers and consistent messages from the community about the unacceptability of violence. Obviously, the criminal justice system – in various forms – is an important part of this.

Batterers' programmes are also becoming better integrated with services for battered women. Given the recognised dangers of providing programmes discussed above,

there is now a strong consensus that programmes for batterers should be provided in a community *only* if there is adequate provision for the safety and security of women and children, including women's advocacy services, support and education groups, and safe housing (e.g. Currie, 1988; Edleson, 1995). As well as ensuring that priority is given to the safety and autonomy of battered women, these services can play a key role in the accountability of treatment programmes and the monitoring of individual batterers (Ritmeester, 1993).

This sort of integration has been incorporated into North American protocols (e.g. Hart, 1992b; Pence & Paymar, 1993) and local protocols such as those developed by the Hamilton Abuse Intervention Project, the Dunedin Violence Intervention Project and DOVE Hawkes Bay (Busch & Robertson, 1993; Stewart, 1997). Under these protocols, treatment programmes for batterers *are* provided but *only* within an integrated framework incorporating women's refuges and criminal justice agencies. The protocols provide a standard set of procedures for each agency, which, together, form a co-ordinated and consistent response to battering. This response includes safe housing, crisis support, legal advocacy and ongoing support for battered women. It includes the arrest and prosecution of offenders, who are routinely ordered to attend a treatment programme as a condition of their sentence and who face further penalties if they fail to attend. An important feature is the monitoring of offenders to ensure that the protocols are being implemented consistently as they are processed by the criminal justice system. The monitoring includes regular checks with partners or ex-partners, obtaining feedback from them and offering them further support, if needed. Thus a key aim is to hold batterers accountable for their actions. For example, there is an explicit agreement that safety will be prioritised over confidentiality, such that admissions of further violence may be reported to police and/or probation officers. If a man makes a threat against his partner in group, group confidentiality will be breached to convey this information to his partner and help her take appropriate action. The bottom line is the safety and autonomy of battered women.

Best practice for treatment programmes

Arguments against batterers' programmes persist. They have been opposed because they endanger women (e.g. Montreal Men Against Sexism, 1995), because they divert resources away from services for battered women which are held to be more

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effective in ending battering (Ritmeester, 1993), and because they give the impression that something is being done about the problem, diverting attention from the need for fundamental social change (e.g. Tiff. 1993). On the other hand, while batterers' programmes are unlikely to achieve widespread social change, well-implemented programmes may have a role in complementing other interventions aimed at protecting battered women (Edleson, 1995).

Thus a picture emerges of what constitutes best practice for batterers' treatment programmes. That is, programmes which:

- (1) Incorporate an explicitly feminist analysis of battering as a means by which the batterer maintains power and control over his partner.
- (2) Prioritise the safety and autonomy of women over the confidentiality of participants.
- (3) Have a primarily educational approach (as opposed to therapeutic) in which the cultural and social context of battering is addressed.
- (4) Within that framework, incorporate cognitive-behavioural techniques to help men learn non-violent behaviours.
- (5) Emphasise the need for participants to take responsibility for their own behaviour.
- (6) Monitor participants, particularly their use of violence.
- (7) Have well-developed links with battered women's organisations to whom they are held accountable.
- (8) Are well integrated with the criminal justice system (or indigenous mechanisms of social control), such that there are clear consequences for the use of violence.

It may well be that within the last three points lies the real value of stopping violence programmes. The specific content and process of the programme may be less important than the fact that the community (via the criminal justice system or some parallel more culturally appropriate mechanism) *requires* the batterer to attend, thereby sending him a clear message about his behaviour. Moreover, during the time

he is required to attend, his behaviour will be monitored and his partner provided with support, information and resources, including support to live independently of him, should she so choose. After all, why should the batterer change if his partner remains isolated and powerless? His violence will continue to gain compliance. His partner will likely reconcile with him to avoid poverty, homelessness, unsupported solo parenthood and the real possibility that he will track her down and beat or kill her. In the final analysis, unless the safety of battered women is ensured, unless their material conditions are improved, unless they have *real* choices, there is a risk that the only contribution a batterer treatment programme will make to their lives will be to produce better educated batterers.

Chapter 5

The police response

With the partial exception of women's refuges, the services discussed in the last two chapters have provided only limited help for women who have been abused by their male partners. What happens when battered women, in their efforts to seek protection, turn to the official systems of social control, the justice system? It is to this question that the discussion now turns. In this chapter, I review literature on the policing of domestic violence and present my own analysis of the New Zealand police response. Then, in the following two chapters, I examine the responsiveness of the criminal and civil courts respectively. But firstly, it may be helpful to make some general comments about the justice system and battering.

The role of the criminal justice system

Historically, the justice system has not been responsive to the needs of battered women. As Fagan noted, prior to the seventies:

Spouse abuse was viewed by the police and the courts as an intractable interpersonal conflict unsuited for police attention and inappropriate for prosecution and substantive punishment. (1996, p. 4)

Indeed, battered women have often been regarded by justice personnel as quite unlike victims of other violent crimes. For example, they are often seen as unworthy victims, at least partly responsible for the crimes inflicted upon them (Hart, 1996a). They have been regarded as unsatisfactory complainants and unreliable witnesses, likely to withdraw complaints, fail to give evidence or recant in the witness box (e.g. see Craney & Davis, 1996). Of course, battered women do differ from victims of other types of violence in two important respects: they often have a continuing relationship with the offender (even if they no longer live together) and they are typically much more vulnerable to retaliatory attacks (Hart, 1996a). But in other ways, they share important characteristics with other victims: they want perpetrators to stop their conduct, they may want compensation for the losses sustained, they often want privacy, they typically want input into the legal process, they want speedy dispositions and they want dispositions which will protect them from re-victimisation. But at best, the justice system's response to battered women has been described as "benevolent neglect" (Buzawa & Buzawa, 1990, p. 110); at worse, it has been described as actively colluding with violence against women (Busch, 1994).

In the United States and elsewhere, the last 30 years have seen various policy developments which could broadly be described as the criminalisation of spousal violence: that is, policies relating to the arrest, prosecution, punishment and/or treatment of batterers (Fagan, 1996). A similar pattern is evident in New Zealand. As will be evident in this and the following chapters, these attempts at reform have not been without their critics. In some instances, the policies have had unintended negative impacts on battered women. Two significant examples are the arrest of battered women who use violence in self defence (see Chapter 10 for a discussion of this in respect of local Hamilton police practice) and the imprisonment of battered women who refuse to give evidence against their abuser (Harvard Law Review, 1993). In a general sense, the reforms have been criticised for consolidating the power of patriarchal, racist and classist institutions (e.g. Morris, 1993), and confirming the relative powerlessness of battered women (Buzawa & Austin, 1993; Cahn, 1992; Ford, 1991)). Such criticisms raise questions about what role the justice system can and ought to play in relation to battered women.

On an individual, practical level, the criminal justice system *is* important to battered women as many of them seek help from it. For example, it is estimated that between a third and two-thirds of battered women report assaults on them to the police at least once (Buzawa & Buzawa, 1993a; Helmle, 1996). On a broader societal level, the justice system is influential in shaping attitudes towards violence against women. To the extent that domestic assaults are treated as less serious than stranger assaults, the criminal justice system identifies wives as legitimate targets of male violence (Busch, 1994). Indeed, by their failure to take meaningful action, decision makers within the criminal justice system can actively collude with abusers, as described later in this chapter. Thus, however problematic the criminal justice response to battering may be; however misogynous, classist and racist the system may be; whatever the potential for reforms to back-fire against battered women may be; there does not seem to be an alternative to pursuing woman-friendly reforms, which, at a minimum, provide protection for victims and ensure that batterers receive negative consequences for their use of violence. Giving up does not seem to be an option.

Police intervention – a review of the literature

The police can be regarded as the front-line of the criminal justice system. A call to the police is the first step in a chain of events which could, potentially, see the batterer

imprisoned, mandated to a treatment programme or subjected to some other form of social control ordered by the criminal court. In fact, what happens is that all the way along this chain there are decision points, at any one of which the “case” may be screened out of the process. The police control the first three major decision points. Firstly, police dispatchers decide whether or not to send a patrol. Secondly, patrol officers decide (among other things) whether or not to arrest the offender. And finally, police officers, in a complex process which may involve the arresting officer, his or her supervisor and the police prosecutor, decide what charge(s) the arrested offender will face – and hence the maximum penalty for which he will be liable - and whether he is to be offered diversion.¹ In addition to this screening role, the police make other important decisions such as whether to retain the offender in their custody until the next court sitting or to give him police bail and whether to withdraw charges once laid (e.g. withdrawing a more serious charge in return for a guilty plea on a lesser one). In other words, the manner in which police exercise their discretion at each of these points is crucial to determining the final disposition of the case.

Historically, the police response to domestic assaults has been described as “non-involvement” or “reluctant involvement” (Ford, 1986, p. 11). Both here and in other jurisdictions, police typically saw domestic assaults as private conflicts, not really amenable to police intervention (Fagan, 1996). Their preferred approach was to restore calm and leave as quickly as possible (Ford). Two apparently contradictory trends were for police to minimise the violence by referring to domestic *incidents* rather than assaults, while simultaneously believing attending such incidents to be the most dangerous part of their work (Ford). (This perception is thought to be based on mis-reading FBI figures on police injuries which lumped together domestic and non-domestic disturbances such as pub brawls (Sherman, 1992).)

The first impetus for change came from within the police. Concern about what was thought to be the inordinate amount of time spent attending such incidents, including a high number of repeat calls to the same homes, lead to some North American police services developing crisis intervention strategies (e.g. Bard, 1969). This approach was

¹ Note that New Zealand differs from many other Western jurisdictions in that the police control decisions about prosecution. In certain circumstances, defendants who indicate a guilty plea may be offered diversion; that is, they will not be prosecuted or convicted providing they undertake some agreed action, such as making reparation to the victim, completing some programme (e.g. a stopping violence programme), or making a donation to an agreed charity.

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adopted in New Zealand where it was thought that low-key intervention focusing on dispute resolution would avoid confrontation (Ford, 1986). Arrest was still seen as a last resort. This stance was justified on the basis that: (a) arrest would exacerbate family stress rather than relieve it; (b) arrested offenders would be more violent once released; (c) arrest may cause financial hardship for the family; (d) prosecution would be unlikely to proceed because complainants may want to withdraw charges; (e) women did not want offenders arrested, would stop calling the police if men were routinely arrested and that more murders would be the result; and, paradoxically, (f) a fear that the police would be “used” by women to remove men from the home (Ferraro, 1989; Ford, 1986; Sherman, 1992).

Some commentators have claimed that to describe the traditional police response as non-involvement or reluctant involvement is a stereotype which obscures the complex decision making processes by which police screen, attend and respond to calls, leading to a variety of outcomes (Manning, 1992). Arrest is more likely if there are bystanders present, if weapons have been used and if the victim has sustained visible injuries (Buzawa & Austin, 1993; Ferraro, 1989). Of course, in many domestic assaults, there are no bystanders, weapons are unnecessary (to achieve the batterer’s objective) and injuries are not always obvious. Police decision making often appears to be blind to the terroristic tactics of batterers. Ferraro has noted that even under a presumptive arrest policy, police did not see destruction of property as deserving of arrest because such property was seen as his, despite a common law precedent which clearly identified marital property as jointly owned.

The demeanour of offenders and victims is an important factor in decisions to arrest (Sherman, 1992). Police are less likely to arrest if they consider the victim to be confrontational or to have caused the dispute (Buzawa & Buzawa, 1993b). They are less likely to arrest if they consider that things are “under control” (Ferraro, 1989, p. 69). On the other hand, factors which increase the likelihood of arrest include aggressors who do not desist when the police arrive, who attack police or who fail to behave respectfully towards them (Buzawa & Buzawa, 1993b). As Sherman et al. have noted,

Police do not enforce the law so much as their own morality. Police routinely speak of suspects who “fail the attitude test,” or who are guilty of “contempt of cop,” or who are just plain bad people, denoted by the widespread police use of the label “asshole.” (1992, p. 142)

Of course, many abusers do not fit such categories and may present as having much more in common with the police than with “normal” criminals.

A local incident typifies the way such decision making based on demeanour can work to the disadvantage of battered women. A man abducted and beat his ex-partner. Witnesses called the police. When the officers arrived on the scene, the offender approached them and calmly explained that his partner was hysterical and needed their attention. He was not arrested (Roma Balzar, personal communication).

Common sense might suggest the gender of the police officer(s) as a factor in arrest decisions: that is, compared to their male colleagues, women officers might be presumed to be more sympathetic to women victims and more likely to arrest their abusers. In fact, there is little reason to believe that women police officers differ significantly from their male colleagues in their attitudes to women victims (Ferraro, 1989; Ritmeester & Shepard, 1991) or that they are more likely to either refer women to support agencies (Belknap & McCall, 1994) or arrest their abusers (Buzawa & Buzawa 1990; Ritmeester & Shepard). Instead, there is more reason to believe that, as a small minority in a male-dominated system, women police officers conform to the overarching culture of the organisation (Buzawa & Buzawa).

Whatever the reasons, it is clear that the exercise of discretion by police means that only a small proportion of domestic assaults reported to the police result in arrest. Estimates vary from 3% to 30% (Bourg & Stock, 1994; Buzawa & Buzawa, 1990; Dutton, 1987; Elk & Johnson, 1989; Sullivan, 1991), depending in part on whether the number of arrests is compared with the number of domestic-related calls, with the number of incidents attended, or with the number of incidents attended at which there was prima facie evidence of an assault having occurred. One would not expect arrests to be made every time a domestic-related call was made to the police: some calls may not involve criminal assaults at all (e.g. those made by neighbours hearing shouting and banging). Whether arrest is less common in domestic assaults, compared to other assaults, is unclear (Buzawa & Buzawa, 1990; Davis & Smith, 1995; Dutton, 1987; Sherman et al., 1992), but police failure to arrest has particular implications for victims of domestic assaults which may not apply to other victims who do not have a continuing relationship with their offender. Several of the women interviewed by Hoff (1990) reported that their abuser sometimes threatened to take them to the police after an assault in the belief that the police would support his position. Similarly, Pence (1991)

has described a common tactic of batterers in Duluth before the introduction of a pro-arrest policy. After beating his partner, the batterer would thrust the telephone into her face, inviting her to call the police, thus confirming for her her isolation and the impossibility of external intervention. Two of the women interviewed by my colleagues reported similar taunts from their partners (Busch, Robertson & Lapsley, 1992; see case studies of “Esther” and “Deb”).

While most attention has been paid to the failure to arrest, other aspects of the police response to domestic assaults have been problematic. Potentially, police are an important source of information for battered women but typically they have failed to provide the sort of information which battered women may need to access other community resources (Belknap & McCall, 1994; Ferraro, 1969). Police enforcement of protection orders has been widely criticised (e.g. Kjervik, 1992). Their documentation of domestic violence calls has often been poor (Buzawa & Austin, 1993, Ford, 1986). As a result, police often attend calls with no knowledge of previous calls to that address, treating each incident as an unique event (Buzawa & Buzawa, 1993a). Their failure to distinguish the violence of the primary aggressor from violence used in self-defence has sometimes lead to arrests of women victims (Shepard, 1993; Stanko, 1995a).

Mandatory and pro-arrest policies

The past 15 years have seen major policy changes in relation to police handling of domestic violence. In New Zealand, following a pilot study by Ford (1986), the Police Commissioner (1987) issued a three part policy for intervening in “domestic disputes.” According to the three-page policy:

- (1) “When an offence has been disclosed involving assault or danger to the victim from the offender, or when a court order has been breached, and there is sufficient evidence to arrest the offender, he/she should be arrested.” (p. 2)
Victims were not to be asked to make a formal complaint or to give evidence unless there was no case to answer without such evidence. Arrest was described as the “standard procedure” but “common sense” exceptions were expected “where incidents are extremely minor or Police intervention is clearly inappropriate” (p. 3).
- (2) Victims should be referred to an appropriate victim support agency.

- (3) Offence reports were to be completed as a matter of routine.

An important point in the policy is the explicit direction not to ask victims whether they want to make a complaint. This is an explicit recognition of the risk of retribution from the batterer which battered women may face if they are seen as responsible for his arrest (Ford, 1986). To ask a battered woman whether she wants the abuser to be arrested may be to put her in an invidious position. If she responds in the affirmative, she risks being “punished” by the abuser. If she responds in the negative, she risks confirming his assumed right to beat her and earning the antipathy of the police for wasting their time.

The 1987 policy has been updated by circulars issued in 1992, 1993 and 1996. The requirements of the 1987 policy have been retained but new provisions added. The 1996 version, which runs to eight pages, includes instructions about:

- (1) Investigation practices: These must focus on protection of the victim, investigating offences and arresting offenders. Specific questioning procedures are outlined.
- (2) Bail decisions: Offenders should not be given police bail but held in custody until the next court hearing.
- (3) Firearms: Police should ascertain if there are firearms on the premises and exercise their powers (under the Arms Act) to seize these.
- (4) Charges: While a range of charges may be appropriate, the offence *male assault* (Crimes Act, s. 194) “will be used in most circumstances” (p. 13).
- (5) Children: Concerns about children who witness domestic violence or who may be directly at risk of physical violence should be reported.
- (6) Victim support: Local protocols are to be developed with women’s refuge or other agencies for victim referrals.

There are other instructions relating to the service and enforcement of protection orders, inter-agency co-operation, record-keeping and monitoring the policy (Police Commissioner, 1996).

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The New Zealand policy, at least in its later versions, is well-developed, incorporating the sort of inter-agency approach which has been advocated by reform activists such as Barbara Hart (1995) and Ellen Pence (1989). Compared to pre-1987 days, the policy has the effect of narrowing the discretion available to police attending domestic assaults.

Paragraph 19 states:

Given sufficient evidence, offenders who are responsible for family violence offences shall, except in exceptional circumstances, be arrested. In the rare case where action other than arrest is contemplated, the member's supervisor must be consulted. (Police Commissioner, 1996, p. 12)

Broadly similar policies are now common throughout much of the English speaking world (Buzawa & Buzawa, 1993b; Elk & Johnson, 1989; James, 1994; Lyon, 1995;). Some are described as mandatory arrest policies (e.g. Tolman & Weisz, 1995). Others are couched in terms of a presumption of arrest (e.g. Ferraro, 1989). The distinction may be more cosmetic than real. Whatever the police policy, a minimum legal requirement for arrest is that the officer has reasonable cause to believe that an offence has occurred. Determining "probable cause" inevitably involves the exercise of discretion (Ferraro, 1989). Nevertheless, it is significant that in no other class of crime has the exercise of discretion by the police been so fettered (Sherman et al., 1992).

The introduction of pro-arrest policies owes much to political pressure from feminist groups who saw failure to arrest as a demonstration that victims' injuries were not important and a message to abusers that further battering would be condoned (Buzawa & Buzawa, 1992; Stark, 1993). From a social justice perspective, pro-arrest policies were seen as a way of ensuring an egalitarian re-distribution of police resources to women who had previously been denied them (Stark, 1993). In the United States, multi-million dollar awards against police departments for their failure to protect victims of battering were a major impetus for reform (Halsted, 1992). Another factor was the well-publicised results of an experimental evaluation of arrest undertaken in Minneapolis (Sherman, 1992).

Evaluations of pro-arrest policies

During the 1980s, a series of experimental evaluations of the effectiveness of arresting perpetrators of domestic assaults was conducted in several cities in the United States. The first and probably best known of these was the Minneapolis experiment (Sherman & Berk, 1984).

Employing traditional experimental methodology, Sherman and Berk's study (1984) randomly assigned offenders to one of three conditions: arrest; separation (i.e. ordering him out of the home for at least 8 hours); and providing advice. The effectiveness of the three conditions in deterring repeat violence was assessed using two sources of data: police records and a series of interviews with victims over the 6 months following intake into the experiment. As might be expected, victim interviews disclosed a higher level of re-offending than police records but both data sources showed the re-offending rate among arrested men to be approximately half that of the other two groups¹.

The experiment was widely interpreted as providing clear evidence supporting mandatory arrest (Lerman, 1992). However, subsequent replications in Omaha, Charlotte, Milwaukee, Miami and Colorado Springs produced more equivocal results such that in 1992, Sherman recommended the repeal of mandatory arrest statutes in favour of more flexible policies in which arrest would be one of a number of options such as taking victims to shelters, helping women access support, and taking intoxicated offenders or victims to de-toxification facilities. Sherman's recommendations were based on analyses of all six studies which suggested, among other things, that an overall deterrence effect for arrest could be identified in only some cities and that it may lead to an escalation in violence in the longer term (6 to 12 months) with certain offenders, most notably, unemployed men. (See Table 5.1.)

Not surprisingly, the implications of the Minneapolis experiment and the replications have been vigorously debated. (For example, see the May, 1993 issue of the *American Behavioral Scientist*.) The debate is complex. Within what could be described as the tradition of positivist criminology, the debate has focused on perceived methodological short-comings and interpretations of the experimental data which seem to point to differential effects of arrest. Other critiques of the experiments question the underlying paradigmatic assumptions of positivist criminology, the decontextualised nature of the experiments and the failure of the researchers to consider the meaning of arrest for offenders and victims.

¹ The percentages of re-offenders as disclosed in victim interviews were: arrest 19%; separate 33%; and advise 37%. The corresponding figures from police records were: arrest, 10%; separate 24%; and advise 19%.

Table 5.1
Selected features of Minneapolis domestic violence experiment and 5 replications

	Effect of arrest (and measures)	Experimental and comparison conditions	Sample inclusion criteria	Sample size	Contextual factors
Minneapolis	Long term deterrence (official measures and victim interviews). Not analysed by employment status.	1. Arrested and detained at least overnight. 2. Separation-ordered out of home for at least 8 hours. 3. Advice given.	Probable cause for misdemeanour assault within previous 4 hours. Victim not seriously injured, had no protection order and did not insist on arrest. No assault on officer.	314. 62% of victims completed initial interviews. 23% retained in sample at 6 months.	High crime area. 60% suspects unemployed, 55% from ethnic minorities. 59% suspects had previously been arrested (for any offence). Only 4% arrested men convicted and 2% sentenced.
Miami	Long term deterrence effect shown by victim interviews. Long term, arrested men were less likely to be arrested for an assault on any victim. For same victim assaults, there was no deterrent effect on prevalence but there was on frequency. Not analysed by employment status.	1. Arrest with follow-up counselling by police unit about 1 week later. 2. Arrest without counselling. 3. Follow-up counselling (no arrest). 4. No counselling, no arrest.	Began with 1 division, 12 hours per day. Extended to 2 divisions, 24 hours.	907. 42% of victims retained in sample at 6 months.	Low crime area. 29% suspects unemployed.
Colorado Springs	Long-term deterrence effect found in victim interviews, but not in official measures. Deterrence effect for unemployed men. Escalation effect for unemployed men.	1. Arrest plus emergency protection order issued on scene. Length of time in custody not known. 2. Immediate crisis counselling for suspect at police station plus emergency protection order. 3. Emergency protection order only. 4. Restoring order (advising) only.	Included non-assault cases such as harassment. Began with selected officers, later included all officers city-wide.	1658. 58% of victims retained in sample at 6 months.	Low crime area. 30% suspects unemployed.
Milwaukee	No deterrence effect for arrest as assessed by victim interview or official measures in terms of proportion of recidivists, but arrest associated with a greater delay in time to first assault. After 12 months, "short arrest" cases showed higher proportion of recidivists and greater frequency of assaults (long-term escalation). According to victims, 7% of warned offenders assaulted victims as soon as police left; 2% of arrested offenders (both conditions) assaulted victims as soon as they returned. Deterrence effect for unemployed, married, whites and high school graduates – escalation effect for unemployed, unmarried, minority group and high school dropouts (at least in terms of frequency of assault).	1. Arrest, held overnight. 2. Arrest with release within 3 hours. 3. Warning that suspect would be arrested for repeat assault.	Probable cause for misdemeanour assaults only. Married/cohabiting or previously so or couple have child in common. Victim not seriously injured, had no protection order and did not insist on arrest. No warrants on record. 3 of 6 patrol districts, during 7pm-3am shift, utilising 35 specially selected officers. 75% of domestic violence calls during shifts ruled ineligible.	1200. 77% of victims retained in sample at 12 months.	Experimentation conducted after implementation of city-wide arrest policy – participants understood that "short arrest" would be a departure from usual practice. High crime area. 47% suspects unemployed. Although most arrested men appeared before prosecutor, less than 5% were prosecuted (DA swamped with cases) and only 1% convicted.
Omaha	"No difference" findings at 6 months reported by Dunford, Huizinga & Elliott (1990). Apparently working from other data presented at a conference, Sherman (1992) described an escalation effect of arrest evident at 12 months follow-up. Deterrence effect for unemployed men - escalation effect for unemployed men.	1. Arrest with variable custody time (average 15.46 hours). 2. Separate parties (suspect asked to leave in 2/3 cases, victim in 1/3). Average separation 70 hours, 23% less than 2 hours. 3. Mediation/restore order.	Probable cause misdemeanour assault where couple had cohabited at least 12 months. City wide 4pm to midnight shift. Excluded felony assaults and cases where a warrant was in existence. 31% of officers contributed 75% of cases: 16% officers referred no cases.	330. 80% of victims completed initial interviews. 73% retained in sample at 6 months.	Low crime area. 31% suspects unemployed. 65% suspects had previously been arrested (for any offence). 64% of arrested men convicted and sentenced (jail/probation/fines).
Charlotte	Long term – re-arrest figures were 20% for arrests, 26% for citation and 12% for separate/advise – that is an escalation effect for arrest. No difference in recidivism from victim interviews.	1. Arrest – detained 9 hours on average. 2. Citation for couple to appear in court on later date. 3. Separate or advise (victim recommended to leave in 40%). In all conditions, women given victim information card.	Probable cause assaults (this excluded 82% of calls). Cohabiting couples only – 60% of domestic calls excluded as not being spouse-like. City-wide, 24 hours. Excluded cases where victim requested arrest, officers threatened or assaulted and further assault considered imminent.	650. 65% victims completed initial interviews. 50% of victims retained in sample at 6 months.	69% of suspects had criminal records and "many" had served time in jail. Only 35% of men arrested or given citations were prosecuted, 17% convicted with 1% imprisoned.

Table based on Sherman (1992, p. 129) with additional information from Berk, 1993; Duford, Huizinga & Elliott, 1990; Lerman, 1992; Hirschel & Hutchison, 1992; Sherman, 1992; Sherman et al, 1991; Sherman et al, 1993; Schmidt & Sherman, 1993. Where conflicting information was found, information contained in articles authored by researchers rather than by reviewers was used.

Inevitably, commentators have pointed out ways in which the studies failed to meet the ideals of experimental rigour. For example, there are strong indications that officers continued to use their discretion to screen out eligible offenders (e.g. in Milwaukee, 75% of domestic violence calls were ruled ineligible; in Charlotte, 60% were excluded). Where individual referral figures were reported, some officers were found to have made no referrals to the experiment while others contributed disproportionately high numbers (see Table 5.1). In the Minneapolis study, the random assignment of suspects was not done blind: that is, officers attending a call already knew to which condition it was to be assigned (if it met the eligibility criteria). It is likely that some eligible suspects who should have been assigned to the arrest condition were not entered into the study because they were co-operative and respectful to the police who were reluctant to have them arrested (Sherman, 1992). High drop-out rates from the samples of victims interviewed (greatest in Minneapolis where only 23% were retained at six months post-intervention) meant that the data were far from complete and that the recidivism measures relied over much on official records. There were questions about the standardisation of the conditions. While in some of the studies police officers worked from a script, this was not the case in Omaha where little effort was made to ensure that police intervened consistently within each condition (Lerman, 1992). One reflection of this is the way the “separation” condition was implemented. In one-third of the “separation” cases, police suggested that the victim leave the home: in two thirds of the cases, it was the offender who left (Dunford, Huizinga & Elliott, 1990). Average separation time was 70 hours (as reported by victim interviews) but in 23% of the cases separation lasted less than two hours. Another inconsistency was the length of time arrested suspects were detained. For example, Sherman (1992) noted that some suspects assigned to the overnight arrest condition in the Milwaukee study were in fact detained for several weeks. Such variations suggest that any single condition may have had widely varying meanings for the offenders and victims assigned to it. However, while these and other departures from experimental rigour suggest that the experimental data should be interpreted with caution, it is not clear whether they strengthen or weaken the argument for pro-arrest policies.

More important criticisms of the studies are based, not on the internal logic of experimentation, but on a more contextual view of intervention in domestic violence. The experiments systematically failed to assess the impact of arrest in terms of its

meaning in the context of the lives of victims and offenders (Lerman, 1992; Stanko, 1995b; Stark, 1993).

An important point here is that the studies focused exclusively on recidivism. Three ways of assessing recidivism were used. The arrest condition was said to have had a deterrent effect if the arrest cases, when compared to the comparison conditions, showed (1) a significantly lower proportion of cases in which no assault occurred during the follow up, (2) a lower average frequency of further assaults, or (3) a longer average time to the first subsequent assault (Sherman, 1992). Police records and victim interviews were used to detect further assaults.

But how should one interpret a reduction in further assaults as recorded through either of these sources?

One problem is the reliance on official records. Does the fact that an offender is not reported during the follow up period mean that he has not committed further assaults or does it mean that further assaults have not been reported? There is likely to be a systematic bias here: women whose cases were assigned to the non-arrest conditions could be expected to have become disillusioned with the police and to be less likely to call the police on subsequent occasions (Lerman, 1992). Interviews conducted with victims might be seen as providing a more complete account. Certainly, they provided a consistently higher estimate of recidivism than police records, but on the whole, the victim data tended to give a more optimistic picture of the deterrent effect of arrest (e.g. Berk, Campbell, Klap & Western, 1992; Sherman, 1992). Yet frequently, the researchers have favoured the official data as providing “the ‘cleanest’ story” (Berk, et al.; see also Sherman, 1992).

A second problem is the focus on assaults without consideration of contextual factors. As Stark has pointed out, “Assault is merely one among many means available to men in battering relationships and its absence, even for some extended period, may signify greater equality or greater dominance” (1993, p. 665). The cessation of violence may simply mean that other tactics of control are effective in maintaining the batterer’s dominant position. This may be particularly relevant in interpreting the reported deterrent effect of arrest among white, middle-class men. Such men may simply have more leverage over their partners than is available to other men (Lerman, 1992; Stark, 1993).

There are other indications that the researchers have failed to understand the meaning of violence within heterosexual relationships. One is Sherman's interest in the frequency of assault. Can one assume that women who are battered once a month are substantially better off than women who are battered weekly? Such a view ignores the crucial role played by threats and the fear they invoke. Similarly, Sherman et.al.'s "time-at-risk" analysis of recidivism reveals a naiveté about the nature of battering (1992, p. 150-154). That is, they excluded from their analysis couples who were no longer cohabiting, as if separated women are no longer at risk of violence from their partners. Such an assumption flies in the face of what is known about the separation violence and the increased risks facing women who separate from their abuser (Carlin, 1988; Hart, 1996a; Liss & Stahly, 1993; Wilson & Daly, 1993).

A crucial point about the experiments is that the effectiveness of arrest was tested without considering the broader context of the criminal justice system. It is particularly notable that in most of the studies few of the arrested men were ever prosecuted. (Omaha was an exception; Charlotte a partial exception. See Table 5.1.) Yet, it appears that unlike abusers in general (Kandel-Englander, 1992), the majority of men included in the studies were no strangers to the criminal justice system. For example, Hirschel and Hutchison reported that 69.4% of male offenders in the Charlotte sample had a criminal record and that "many" had spent time in jail (1992, p. 117). In Minneapolis, 59% of men had been arrested previously, and in Omaha, 65%. Arrest for a *domestic* assault might have been a surprise for many of these men, but it was hardly an unambiguous message, given that, in most cases, they were quickly released and seldom prosecuted. Anecdotal evidence tends to confirm this. Surprised by the apparent escalation effect of arrest in the Milwaukee experiment, battered women's advocates sought feedback from women whose partners had been part of the study. A typical response was that arrested men initially desisted from further assaults - at least until they heard from the District Attorney's office that they were not to be prosecuted - when the battering resumed (Pence, 1993a).

In this regard, the Minneapolis study and its replications can be contrasted with an evaluation of a pro-arrest policy in London, Ontario (Jaffe, Hastings, Reitzel & Austin, 1993) which provided a much more optimistic view of arrest, or at least, arrest leading to some further sanction. In this study, the women whose partners had been arrested reported significant reductions in violence over the following year. On the other hand,

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women who had had the police intervene but without making an arrest, and women for whom there had been no police intervention reported little or no change in the violence they were subjected to. Although the study had its limitations (the samples were not randomly selected) it provides a useful view of the effectiveness of arrest in a different context. In the London study, all but 11% of the arrested men were subsequently convicted and sentenced.

The arrest experiments can also be criticised for ignoring women's experience of violence and their strategies of resistance. As Elizabeth Stanko has noted,

The tragedy of the deterrence studies was the disappearance of the issue of violence from the texts. The many different strategies many different women use for escaping violence - the substance of diversity - were not chronicled in the quest to document 'causation'. I mourn that lost opportunity. (1995b, p. 53)

No-one asked women what the arrest (or non-arrest) of their partner meant to them¹. Instead, their role in the studies was limited to answering highly structured interview questions about the batterer's behaviour and police intervention. Moreover, that intervention was offender-focused: the police did nothing to support women's efforts to escape violence (Stanko, 1995b). The solution to violence was seen as lying in "sanctions rather than sanctuary: the police strategies, not those of the victim" (Stanko, 1995a, p. 35).

Moreover, ending violence was seen as a matter of *individual* deterrence. The assumption underlying the arrest studies was that arrest could be considered to *work* if offenders who were arrested desisted from further violence. When the replications showed that arrest *worked* in only some circumstances, Sherman (1992) argued for more flexible approaches. But arrest has other functions besides individual deterrence. It may help ensure the immediate safety of victims (Helmle, 1996). It also sends messages about the unacceptability of violence (Stark, 1993). There is evidence that such messages are heard in the general population. A nation-wide sample of American men were asked (in telephone interviews) what they would lose, firstly, if they assaulted their partners, and

¹ Ironically, while women were not asked about the meaning of (their partner's) arrest, in the Milwaukee study, offenders *were* asked such questions. Their responses showed that "short arrest" offenders were more likely than "long arrest" offenders to take the intervention lightly. They were twice as likely to say that they were not bothered or did not care (25% v 13%); less likely to say they were afraid of what would happen next (31% v 39%); less likely to expect arrest to hurt their ability to get a job or a loan to buy a car (29% v 42%); and twice as likely to expect friends to be angry with their partners for the arrest, not them (21% v 11%).

secondly, if they were arrested for such an assault. Their responses identified significant additional costs of being arrested over and above the costs of committing the assault. These costs included not only the direct penalties imposed: they also included social costs such as an increased likelihood that their partner would leave them, that their friends and relatives would lose respect for them, and that they would lose respect for themselves (Williams & Hawkins, 1992).

Other criticisms of pro-arrest policies

The expectation that arresting batterers will end violence against women has been described as an example of the “prevention conceit” (Manning, 1993, cited in Stanko, 1995a): the belief that criminal justice interventions alone can prevent crime. But the fact that arrest may not deter some offenders from future violence is not necessarily an argument for abandoning it. If individual deterrence is the only goal, arresting many classes of offenders must be considered a waste of time (Helmle, 1996). Yet arguments against mandatory or pro-arrest policies in relation to battering continue.

One argument against pro-arrest policies is based on the observation that they often result in an increase in the number of women arrested for domestic violence. (e.g. see Buzawa & Buzawa, 1993a; Pence, 1987; Stanko, 1995a). Sometimes, both parties are arrested for what is construed by police to be a mutual fight (e.g. Buzawa & Buzawa; Shepard, 1993). Clearly it is problematic if women who use violence in self-defence are arrested but it is difficult to argue against the arrest of those (few) women who are the primary aggressor. Experience in Duluth suggests that arrest protocols can be refined so that the legitimate use of violence in self-defence does not result in arrest (Shepard, 1993).

A second argument against pro-arrest policies is that they disempower women by failing to consider their wishes (Buzawa & Buzawa, 1993a). As Buzawa and Austin (1993) point out, victim preference has long been a key determinant of police response in most classes of crime. Pro-arrest policies place victims of domestic assaults in the company of victimised children and other legal incompetents in that the decision to intervene is made without regard to their wishes. On the other hand, placing the onus of determining arrest on victims of domestic assaults can be problematic if they are at risk of retribution from the offender (Stark, 1993). To argue the case for making victim preference paramount in arrest decisions is to argue for a “right” many battered women

may not be able to exercise. A victim's preference against arrest should be seen in the context of the common tactic of batterers of encouraging their partners to take responsibility for the violence. The self-blame some women may feel will often extend to believing the arrest of the batterer to be unfair (Hart, 1996a). Or as Stark has argued, "It is hard to see how the benefits of individual choice outweigh the social interest in stopping the use of illegitimate power" (1993, p. 676).

In part, Buzawa and her colleagues (Buzawa & Austin, 1993a; Buzawa & Buzawa, 1993a) based their argument for considering victim preference on a study of police interventions in domestic assaults in Detroit. They found that victim preference was a significant factor in police decision making and concluded that where police acted in accordance with that preference, victims were generally satisfied. However, it should be noted that the huge majority of women victims were satisfied with the police (94%): even those women whose partners were arrested against their preference (as expressed to the interviewer at follow up) were satisfied. On the other hand, of the 6% who were dissatisfied, all had wanted a more assertive police response. That is, they had wanted their partner arrested but the police had not done so. These data do not paint a picture of women being disempowered by police decisions to arrest their partners. Nor do data from various sources which consistently show that the introduction of pro-arrest policies has led to a greater willingness of women to report domestic assaults to the police, not less (e.g. Ferraro, 1989).

A related argument against pro-arrest policies is that they simply extend the power of institutions over the lives of citizens (e.g. see Buzawa & Buzawa, 1993a). For example, in New Zealand, Alison Morris has argued that "It is no accident that the police were so receptive to women's demands for more arrests - it meant more power for them" (1993, p. 5). In particular, Morris has been concerned differential policing by class and race means that pro-arrest policies place minority group or working class women in a position of having to protect their partners from racist and classist police practices. Her fears tend to be confirmed by the Minneapolis study and its replications in which minority group men were significantly over-represented (Sherman, 1992). But this need not necessarily be the case. The Duluth Abuse Intervention Project monitored the introduction of a mandatory arrest policy in that city. The number of white men arrested for domestic violence offences increased by a factor of 10 while the number of minority men arrested only doubled, all but wiping out their over-representation among

domestic violence arrests compared to the city's population (Pence, 1987). Contrary to Morris's argument, it would appear that a properly implemented pro-arrest policy will counter the racist exercise of police discretion. Moreover, as Stark has argued, whether intervention of the criminal justice system is seen as control or liberation rather depends on one's position. Arrest will increase the controls placed on batterers but

From the standpoint of women whose personal lives are governed by norms of male dominance supported by structural inequalities, *noninterference* functions to exacerbate control. Conversely, outside interference that challenges existing power relations is a fundamental precondition for autonomy among the oppressed. (Stark, 1993, p. 677) (emphasis in original)

In this light, arrest can be seen as an important weapon in breaching the walls of "the total institution" which Avni (1991) has described as the model for the homes of battered women.

Policing domestic violence in context

The arrest experiments focused on a single independent variable, arrest. The effectiveness of arrest was assessed solely in terms of recidivism. It is hardly surprising that the studies produced equivocal results. Battering is used by men to control their partners. They have typically continued battering because it works and no-one has required them to stop. It is naïve to expect that any one intervention would end domestic violence (Lerman, 1992). Indeed, if the experiments have taught us anything, it is that any *single* intervention will have limited success at best and may sometimes make things worse. Consider the Milwaukee women who experienced greater violence after their arrested partners were told they were not going to be prosecuted. Consider too, the possibility of retaliatory assaults which may follow arrest.

One response to this situation is to argue against arrest. But this is surely to collude with the batterer and to condemn his partner to continued subjugation within the *total institution* of their relationship. On the other hand, the problems sometimes associated with arrest can be seen as strengthening the case for more, not less protection. That is, the police do have an important role to play in arresting offenders as the first step in holding abusers accountable for their use of violence (Eisikovits & Edleson, 1989) and in assisting battered women to access the resources they need to live violence-free lives (Stanko, 1995a). Thus, a protection-focused intervention requires police to collaborate with other criminal justice agencies (e.g. courts and corrections agencies) and with victim support and advocacy groups to provide a consistent and comprehensive

response to battering. Such collaboration may also provide mechanisms by which the performance of the police can be monitored to ensure that misogynist, racist and classist practices are minimised. Taking a more contextual approach, the question is not whether arrest works, “but rather how can it work effectively as part of an integrated community response” (Jaffe et al., 1993, p. 93).

An analysis of the New Zealand police response

As described in Chapter 1, during the period 1990 – 1992, I worked on a study of policing domestic violence as part of the larger Domestic Protection Study. This involved 25 interviews with police officers from around the country, an analysis of police records (including official statistics), and an analysis of the 20 case studies prepared as part of the larger study. None of these sources of data is comprehensive but each provided a perspective on the performance of the New Zealand police in relation to domestic violence, in general, and in relation to breaches of protection orders, in particular.

Three points should be noted about the analysis which follows.

Firstly, this is an analysis of some of the significant *problems* in the New Zealand police response to domestic violence, not a systematic evaluation of that response. That is, it draws heavily on case studies of women who were recruited specifically because they had had difficulty with the enforcement of protection orders. Their experiences are not necessarily representative of all women who call the police.

Secondly, this information was collected during 1990 and 1991 when the arrest policy was still relatively new. This analysis may not be a fair reflection of current practice. As I have explained, the original policy has since had some minor refinements. Moreover, one might hope that some of the resistance to the arrest policy we detected has since lessened.

Thirdly, as will become clearer, discussing the performance of the police in isolation is sometimes to do them an injustice. Police actions are often constrained by a lack of resources or by the policies of other institutions, notably the courts. For example, limitations on what is admissible evidence may make policing harder in some circumstances. Similarly, police may feel discouraged if judges impose lenient sentences on offenders the police bring before the courts. (This was a frequent complaint of

police informants.) The point is that some of the problems identified in this analysis are really system-wide problems, which the police alone can do little about.

Some of the problems identified in this analysis are specific to the enforcement of protection orders. Some are more generic, relating to the policing of domestic violence in general; that is, problems in arresting and prosecuting abusers. I will discuss these generic problems first before discussing the special case of enforcing protection orders.

The arrest of abusers

As I mentioned earlier, the 1987 policy stated that offenders “should” be arrested whenever there is evidence of an assault, of danger to the victim or of the breaching of a court order – without asking victims to make a complaint (Commissioner of Police, 1987, p. 2). A majority of the police I spoke to thought the arrest policy to be a good idea. So too did most of the key informants from other organisations. The policy was widely seen as an important advance on previous practice which often favoured minimum intervention. However, the first problem we identified was that this policy was poorly implemented.

All of the 20 women featured in the case studies told us about instances in which the police had failed to arrest their partners for assaults and/or breaches of protection orders. (I discuss the circumstances of some of these cases later.) In fact, only 5 of the women reported instances in which the police did take effective action: the other 15 women recalled only negative experiences. Of course, it cannot be claimed that the experiences of these women are typical, but from what our key informants told us, they are not unusual. For example, women’s refuge workers reported a widespread reluctance by police to arrest assailants. In some areas, women were reported to have largely given up ringing the police because of the unsympathetic attitudes of local officers. To some extent this was confirmed by the police officers I spoke to. Some supported the arrest policy: some were critical of it. All agreed that it was being unevenly implemented with significant regional and individual differences.

In an attempt to determine how widespread the failure to arrest offenders might be, I analysed telephone message forms collected from three police districts: a large city district, a small city district and a predominantly rural district. These were the forms on which police telephonists recorded the details of emergency calls, and later, the outcome of police attendance (or non-attendance). The message forms provide only a very

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limited record of the events to which they relate: that is, a summary of what the caller said and a single digit code to denote outcome. On the other hand, in terms of the screening out processes described earlier, these forms are the most inclusive set of information about domestic violence incidents reported to the police in that all calls are included, even those which the police did not attend and those which they did attend but did not make an arrest.

My analysis shows that approximately 14% of reported domestic incidents result in an arrest (see Table 5.2). This does not mean that the other 86% of calls represent a failure to implement the arrest policy. An unknown proportion of calls do not involve criminal offences. For example, some calls are made by neighbours who hear shouting, and in some of these instances, there may not have been an assault. In other cases, there may have been an assault but even the best investigative techniques may not produce sufficient evidence to sustain a prosecution. In some cases, the abuser may have left the scene and cannot be apprehended by the end of the shift when the outcome code is added (see Table 5.2, note 6). On the other hand, the evidence does not suggest that such a high proportion of non-arrests is justified. The text of the police logs tend to confirm what one police officer told us: “We don’t often arrest... usually we resolve it.” Illustrative examples from the logs include the following:

There is a guy kicking a female around on the front lawn of the property across the road. She looks about 9 months pregnant. (*Outcome - Police attendance sufficient.*)

Heard woman getting thrown against wall. Still going on. (*Outcome - Both parties spoken to. No complaint forthcoming. Settled at scene. Police attendance sufficient.*)

Female kicked in face and side of body by local prominent (name of city) lawyer. (*Outcome - Police attendance sufficient.*)

The last example is interesting because the police officer has evidently departed from the standard practice of recording the call verbatim (or as near so as possible) to censor the name of the assailant. As had previously been discovered by one of the women in our case studies, having a partner who is a friend of certain police officers may mean being denied effective protection. (Jane¹ was unable to get her local police officer to arrest her ex-husband on repeated breaches of her protection order. The two men were friends and belonged to the same rugby club.)

¹ Here and in other the cases I refer to, the full case study can be found in Busch, Robertson & Lapsley (1992).

Table 5.2
Outcomes of domestic incidents reported to three selected police districts¹

Outcome	Large city ² (n=226)	Small city ³ (n=210)	Rural town ⁴ (n=117)	All districts (n=553)
Arrested	12.8%	15.2%	15.4%	14.3%
Warned	6.2%	2.4%	4.3%	4.3%
No further action ⁵	65.5%	60.0%	58.1%	61.8%
Others ⁶	15.0%	22.4%	22.2%	19.0%

- (1) All domestic-related message forms for the sampled days were included: that is, those which were coded by police as "1D" (the "domestic" code), plus those other forms given offence codes where the text of the message clearly indicated that the offence was committed against a family member or partner. Phone messages where no outcome was recorded (mainly those referred to outstations for follow up) were not included in the analysis. The manner of sample selection is described below and was partially determined by the availability of records (they are shredded, usually after 12 months) and a desire to get approximately equal sized samples from the districts.
- (2) For this district, the sample comprised 12 weeks, randomly selected, one from each month of 1990. This sample includes every domestic call for each of the selected weeks.
- (3) For this district, every domestic call recorded in the first six months of 1990 was included.
- (4) For this district, every domestic call recorded during 1990 was included.
- (5) The vast majority of incidents in this category were recorded as "police attendance sufficient." According to a police informant, this outcome sometimes includes informal warnings given to assailants. A small number of incidents were recorded as "no offence disclosed."
- (6) This group includes referral to the next shift for action, filing a report (not necessarily for further action), submission of an offence report for follow up and referral to other agencies (e.g. ambulance). According to a police informant, very few of these incidents could be expected to result in an arrest or the charging of an offender.

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According to my analysis, about 4% of incidents were recorded as resulting in the offender being warned. The actual number warned is probably rather larger as we were told that police sometimes failed to formally record warnings. However, even if the warning was formally logged, there was usually no retrieval system which could be used to tell if an offender had previously been warned.¹ Some stations did have a simple recording system for domestic violence, typically, a “domestic violence book” in which events were recorded, and in small stations, repeat abusers were generally well-known among officers. Otherwise, the risk was that each assault would be treated as if it were an isolated incident and assailants could receive repeated warnings. (This was particularly a problem in respect of breaches of protection orders. See discussion below.) The persistent, cumulative effect of battering remains hidden.

My analysis of the telephone message logs revealed two other significant aspects of police response. Firstly, some calls were not attended at all. In such cases, the logs recorded outcomes such as “Dispute resolved over the phone.” According to police informants, a lack of staff and cars, especially in busy periods (Thursday, Friday and Saturday nights), meant that some domestic incidents went unattended.

A second aspect was that a number of calls were cut off before identifying information was passed on. This provided further evidence of the problem reported in several of the case studies: assailants are frequently able to prevent their victims from getting to the telephone and/or completing a call to the police. Fortunately, the introduction of caller identity technology should partially help resolve this problem.

Evidence from the case studies, the key informant interviews and the analysis of archival material, suggests a number of reasons why assailants often avoided arrest. These included the misogynous attitudes held by certain police officers, a tendency to discount repeated calls, a reluctance to arrest offenders without victims making a complaint, frustration with the difficulties of prosecuting offenders, and a lack of resources (especially in rural areas). These are discussed below.

¹ The police have since established a national family violence database. Theoretically, this should ensure that police attending a family violence incident should know of any earlier incidents. However, my conversations with police officers and clerical staff suggests that only a relatively small proportion of incidents are ever entered into the database.

Misogyny and the trivialisation of violence against women

Some of our police informants described their colleagues as being reluctant to arrest assailants, pointing to a set of attitudes which favoured the historical pattern of minimum intervention. For example, some police managers described a tendency for some officers to dismiss domestic violence as not “real” police work. Indeed, one officer I spoke to described attending domestic violence incidents as “social stuff.” The language used by most of our police informants could be seen to reflect this view. Typically, police officers referred to “domestic incidents” or “domestic disputes” rather than “domestic violence.” Most agreed that stranger violence was rated as more important than domestic violence. Certain older officers told us that some young police staff would prefer to do something “exciting” (e.g. chase a stolen car) than to attend an incident involving domestic violence. This was the message given to Margaret who eventually gave up calling the police after their repeated failure to arrest her partner for assaulting her. On one occasion, she was told, “We have better things to do than come to domestic disputes.”

Some of our police informants were openly critical of what they saw as the misogynist attitudes of some of their colleagues. Other police officers conveyed such attitudes to us, either explicitly or implicitly. One police prosecutor, when asked for his views on the causes of domestic violence, talked about alcohol, unemployment, stress and “silly arguments” such as dinner not being ready. He then went on to say,

Some women have a huge capacity to create massive problems within their household. They can't keep their bloody mouths shut at the appropriate time. (You would expect them) to know from past experience what riles their man.

Another prosecutor we spoke to believed that women sometimes use calling the police “as a big stick” to gain power over their partners. He also believed that there are some women who enjoy getting beaten and others who provoke violent situations. A third prosecutor I interviewed had a pin-up calendar on his office wall. A senior police officer told us that in his view, the attitude that “A man’s home is his castle” is still widespread in the police service and that this discourages officers from arresting abusers.

Such attitudes are not surprising; they are not so different from the attitudes of many men (see Leibrich et al.’s (1995) study of New Zealand men’s attitudes to violence against women partners). Moreover, there are a number of ways in which the practice of policing is structured such that negative attitudes towards women are reinforced.

Making victims responsible and discounting repeat calls

One practice which may have helped to reinforce negative attitudes towards women who are battered was the tendency of many officers to put the onus of a decision to arrest and/or to prosecute on the victim. This was in direct contravention of the arrest policy, which stated, *inter alia*:

Where possible the victim should not be asked to make a formal complaint, nor should the victim have to give evidence in court unless there is no case to answer without such evidence. Good investigation techniques at the scene should negate the necessity for the victim to give evidence in most cases. (Police Commissioner, 1987, p. 2)

However, in my analysis of police logs, I frequently came across comments such as “No complaint” or “Wish no police involvement.” If this happens repeatedly, the risk seemed to be that some women get assigned to what one officer called “the lower echelon,” a group among whom violence is presumed to be seen as normal. In most districts we visited, we were told that there were certain addresses to which police were frequently called. Such calls tended to be taken less seriously as police came to see the victims as at least partly responsible for their victimisation and unwilling to take decisive action.

It became clear to us that too few police officers have a clear conception of the terrorising effect battering has. Many seemed either not to understand or to minimise the dangers women may face if they are understood by the abuser to be promoting his arrest. However, even among those officers who did seem to have some understanding of the dynamics of battering, some still seemed to place the responsibility for ending the violence squarely on the victim. As one police officer said:

The thing is that for a lot of men, it's a power thing; no question about that. They may be real weaklings out there in the real world but they can come home and they (their partners) can serve their authority. So long as she is prepared to put up with that, as long as she gets knocked around, the police come up and nothing happens, these sorts of things continue to happen. She has to get out of that situation. She has got to be prepared to put her foot down, but a lot of the time they won't.

While this officer seemed to understand that battering is about power, he seemed content to hold the less powerful partner responsible for ending it. To return to Avni's (1991) metaphor, the inmates of the total institution must overthrow the guards without outside assistance.

This officer's use of language is also interesting. He has made a clear distinction between the “real” public world outside the home and the private domestic world

within it. For many women, this second world is where they continue to live much of their lives. If one puts this phraseology alongside the earlier notion that domestic violence is not “real police work,” the logic is complete. It is not “real police work” because it is not part of the “real world.”

Anticipated prosecution problems

Two senior police informants gave another reason for officers’ reluctance to make an arrest: the amount of paper work involved. Even in a straight-forward arrest in which there is good evidence and an admission by the offender, police officers may have to spend an hour and a half completing the initial paper work. This was considered to be a disincentive, especially for police coming to the end of their shift who will be faced with having to work beyond their rostered hours. Downstream, a defended hearing will require more of the arresting officer’s time. Moreover, all the officers I spoke to were acutely aware that the prosecution of domestic violence offences was particularly difficult and had a low success rate. One police officer I spoke to said that 90% of victims withdrew their complaints. This is almost certainly an exaggeration, but such perceptions are likely to discourage officers from arresting abusers.

There is no readily available measure of the success rate of prosecutions for domestic violence. In police statistics, prosecutions are categorised by the statute and section under which the information has been laid. There is no way to determine how many of the offences in any category occurred within a domestic setting. A partial exception is the offence “male assaults female” (Crimes Act, 1961, s.194(b)). This is the charge laid against many abusers and most, but not all, of the men charged under this section of the Crimes Act have assaulted their partners. Thus this offence category gives the best, although far from perfect, index of the outcomes of domestic violence prosecutions. District Court statistics show that almost a third of prosecutions under section 194(b) are dismissed or withdrawn. Furthermore, almost half of the successful prosecutions resulted in no or minimal penalties: fines, discharges or orders to come up for sentence if called upon (often referred to as a suspended sentence).¹

¹ These statistics were supplied to me by the then Department for Justice and are from 1991. More recently published figures do not provide a detailed breakdown of outcomes of prosecutions under s.194(b) but comparing the number of prosecutions reported by the police during 1997 (5,081) with the number of convictions reported by the Ministry of Justice for the same year

There are other issues relating to the prosecution of abusers which are discussed later. The point to be made here is that a low rate of successful prosecutions and a belief that the courts will treat offenders leniently clearly discourage officers from making arrests. As one officer said, “Cops need to have credibility and it goes out the door if we lose case after case.”

The blue line is thinner in rural areas

Two reasons for the failure to arrest some abusers are unique to remote, rural areas. Firstly, in some places, police help is simply too far away for effective protection. Unless the victim knows that the police will attend quickly, she is likely to fear the abuser “punishing” her for calling the police. It may be safer not to report the offence. This was the conclusion reached by several of the women in our case studies (e.g. Esther, Pam, Linda, and Lynette).

A second problem in rural areas is that most lack adequate facilities for holding prisoners overnight. An arrest may mean driving the offender a considerable distance to suitable holding cells. In the meantime, the area has no effective police cover. Some police officers identified this as a significant disincentive to arresting abusers.

Whether abusers understand the problems of policing rural areas I do not know, but some do make calculated decisions to move their families to remote areas. This was evident in one of our case studies. For most of her three-year marriage to Kevin, Lynette lived in a farmhouse half an hour’s walk from the nearest neighbours. Kevin later admitted that he had wanted to live there to keep her isolated and away from her friends.

The prosecution of assailants

Downstream from an arrest, police officers make various decisions relating to the prosecution process which can have important implications for the safety of victims and the likelihood that an assailant will be held accountable for his use of violence. Three important decision points are (1) considering the granting of police bail, (2) determining under what section or sections the offender is to be charged, and (3) determining

(3,338) suggests that there has been no improvement in the rate of success for such prosecutions (65%).

whether or not an offender is to be offered diversion. I consider each of these issues in turn.

Granting bail to abusers

I began this thesis with a brief description of the death of Peggy, shot by Brian five hours after he was released on police bail – without any warning to Peggy. As this case graphically illustrates, the issue of bail is a crucial one for women’s safety. The experiences of three other women in our case studies are also relevant. Karen got occupation, non-violence and non-molestation orders against Kevin but he simply refused to leave. After several efforts, Karen finally succeeded in having the police come and remove him. He was released two hours later and returned to beat her up, smashing in the back door. With Karen being unable to afford a new lock, Kevin had unrestricted access to the house for some time. The first time Diana’s protection orders were breached, she called the police, who arrested Ross, but as in Kevin’s case, released him two hours later. Ross returned, found Diana and a friend, and tried to run them off the road. Fred was arrested for breaching Esther’s non-molestation order by entering her property at 9:45 am. His prompt release on bail meant that he was able to breach the order a second time by early afternoon the same day, pushing his total of breaches past 50 (although these 2 were just the fourth and fifth to result in convictions: he was fined \$200). Yet in contrast to these bail decisions, many police officers told us that spending the night in the cells was often the most effective censure offenders faced.

The 1987 arrest policy was silent on the issue of bail. We were told that abusers were usually held overnight unless the police were happy that they will not return to further harass or otherwise harm their victims. We were also told that in cases of domestic violence, victims were notified if the abuser was to be given bail. As our case studies showed, this did not always happen. The current version of the policy is more specific, stating that the general expectation is that offenders “will be kept in custody until the next available court hearing” (Police Commissioner, 1996, p. 12). It does allow exceptions but decisions to give bail can be made only after the safety of the victim is considered. The approval of a non-commissioned officer is required and victims must be notified and consulted about possible conditions to be attached to bail.

Charging policy

The choice of what particular charge (or charges) to lay against an offender is significant. In a general sense, it is a statement to the court about the police view of the severity of the assault and determines the maximum penalty for which the offender is liable. A particularly important threshold relates to section 5 of the Criminal Justice Act (1985). This requires offenders convicted of an offence punishable by 2 or more years imprisonment and who have used “serious violence” in committing the offence to be imprisoned unless there are special circumstances¹. Not all violent offences meet this threshold (e.g. Common assault under the Summary Offences Act (1981) carries a maximum of 6 months imprisonment) and although offenders charged with lesser offences are sometimes imprisoned, they are less likely to be.

As mentioned earlier, many abusers are charged with assaulting a female (Section 194(b) of the Crimes Act: maximum penalty, 2 years imprisonment). We were told that this was a local policy in some police districts, at least for those circumstances in which a more serious charge is not warranted. It was pointed out to us that charging abusers under this section of the Crimes Act avoided the problem of having to prove the severity of the assault or the extent of intentionality (compared with charges such as wounding with intent or grievous bodily harm).

We asked some of our police informants what criteria they used in making decisions about charging offenders. One theme stood out in their responses: the use of an instrument in the course of an assault seemed to be an important criteria for many police officers. Assaults involving boots, knives, chairs or other household objects were uniformly regarded as being the more serious. Such assaults were often seen as warranting a charge such as wounding with intent to injure. Offenders who used only their hands, whether open or closed, were generally agreed to be likely to face lesser charges or simply be warned. For example, a slap was seen by one prosecutor as warranting a charge of common assault. Another prosecutor said he thought that a “simple” push or shove (e.g. one that did not result in the victim falling or being thrown down stairs) would normally result in a warning.

¹ There is a lesser threshold for repeat offenders. That is, a second offence within two years triggers the presumption for imprisonment irrespective of the degree of violence. The implications of this provision are discussed further in Chapter 10.

No doubt assaults which involve the use of an instrument will often result in more serious injury to the victim than assaults which involve bare hands. It could also be argued that the use of an instrument suggests a greater degree of intentionality. From this perspective, it is easy to understand the distinction which these officers are making. However, there is another perspective. Most of the assaults described in the case studies did not involve instruments yet inflicted significant physical and psychological damage. Compared with their victims, male abusers are typically taller, heavier, and have greater upper body strength and longer arms. Unlike their victims, they are very likely to have learnt how to fight. Distinguishing assaults with instruments from bare handed assaults seemed to me to reflect a notion of “fair fighting.” A fair fight, at least in the playgrounds and locker rooms in which I grew up, involved mutual combatants of similar size. Boys who broke this rule were told to “Pick on someone your own size.” Moreover, fair fighting precluded the use of weapons and kicking or hitting the other when he was down. Given the disparities between men and women just described, it is difficult to imagine how the notion of a fair fight can be applied to most domestic assaults. Simply warning abusers for slapping or pushing their partners is incompatible with an understanding of the power and control dynamics of abuse and its terrorist nature. To the women we spoke to, warning abusers is tantamount to condoning the violence and supporting the abuser in his belief that he can control his partner.

It should be noted that many of the distinctions our police informants made in relation to charging offenders have no basis in statute. For example, the law regarding assaults makes no distinction between “pushing” and “punching.” Neither does it distinguish a fist from a boot. An assault is simply non-consensual touching. By interpolating their own, non-statutory, criteria, certain police officers may be effectively minimising the violence of assailants and/or allowing it to remain hidden.

Similar considerations apply to another theme to emerge from the case studies: the minimisation of threats. Not surprisingly, all of the women interviewed reported being threatened by their partners or ex-partners. Although some of these threats were reported to the police, none of the abusers was prosecuted for threatening behaviour,¹

¹ There are also other charges which may be relevant here such as threatening to kill and threatening to cause grievous bodily harm. It should also be noted that making a threat to assault with the immediate ability to act on the threat constitutes an assault.

even when there were third party witnesses to the threats.¹ For example, Esther's ex-husband, Fred, took over the offices of Counsel appointed to act for the children and made threats against the lawyer, against Esther's lawyer and against their respective children. Other threats against Esther were witnessed by police officers and a judge. In one statement he made to the police Fred threatened to kidnap the children from school, and other threats were committed to writing in letters to Esther and her lawyer. He was prosecuted for none of these threats.

Valerie reported an incident to the police in which Graeme, in the presence of her parents, had placed a cocked shotgun on the table and threatened to shoot both her and her parents if she did not return to the relationship. According to Valerie the police talked to Graeme and later reported to her that "He's a nice bloke. You've got no problems there." On another occasion when she spoke to the police about further threats involving guns, the police response was to suggest she went to refuge. They thought the threats were not enough reason to press charges.

Jane called the police when her ex-husband, John, arrived at her house. At the time, she had family and friends around. He was wielding an axe and "Yelling out... that he was going to kill my mother, kill me and the kids." He was disarmed by the neighbours. The police came and took John home. No charges were laid.

These incidents tend to confirm what one police prosecutor told me: it is very rare for police to take action in respect of threats, yet it is clear that these threats are the very currency of battering.

Diversion

A final issue in the prosecution of abusers is the use of diversion. Under the diversion scheme, offenders are taken to court but after a guilty plea is intimated, police may recommend that the case be remanded for a diversion programme to be implemented. Diversion programmes typically include such things as community service, donations to charities, reparation to victims or counselling. If the programme is completed satisfactorily, the offender is discharged without conviction.

¹ If the threatened party is willing to testify, prosecution for threats could theoretically proceed without a third party witness. (The case would essentially hinge on the court's assessment of the

While it is difficult to know how widespread the practice is, in every police district we visited, some abusers were being diverted. In some districts, we were told that violent offenders were not seen as eligible for diversion but that it did happen in exceptional circumstances. (For example, the officer in charge of diversion in one police district mentioned that he had recently varied usual practice to recommend diversion for a university lecturer who had committed a “minor” assault on his partner. The man had “grabbed” his partner and ripped her dress.)

In other areas, there were local policies under which abusers were more routinely recommended for diversion. For example, in two districts, diversion was used when it was thought unlikely that the victim would give evidence against her partner. In another district, diversion seemed to have become a preferred option for abusers except in the most serious cases. In this district, diversion programmes included a number of components. The offender had to make an apology to the victim and, where appropriate, reparation. He had to either make a donation to a charity (of his choice) or undertake community work. He was expected to undergo counselling or anger management training. The officer in charge of diversions in this district said that he routinely referred both the abuser and his victim to counselling as part of the diversion programme. He felt that this was a constructive option, one which avoided conviction and promoted reconciliation. His belief in the effectiveness of diverting abusers was supported by his observation that few men who were diverted were ever re-arrested. He believed that diversion promoted reconciliation and even advocated delays in prosecuting offenders to improve the chances that the couple would reconcile.

This particular approach to diverting abusers seems especially problematic. At the very least, a joint referral to counselling would seem to give ambiguous messages about the responsibility for the violence. While the officer regarded infrequent re-arrest as indicative of success, I find an alternative analysis more persuasive: the partners of these men may have become confirmed in their powerlessness and have given up ringing the police as a way of seeking protection. Although we were not able to interview women whose partners had gone through this particular diversion scheme, the more pessimistic interpretation seems consistent with the evidence of the case studies.

credibility of complainant and defendant.) The point here is that the availability of third party witnesses makes the prosecution of threats much easier.

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It should be noted that the use of diversion for domestic violence offenders was, in several respects, inconsistent with official police policy at the time. Firstly, diversion was officially regarded as appropriate for non-violent offending only. Its use in cases of domestic assaults is a further example of the distinction made between stranger violence and domestic violence, a point made quite explicitly by one officer who said that a previous conviction for stranger violence would exclude an abuser from diversion.

Secondly, we were told that diversion was intended for first offenders (although some officers considered it appropriate for previous offenders who had been “clean” for some time). However, as has been noted earlier, it is very unusual for men to be arrested for their first assault. Typically, women have endured repeated assaults of increasing severity before ringing the police. For this class of assault, police are almost never dealing with “first offenders,” at least, not as defined from a victim’s perspective. A related problem was gaps in police record keeping systems such that offenders could be repeatedly treated as first offenders. Warnings were not routinely recorded and formal diversions were recorded only on local systems so that there was no way of knowing if an offender had previously been subject to diversion in another police district.

Thirdly, under the diversion guidelines in force at the time, an offender could be diverted only with the victim’s consent. Given the power and control dynamics characteristic of abusive relationships, it seems questionable whether victims can give their free consent, without pressure or intimidation. Just as victims can be intimidated into withdrawing charges, they are likely to feel they have no option but to agree to diversion.

Diversion schemes can be a useful part of the criminal justice system. For example Smith and Cram (1998) have evaluated a programme in which the use of diversion was overseen by community panels, victims were involved in decision making, and offender’s completion of diversion programmes was well-monitored. The evaluators reported favourable outcomes, both in terms of recidivism and victim satisfaction.¹ However, the much looser arrangements I have described seem unlikely to have served battered women well. Neither is it likely that the offenders have received clear and unambiguous messages about the unacceptability of violence.

¹ This was a generic programme, not specifically for domestic violence offenders, although some domestic violence offenders were included.

The response to breaches of protection orders

While there are now a number of studies of policing domestic violence, very few of these have focused on the special case of policing protection orders. There are partial exceptions in the studies by Fischer (1992), Ralph, (1992) and Wearing (1992): each reported data on the police response to breaches in their investigations of women's experiences of protection orders. Yet breaches of protection orders have particular meanings and occur in particular contexts which make the police response especially important.

Firstly, almost by definition, breaches of protection orders occur in the context of separation¹. Given the elevated risk of homicide associated with separation (Wilson & Daly, 1993), breaches of protection orders are especially high risk situations. The stakes are high.

Secondly, a breach of a protection order is a site at which the state's commitment to the protection of the applicant is tested. If police fail to take effective action, women are effectively being told that they are on their own: despite what the court has said, no-one is actually going to stand between them and their abuser. In the same vein, non-enforcement is likely to encourage abusers in the belief that they can continue to access their ex-partner with impunity.

The enforcement or non-enforcement of a protection order may be particularly meaningful for those men whose orders were made *ex parte*.² For such a man, a police investigation of a breach may be the very first occasion on which he has experienced, face-to-face, the intervention of the state. That is, until that point, his violence has been essentially private and his dealings with the state limited to the receipt of documents.³ How police officers respond to his breach may be particularly important in shaping the

¹ Protection orders (Domestic Violence Act, 1995), like the old non-violence orders (Domestic Protection Act, 1982), can be obtained against a partner with whom the applicant continues to cohabit. However, this is rare (as it was under the old Act) and hardly alters the basic point. Obtaining an order is likely to be seen by the respondent as a statement that separation is at least contemplated.

² That is, without notice having been given to the respondent (alleged perpetrator), who thus, has not had a chance to be heard.

³ There are several ways service of a protection may be effected, only one involving the respondent in a face-to-face interaction with an official (most likely a non-uniformed bailiff).

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respondent's beliefs about the potency of the order, the consequences of breaching it, and his ability to justify his actions to others.

Unfortunately, as the following sections show, the police response to breaches of protection orders has not been particularly effective. Too often, the message has been that an order is simply a piece of paper.

Official and informal policy

The 1987 arrest policy was quite clear. Arrest was to be the preferred option "when a court order has been breached" (Police Commissioner, 1987, p. 2).¹ Yet it seems that this was not well understood. For example, we spoke to some police officers who said they thought the policy should be "extended" or "changed" to cover breaches of protection orders. On the other hand, one of my colleagues attended a police training session where the policy was clearly stated as applying to breaches of orders. Less helpfully, the trainer made it clear that police still had discretion:

You don't need to arrest if it is a non-serious breach of an order. We are not interested in trivial breaches

A police prosecutor told us.

The truth of the matter is that we don't very often arrest people for breaches of non-molestation... it's a natural reaction to try and resolve things if we can.

A police inspector said that he thought warnings were typically issued where the offender was besetting the respondent's house. A senior sergeant told us that respondents who leave the applicant's property when asked to by the police will not usually be arrested.

Such comments point to a significant discrepancy between policy as promulgated and policy as practised.

Statistics

Police statistics on offence clearances tend to support the notion of an informal policy of minimum intervention. Table 5.3 presents information on the outcome of breaches of non-molestation orders reported to the police during 1990. This indicates that fewer

¹ The current policy (Police Commissioner, 1996) includes more extensive, and more emphatic, provisions relating to the arrest of respondents who breach protection orders.

than half of the reported breaches resulted in arrest and prosecution. In fact the proportion is undoubtedly smaller. The data in Table 5.3 has been compiled from incident and offence reports. These are not usually filled out unless police attend the incident. As I describe below, there are a number of reported breaches which do not result in police attendance.¹

Table 5.3
Clearance of breaches of non-molestation orders¹

Outcome	Number	Percentage of all reports	Percentage of reports cleared
Not cleared ²	235	27.3%	---
Prosecuted	387	45.0%	61.9%
Warned or cautioned	155	18.0%	24.8%
Other ³	83	9.7%	13.3%
Total	860	100%	100%

- (1) Only breaches which have been recorded as incidents or offences are included in these figures. In general, reported breaches which were not attended would not be recorded.
- (2) It has been suggested that in most of the cases which are not cleared, the offender had left the scene by the time the police arrived and no further action has been taken. It is not known how often this happens.
- (3) Most of these are incidents in which police determined that there had been "no offence disclosed."

¹ More recent data are not strictly comparable because the Police have changed the way they report clearance statistics. Now, events categorised as "no offence disclosed" are omitted from the analysis which shows only the number of offences "resolved," where resolved includes prosecution, warning and other outcomes involving the identification of the offender. In 1997, 84% of reported breaches of protection orders were "resolved." Using the new categories, the 1990 figures translate into approximately 70% to 80% of offences being resolved, depending on the assumptions made about how one should re-categorise "other" in Table 5.3. Similarly, the proportion of reported breaches resulting in prosecution has not changed perceptibly (45% in 1990; 46% in 1997). What has changed dramatically is the number of reported breaches: 860 in 1990 and 3,669 in 1997. This is a reflection of the huge increase in the number of protection orders granted following the implementation the Domestic Violence Act, 1995.

Women's perspectives

The experiences of the women featured in the case studies provide some insight into how the police policy operated in respect to breaches. The first problem: some calls regarding breaches are screened out by police dispatchers. One of our interviewees, Diana, reported the following incident which seemed to indicate the sort of reluctance to attend some of the women experienced.

Ross had kicked my door in. It was during an access visit; he returned the children to the doorstep and then got angry because he wanted to stay for tea and I didn't want him to. He was actually in the house when the police arrived. Before the cops arrived, Ross had been ranting and raving, threatening to kill people and I called the police station. The woman cop on the phone asked, 'Is he threatening to kill you?' It was ridiculous since she could hear him and there was no way that I could give her further details with him standing there threatening me. It took me being on the telephone with her for a half hour for the police to finally get to the house.

Here, the police did eventually attend, but nine other women reported instances in which the police failed to attend at all (Esther, Pam, Deb, Sandra, Karen, Linda, Jane, Tania, Margaret, Lynette, and Anne). Generally, this seemed to be because the respondent had left the premises. For example, when Linda called the police after Matthew breached the order she was told there was nothing the police could do because he had left the premises. Tania got the same response even though her reported breach included a complaint of rape. Arguably, if the respondent has left the premises, then the need for police follow up might be seen as less urgent – but in the cases mentioned above, there was *no* follow up, despite the fact that in most cases, the women could tell the police where to find the respondent.

Another set of circumstances involved situations in which the police did attend but took no further action if the offender had left the scene by the time they had arrived: Esther (on numerous occasions), Deb, Judith, and Peggy, whose ex-husband went on to kill her. One cannot tell if the final outcome might have been different for Peggy if the police had followed up the earlier breaches but at a minimum, their failure to do so meant Brian had little reason to take the orders seriously.

A third set of circumstances involved situations in which complaints of breaches were made some time after the offence. These complaints were even less frequently followed up (e.g. Esther, Jane, Margaret, Maureen and Shirley).

These failures to follow up offenders are consistent with what police informants told us: following up men who breach protection orders was generally rated a low priority compared to other police work.

Warnings

A second pattern involved those cases in which the police did find the offender (either at the scene or subsequently), but failed to do anything more than warn him. For example, in one of her early attempts to have her protection order enforced, Diana laid complaints of assault and breach of her non-molestation orders. The police took the complaint but Diana heard nothing back for two months. When she rang to find out what was happening, she was told that an officer had spoken to Ross who said that he and Diana were now getting married. As Diana said, “They never verified that piece of idiocy with me.”

All but three of women in the case studies related incidents in which reporting a breach of their protection order had resulted only in the offender being warned. In one case, an official warning did seem to provide a temporary respite. Shirley’s orders had been breached dozens of times by Mark. He phoned her repeatedly. He harassed her in the street, in the pub and at the supermarket. He harassed her family. Several breaches involved further assaults. At the time he received an official warning, he had been convicted on four occasions for ten breaches, being sentenced to 12 months supervision, to 4 months periodic detention, to 2 months imprisonment and to 3 months periodic detention respectively. (The last sentence was reduced on appeal to a \$200 fine). When Mark continued to harass Shirley, the police wrote to him detailing six more breaches and warning him that he would be charged with these as well as any new offences if he continued to offend. There followed a respite of a few months, the longest gap between offences, but eventually Mark resumed his campaign which ended only with his death.

While the police who issued the warning to Mark considered the tactic a success, albeit a temporary one, the more common pattern was that offenders who were warned simply continued their harassment and abuse unabated. For example, Maureen estimated that she made 50 calls to police to enforce her non-molestation order: on only 7 occasions was her ex-partner arrested. Esther’s ex-husband was repeatedly warned during his systematic campaign of harassment. According to the police file on Peggy’s ex-husband,

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he was warned for breaching orders on at least three occasions before the day on which he killed her. And as I have already noted, warnings were not systematically recorded. It is very likely that many of the “repeat” warnings were given without the officer concerned knowing of earlier warnings.

The circumstances under which police warned (or otherwise failed to arrest and charge) offenders varied. Some warnings were issued in apparently extreme circumstances. For example, when Jane’s ex-husband used an axe to threaten her, her children and her mother, he was taken away but never arrested or charged (for the breach or any other offence). More often, warnings were issued when breaches did not involve physical violence. No doubt the police involved saw such breaches as minor or technical, but to the women involved, there was a different meaning.

Esther’s experience is a case in point. She was subjected to a systematic campaign of harassment and threats, including having Fred break into her house, having him prowling outside at night, having him deliver letters and sending her very explicit threats. At some stages, her orders were being breached daily. On one particular occasion, she found books and a letter from Fred at her back door. She made a complaint to the police. The officer’s report read:

...due to the mild nature of the breach on this occasion I have uplifted the letter and returned it to (Fred) with a warning to use the proper channels when he wants to correspond by letter to his ex-wife.

To the officer, the breach was mild. To Esther, it was yet another statement from Fred that he knew where she was and that he could get her at any time.

Ignoring associated offences

A slightly different pattern was evident in some of the incidents reported in the case studies. In these, the respondent was arrested and prosecuted for breaching a non-molestation order but faced no action in respect of other offences committed at the time. For example, although Ross was charged with breaching Diana’s order after he kicked her door down and threatened to kill her and others, he was not charged for either the threats or the destruction of property. Mark was charged with breaching his order when he assaulted Shirley at a hotel, but was not charged for the assault. The police took four months to charge Gavin for breach after he chased Maureen in his car but they did not charge him with either dangerous driving or threatening behaviour.

Sandra called the police after Bruce had held her down and attempted to choke her. The police believed that her order had lapsed and so did not arrest him for the breach but neither did they take action for the assault. Unless offenders are charged with these other substantive offences (in addition to any breach action) their further violence is not subject to sanctions and their offending may be treated by the Court as more “technical.” It should also be noted that by not being charged with the associated offences, the offenders just mentioned faced substantially lesser penalties than they might have otherwise. In these incidents, the protection orders seemed to protect the respondent, not the applicant.

How can one explain some of the actions – or inaction – of the police described above? From the case studies and our conversations with police officers, three themes stood out: (1) a failure to understand the dynamics of battering and an associated tendency to discount women’s fears; (2) certain beliefs about women who seek protection orders; and (3) sympathy for respondents.

Discounting women’s fears

In my analysis, Brian was bailed, and thus given the chance to kill Peggy, largely because certain police officers responded to him from their own experience of him. He was “blubbing” and “pathetic.” Peggy’s experience of Brian and the risk he posed to her were discounted, in the same way that I began to discount the experience of Linda, whose orders I was serving (Chapter 1). This mechanism seems evident in the police officer’s written rationale quoted earlier for not arresting Fred after he breached Esther’s non-molestation order by leaving a letter and books at her back door during the night. This was far from the first time Fred had been prowling outside Esther’s house, as some police, at least, knew. In an earlier incident, he left her presents for Mothers’ Day. Although he was arrested - at Esther’s insistence - in a novel move, he was promptly “unarrested”¹ and no further action was taken. Similarly, the police did nothing about Maureen’s ex-partner who kept her workplace under surveillance, about Peggy’s ex-partner who repeatedly rode up and down outside her address, or about Dianne’s ex-partner who made persistent phone calls to her home. Police were amazed that Deb wanted Sandy arrested after he had broken into her house. Nothing had been

¹ There is no statutory or administrative provision for rescinding an arrest.

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disturbed but he had done the dishes. According to Deb, the police officer said “What are you moaning about?” But this was not about dishes. Sandy had a significant history of violence against Deb, against a previous partner, against other women (Deb knew he had once raped a woman), against police officers and against other men. He had repeatedly breached the non-molestation order by driving past her house, stealing her mail and harassing her at home and work. Deb had received an anonymous death threat in the mail, cut out from newspaper obituary columns. There had been several fires lit on her property. On one occasion, Sandy broke into Deb’s house at three in the morning and was seemingly quite explicit about his intentions, telling Deb “I’m trying to scare you, you dirty...” Moreover, Deb knew that Sandy owned a gun. Understood in this context, breaking in to do the dishes is not a conciliatory gesture but a further act of intimidation in a protracted campaign of terrorism.

What these women reported to us was consistent with the responses of various police officers to some of the scenarios we presented to them. It was generally agreed that a man who breached a non-molestation order by delivering letters to her mail box, phoning or sitting outside his ex-partner’s address would be unlikely to receive anything more than a warning. One sergeant explicitly ruled out arresting a man who wanted to talk to his (ex)partner and went to her house for that purpose. Others agreed that they would not arrest if there was a “reasonable” explanation for the man being present. In each case, a police officer’s interpretation of danger has superseded the victim’s experience of fear.

Police views of applicants

Certain police officers seemed to believe that women use protection orders maliciously.

A sergeant commented:

By far the most prevalent problem we have is where the female of the partnership is using the various orders to her advantage and convenience... The lady... sometimes uses the Interim Order as a weapon or tool to hold over their partner to behave or else, but this usually makes the faltering relationship worse. To be fair, most of these Interim Orders are thrown out at the Family Court hearing, but while the Interim Order is in force **Police are left in a judgemental role to decide to enforce it or not** depending on the circumstances of the case. (emphasis added)

This is an interesting view of the status of protection orders and of the role of police in enforcing them. Implicit in the use of the term “behave” seems a recognition that respondents have “mis-behaved.” The nature of this mis-behaviour is not specified but presumably in the context of non-molestation and non-violence orders, the reference is

to partner violence. Yet men are clearly not expected to be accountable for their behaviour or mis-behaviour: efforts to hold them accountable only “makes the faltering relationship worse.” Particularly important is the way this officer sees the role of the police. Officers can effectively countermand judicial decisions, taking for themselves a power reserved for the higher courts.

Such views were not unusual. One officer who agreed with the proposition that some women may use protection orders to gain leverage in custody and matrimonial disputes said that a police officer would always have that possibility

in the back of his mind... you listen to both sides of the story and try and take what's most evident – the strongest evidence.

When police take on this quasi-judicial role (as opposed to simply enforcing judicial orders) they may come down against both parties, seeing them equally to blame for the situation and not wanting to be involved at all. Sandra described nine years of serious violence at the hands of Bruce, including a serious attempt on her life. The violence continued post-separation, despite the granting of protection orders. When Sandra's daughter disclosed being sexually abused by Bruce five years earlier, Sandra told the police. They refused to investigate, apparently dismissing it as a one-off event which happened too long ago to be worth following up. Sandra also found the police reluctant to prosecute Bruce for breaching the non-molestation order. When she obtained an occupation order, the police refused her request to help get Bruce removed from the matrimonial home. She recalled being told

We don't want anything more to do with you. We are sick of the whole lot... We don't want any more. You two are just playing cat and mouse with each other and that's it.

Sandra's experiences illustrate a dynamic evident with other women. Being assertive and persistent in asking police to carry out their job risks being characterised as troublesome or vindictive. This happened to Esther, who consistently requested police to take action against Fred. On one occasion, a police memo described her position in the following terms:

She appears to be genuine in her complaint. She wants him charged with any breach of the order and hopefully get it through to him that he has to leave her alone and stop interfering with her life.

However, she was not usually described in such neutral terms. Esther's requests that the police enforce the law were often taken as evidence of vindictiveness and paranoia. For

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example, five years into Fred's post-separation campaign of terror, in a repeat of an earlier incident, he broke into Esther's house at night by removing a pane of glass from a window. Esther was alerted by her daughter's screaming: the child had awakened to discover Fred sitting on her bed. By this time, Fred's campaign was taking a serious toll on Esther. Her frustration was evident in her statement to the police.

In fact I don't even want to talk to you about it because you never seem to do anything and every time it happens he gets away with it. I mean what is wrong with you people and your system? Why don't you go and find him instead of asking me questions?

The Constable in his file note stated:

(Esther) became agitated when I asked for the reason Fred may have had to come to the address. I suggested that it may be because it was close to the child's birthday. I know this because I had dealings with (Fred) on (date: a week earlier, on another breach.) She immediately went on the 'defensive' and basically abused me personally for not arresting him. As I could get no sense out of her in that frame of mind I explained that I was leaving and would contact her the next night I was working.

In the end, Fred's visitor status within New Zealand provided the key. He was deported. Some of the officers we interviewed afterwards agreed that this was a frustrating and problematic case. That frustration appears often to have been directed towards Esther who was described as "vindictive" and "paranoid." She came to be seen, at least by some officers, as the source of their problems.

Commentaries on Post Traumatic Stress Syndrome identify a possible mechanism which may contribute to police officers labelling battered women in this way. For example, Dutton and Goodman (1994) have noted that feelings and memories associated with prior experiences of domestic violence may be triggered by police officers or other male authority figures, especially if they raise their voices or act in an intimidatory or aggressive manner. Walker (1991, 1993) has noted that battered women's legitimate anger at the way they have been treated, suppressed while in the relationship when the need to keep the abuser calm is paramount, may be more openly expressed when it is safe to do so. Hearing women's anger may be uncomfortable for police officers, who may find it easier to act as the police officers just described: label the angry woman as vindictive and/or refuse to deal with her until she behaves herself.

Sympathy for respondents

While Esther was seen as vindictive (at least by some officers), Fred evoked some sympathy.

(Fred) was a model prisoner. We never had an ounce of trouble with him in the cells. There was a lot of sympathy for the guy. They would say, 'Poor guy, it's been dealt to him.'..... The guys felt sorry for this guy.

The officer who arrested Fred after one of his night-time breaches (he had breached his non-molestation order in leaving Esther a present for Mothers' Day) wrote

He was very cooperative and stated principles were at stake. He added that he didn't care how many times he was locked up because all he wanted to do was see his kids who he hasn't seen for three years. (Fred) **is a man of principle**, very sincere, and cannot conceive that his future with his wife and kids is no longer existent. (emphasis added)

Fred's appeal to "principle" to justify his actions has been accepted uncritically. This is in contrast with the way Esther's request (that the police do their job and enforce court orders) was often critically evaluated as being motivated by vindictiveness.

The essence of a protection order is to restrict the respondent's access to his partner and children. Yet it seems that the denial of access to wives and children evokes particular sympathy for respondents which is inconsistent with viewing them as criminals. Certainly, Brian seemed to have succeeded in getting bail (see Chapter 1) by arguing that he was not a real criminal and just wanted to see his wife (Peggy). This logic was made quite explicit by one officer, who, when asked if he saw men who breached non-molestation orders as being criminal, replied;

(No) because I think it is purely of the situation that they find themselves in that they do these things.... **their home, their family, their children**, who they ordinarily had complete access to is suddenly denied to them by a piece of paper... You can't help but have some sympathy for them, and no, I can't see them as criminals at all. Part of it you answer yourself because you use the word "criminal", and what he is doing is not a crime; to us crime is what comes under the Crimes Act, is serious. (emphasis added)

While the emphasis is mine, not the officer's, his analysis seems closer to the historical view of women as property (Sigler, Crowley & Johnson, 1990) than to a view of women as having the full rights of citizenship, including the right to the protection of the law (United Nations, 1998).

Ambiguities about the status of orders

A frustration expressed by some of the women in the case studies was that police were reluctant to arrest respondents if there was any ambiguity about the status of the order. This was confirmed by many of the police officers spoken to. Two common scenarios were relevant: (a) when no confirmation of the existence of the order was available, and (b) when a non-molestation order was claimed to have lapsed through the resumption of cohabitation. We recommended administrative changes in the way information about protection orders was handled and a legislative change to remove the cohabitation provision. The implementation of the Domestic Violence Act (1995) and associated administrative reforms have now largely resolved these problems.

Briefly, the first of these problems arose when applicants who called the police did not have a copy of their protection order(s) at hand. Apart from some areas in which copies of orders were forwarded to the police and held on file in the watch house, there was generally no way of confirming the existence of a current order. This has changed. Now, Court Registrars are required to forward copies of protection orders to the police (Domestic Violence Act, 1995, s.88) who enter this information into the Person of Interest Sub System (Police Commissioner, 1996).

The second of these problems arose when respondents claimed that they had resumed living with the applicant, which, under the Domestic Protection Act (1982, s.17), meant the order lapsed. The officers we spoke to were unanimous; if there is any dispute about the resumption of cohabitation, it was unlikely that the respondent would be arrested or prosecuted. This was Diana's experience: the police took no action after Ross told them he and Diana had reconciled. As one officer told us, "How are police to decide whether there has been cohabitation or not when one party has a different story to the other?" There is an advance to be celebrated here. Protection orders granted under the Domestic Violence Act (1995) do not lapse on resumption of cohabitation.

The prosecution of breaches in the District Court

While protection orders are granted by the Family Court, the breach of such orders is prosecuted in the District Court. While this division of responsibilities may have advantages, the lack of information sharing between the two jurisdictions was identified by some of our key informants as being problematic. For example, Family Court judges and Family Court staff said that they seldom got feedback on what happens to

applicants and respondents after orders are granted. They thought that getting reports of prosecutions on breaches of protection orders would be very helpful. At the same time, some of our informants noted that the District Court does not generally have available to it information about the circumstances which lead to the order being granted. These informants thought that not knowing the background made it less likely that judges would appreciate the serious impact breaches of protection orders may have on applicants.

This division of jurisdictions has implications for the police. While most police officers know relatively little about the Family Court, the operation of the District Court is a major influence on them. A consistent complaint from the police officers we spoke to was that respondents who were convicted for breaching their orders received minimal penalties, often described as no more than a “slap on the hand,” which failed to deter many of them. Repeatedly, we were told that this pattern discourages police from arresting and charging offenders. In particular, police officers said that it discouraged prosecutions for what they termed “minor” or “technical” breaches - delivering letters, making persistent phone calls, keeping an ex-partner’s house under surveillance, leaving presents or delivering notes – as many of the women in our case studies could attest.

Statistics supplied to me by the Department of Justice tend to confirm the police view that breaches were treated quite leniently. Table 5.4 summarises the outcome of prosecutions for breaches of non-molestation orders for 1989. This shows that over a third of prosecutions for breach of non-molestation orders failed. Among those offenders who were convicted, 58% faced no penalty. That is, they were discharged without penalty (Criminal Justice Act, 1985, s.19) or subjected to an order to come up for sentence if called upon within a specified time. This last outcome was effectively no penalty. As mentioned earlier, because breaches of non-molestation orders carried *only* three months imprisonment, repeated offences failed to trigger the call up provision.

Table 5.4
District Court dispositions of breaches of non-molestation orders¹

Disposition	Number	Percentage of total cases	Percentage of convictions
Dismissed, withdrawn or struck out	91 ²	36.8%	
Discharged under section 19 of CJ Act ³	7	2.8%	
Imprisonment	4	1.6%	2.7%
Periodic detention	12	4.9%	8.1%
Community service	1	0.5%	0.7%
Supervision	8	3.2%	5.4%
To come up if called ⁴	77	31.2%	51.7%
Convicted and discharged ⁵	10	4.0%	6.7%
Fined	36	14.6%	24.2%
Other orders made	1	0.5%	0.7%
Total	247	100%	100%

- (1) Distinct cases: that is, includes only individuals for whom the most serious offence at the time of their appearance was a breach of non-molestation. Offenders who simultaneously appeared on more serious charges appear as distinct cases only in the more serious offence category. These figures are from 1989.
- (2) Includes the only 2 women to appear. All the rest of the offenders were men.
- (3) Under section 19 of the Criminal Justice Act 1985 an offender who pleads guilty (or found guilty) may be discharged without conviction. A discharge under this section is deemed to be an acquittal and is used when the judge decides that to have a conviction entered against the offender would be too great a penalty.
- (4) Convicted and ordered to come up if called upon within a specified period (up to one year). No penalty is imposed, but if the offender is convicted within the term of the order of any offence carrying more than 3 months imprisonment the prosecutor can request that the offender be sentenced on the original charge as well as the new charge. It is important to note that a subsequent breach of a non-molestation order did not trigger this provision because the maximum penalty was 3 months.
- (5) A conviction is entered but no penalty imposed (with the possible exception of court costs).

Other aspects of ensuring safety

The case studies and interviews with police officers revealed other more general issues in the policing of domestic violence. These include information and other support provided to victims, the granting of police bail to offenders, assessing the dangerousness of offenders and the availability of firearms.

Information and support for victims

The police have a particular role to play in providing information to victims and helping them to access relevant services. Much of this is mandated by the Victims of Offences Act, 1987. For example, the Act says that police (among others) should “inform victims at the earliest practicable opportunity of the services and remedies available to them” (section 5). This applies to all victims of criminal offences (defined in section 2 of the Act). Other sections are more limited: for example, provisions relating to the victim’s views on bail and notifying the victim of the release or escape of the offender, apply only to prosecutions for sexual violation or other serious assault or injury.

The case studies include examples of police providing good information and support for victims. For example, Brenda was advised when her partner escaped from prison. A community constable made an affidavit in support of Maureen’s application for protection orders. Valerie described the constable who attended one assault as very understanding. She felt very safe because the police kept her house under surveillance for the rest of the night.

Other instances were much less favourable. For example, Linda had to stand in the police station for over an hour despite the fact that she was meant to be on bed rest. Carol was declined protection while she moved out of her house, despite Stan’s history of serious violence and repeated breaches of her non-molestation order. Many of the women were given incorrect information by police. For example, Tania was told that her ex-husband could stay a short time before he could be considered to have breached his non-molestation order. Deb was told by police that they could take no action about the breach of her occupancy order unless she was at the residence at the time. When Diana complained about her ex-partner’s persistent phone calls, she was told that he was not breaching the non-molestation order unless he asked for her (he always asked for the children) whereas protection orders apply equally to applicants and their

children. Karen was told by police that *she* had breached her order by allowing Steve to come on to her property. These are not esoteric points of family law: they are simply the conditions of protection orders, which police officers could quite reasonably be expected to know.

As well as providing good information, police also have a duty under the Victims of Offences Act to help victims receive appropriate services. In one provincial city, the police had developed guidelines for referring women to the local women's refuge, including procedures for protecting the confidentiality of the refuge, an expectation that officers would inform the refuge if the partner (or ex-partner) of a resident was to be bailed and accompanying refuge workers on calls when they fear for their safety. This sort of cooperation has since been written into national guidelines for family violence intervention (Department of the Prime Minister and Cabinet, 1996).

Firearms

Offenders who have access to guns and rifles have greater potential to harm others than those who do not. A New Zealand study found that firearms were used in almost a third of partner homicides (Fanslow, 1991), such deaths accounting for approximately half of all firearm homicides (Alpers & Morgan, 1995). Our case studies included two in which women were fatally shot by their ex-husbands (Peggy, see Chapter 1; Kathryn, see Chapter 8) and one in which police intercepted a man on his way to his ex-wife's address with rifle, ammunition and suicide note.

Of the 20 women featured in the case studies, 8 reported having been threatened with firearms. Pam said that her partner had, on several occasions, poked her in the stomach with a gun and threatened to "blow her away." On one occasion, when he was drunk, he actually pulled the trigger. Fortunately, Pam had earlier hidden the ammunition. Valerie's husband, who was involved in sports shooting, made repeated threats to shoot her. Her sisters and brothers-in-law shared her belief that he was capable of carrying out these threats. On one of the occasions she attempted to leave, he coaxed her to return "just to talk." She did, and found herself discussing "reconciliation" with his shotgun, cocked, on the table. He told Valerie he would "blow her away" if she did not come back to him. Maureen reported that after an argument, Gavin sat quietly in the lounge cleaning his three guns. Lynette reported Kevin regularly used firearms to intimidate her. The first occasion followed an argument which saw her spending the night in

another bedroom. In the morning, Kevin walked in while she was in the bath and told her that if she left him, she would not get out of the area alive. A frequent terrorising tactic was to discharge a rifle by the bedroom window while she was sleeping.

The case studies and the homicide statistics previously cited suggest that effective policing of firearms law may be an important part of the police response to domestic violence. For instance, under the Arms Act, a firearm licence can be revoked and firearms seized where a commissioned officer considers the holder not to be “a fit and proper person to be in possession of a firearm” (1983, s.27). Making threats with a firearm or having a protection order made against one would appear to be sufficient grounds for exercising this power (Police Commissioner, 1992). However, our case studies showed instances in which police failed to take effective action in respect of firearms. For example, police failed to take action when Peggy’s son reported to the police that Brian had obtained a rifle, which he later used to kill her. Valerie reported Graeme using his shotgun to threaten her and her mother. The police spoke to him but left the weapon in his possession. On the other hand, the police did eventually revoke the firearm licence held by Shirley’s ex-partner. And although his search was fruitless, the police officer who first interviewed Kathryn’s ex-husband did conduct a cursory search of the house for firearms (Chapter 8).

We recommended that Family Court judges be given the power to order the surrender of weapons as part of a protection order. In the event, Parliament went slightly further. It is a standard condition of the new protection orders that the respondent surrender any firearms in his possession, although he may subsequently apply to have these returned to him (Domestic Violence Act, ss.21-26).

Administrative and monitoring systems

However well-intentioned a policy may be, its worth inevitably depends on the effectiveness of its implementation (Thomas & Robertson, 1990). In my analysis, certain deficiencies in administrative and monitoring arrangements were implicated in the failure to implement the arrest policy.

Good information systems are vital in most organisations, and the policing of domestic violence is no exception. One problem identified in this chapter is that police officers attending any specific incident of domestic violence often had no knowledge of previous incidents. Viewing each incident as unique tended to result in an

underestimation of the seriousness of the victim's situation. This point was made explicitly by an officer who had been involved with the ongoing saga of the repeated breaches of Esther's orders. He said that officers who knew the history took the breaches more seriously than those who did not. He attributed the partial success in dealing with Fred to the "boxing" of the file (collating all the information in one place). Similarly, as I will show in Chapter 8, the police view that Kathryn's death was unpredictable and non-preventable is less convincing if one takes into account the eight occasions over a five week period on which she or a member of her family contacted the police with various pieces of information.

These problems can be seen as failures of the information systems in place at the time. The subsequent implementation of a national, computer-based family violence database provides some hope that these problems will be rectified. The system is designed to store and retrieve case-specific information so that police responding to a domestic violence call out can have available to them information about earlier call outs, warnings given and other actions taken, the presence of firearms, and the status of protection orders. It is too early to know how much difference this system has made.

On another level, it is clear that research and policy development in relation to domestic violence is hampered by the invisibility of this type of offending in police records. Police statistics assign a numerical code to each offence. This means, for example, that it is possible to monitor the number of reported assaults, the number which have been cleared and the outcomes of prosecutions for assault. However, there is no way of telling how many of these assaults happened in domestic situations. This applies to all offence categories (e.g. burglary, wilful damage, kidnapping). I was told that it was quite feasible to add an extra marker to each offence category to distinguish domestic violence offences from others. We recommended that this be done so that the particular problems facing policing of domestic violence offences could be better monitored. This has not happened.

Finally, it became clear that there was little effective monitoring of the arrest policy. Police officers had been asked to send a pre-formatted computer message to the police psychologist based in Auckland whenever an arrest for a domestic assault was made but of course this did not help in monitoring non-arrests. We were told that sectional sergeants would occasionally seek an explanation from officers if they had failed to arrest but that such oversight was irregular and superficial. On the other hand, certain

officers agreed that external monitoring was needed to improve compliance. This is a theme to which I return in Chapter 9.

Conclusions

Both from the literature I have reviewed and my own analysis of policing domestic violence in the New Zealand context, certain things are clear. Historically, police have served the interests of battered women poorly, exercising considerable discretion in deciding whether to arrest batterers or not. Typically, the police response has been one of reluctant, minimal intervention.

Largely in response to the battered women's movement, many police forces throughout the western world have established policies mandating or favouring the arrest of domestic violence offenders. These have raised certain new problems such as the arrest of women who use violence in self-defence but the main problem seems to be that arrest policies have been unevenly implemented. This is certainly the case in New Zealand.

There are a number of individual-level factors implicated in the failure to implement pro-arrest policies with any fidelity, such as the misogynous attitudes of police officers, sympathy for abusers (particularly those whose access to wives and children has been denied by the granting of a protection order) and a lack of understanding about the dynamics of abuse.

But perhaps more important reasons lie in the institutional arrangements which surround the police response to battering. The "rules of the game" are structured to actively discourage an assertive response from officers: poor information systems, excessive paperwork, frustration with women who recant or withdraw from prosecution, and a belief that the courts will not impose meaningful consequences if, against the probabilities, an offender is convicted. Moreover, despite policy guidelines, it is clear that officers can still exercise a choice not to arrest. Why go to the bother if no-one is going to hold you accountable for taking the easy route?

As I argue more formally in Chapter 9, important implications arise from the above analysis. Firstly, to implement an arrest policy with any consistency requires systematic monitoring. Secondly, if one takes an ecological view in which arresting abusers is understood within the total context of their lives, and perhaps more importantly, within

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the context of the lives of their victims, then it becomes very clear that arrest of itself is unlikely to be the determinative factor in stopping battering. What benefits accrue to battered women if abusers are arrested but quickly returned to the streets with the freedom to continue their intimidation? Arrest per se provides neither effective protection nor realistic options to “reconciliation.” As Eve and Carl Buzawa (1993b) have noted, arrest is not the “magic bullet.” An arrest policy is likely to be effective only if certain “downstream” problems are addressed – such as those relating to bail, witness protection, effective prosecution and meaningful sentencing – as well as addressing the other needs (discussed in Chapter 2) which battered women typically have.

In short, the analysis of policing presented here provides, I believe, a compelling rationale for the sort of integrated, co-ordinated and accountable interventions outlined in Chapter 9.

Chapter 6

The criminal courts' response

Many of the problems in the police response to battering discussed in the previous section have parallels in the criminal courts. Historically, just as police were reluctant to arrest batterers, prosecutors were reluctant to prosecute them and courts reluctant to convict them. Each party's inaction seemed to reinforce the others (Tolman & Weisz, 1995).

Battered women fulfil two roles in the courts: complainants and witnesses. (A third, less common, role is defendant: e.g. when they are coerced into offences, when they kill their abuser, or when they fight back.¹). In none of these roles have the criminal courts served them well. Indeed, the interests of battered women and the courts may be quite different. While the courts are concerned with institutional goals such as securing convictions and penalising offenders, battered women may be more interested in securing their own safety (Hart, 1996a).

In this chapter, I draw on international literature and an analysis of certain New Zealand decisions in discussing how a general bias against women within the courts operates to disadvantage battered women and how cases against men who batter are screened out of the prosecution process. I then evaluate the oft-quoted reluctance of battered women to have their partners prosecuted against the context of intimidation and fear which typically characterises battering relationships and discuss various attempts to improve the courts' responsiveness to battered women.

Gender bias in the courts

Like women in general, battered women experience the negative impact of what is increasingly recognised as gender bias in the courts (e.g. see the investigations by the Maryland Special Joint Committee on Gender Bias in the Courts, 1989; and the Australian Law Reform Commission, 1994). This takes a number of forms but includes the tendency for men to be judged as more credible than women (Seuffert, 1996). One aspect of the problem described in the Maryland investigation was the tendency of some male judges to dismiss the testimony of battered women as

¹ I consider the first two roles only in this chapter.

incredible: that is, they could not believe that the events recounted in court could possibly happen. Evidence may be evaluated from the judge's personal, and generally male, experience in what might be called, an *if I was you* criteria. This was explicit in one Maryland judge's comments to a woman whose testimony he discounted.

The reason I don't believe it is because I don't believe that anything like this could happen to me. **If I was you** and someone had threatened me with a gun, there is no way that I would continue to stay with them. (Maryland Special Joint Committee on Gender Bias in the Courts, 1989, p. 3) (emphasis added)

Of course he would not stay. With his status, power and resources, there would be little reason to remain in a relationship with a homicidal partner.

No systematic evaluation of gender bias in New Zealand courts has yet been completed (although the New Zealand Law Commission is conducting a project investigating women's access to justice) but similar problems in assessing the credibility of battered women are evident here. My colleagues interviewed a woman whose affidavit detailing the abuse she had received was read by the presiding judge, who responded, "No-one can live under those circumstances: it has got to be lies." (Busch, Robertson & Lapsley, 1992, p. 54).

It is commonplace to observe that judges, prosecutors and juries frequently trivialise violence against women (e.g. Busch, 1994; Corsilles, 1994; Hart, 1996a; Maryland Special Joint Committee on Gender Bias in the Courts, 1989). A local case provides an example of this. An 87-year-old man was facing sentence for the manslaughter of his 61-year-old wife. He, according to his testimony, had thought her to be unfaithful. After an argument with her, he left the house and returned carrying a coal chisel with which he struck her about the head (*Guilty of manslaughter*, 1990).

In imposing sentence, Justice Fisher noted the aggravating features of the case. These included the fact that the man had a history of violence towards his wife. The judge also noted features in favour of the defendant. These included the fact that there was held to be no premeditation, that he had co-operated with the police, that he had no prior convictions, that he had led an exemplary life, and that there was no prospect of re-offending or danger to the public. Although the man was said not to have shown remorse, a sentence of 3 years imprisonment was imposed.

There are several noteworthy features about this case. The first is that the jury had found the man not guilty of murder because they accepted that he had acted under

provocation. That “provocation” was, according to the judge, based on the defendant’s perception of the facts and there had not been any finding that his wife had indeed been unfaithful. “The sole point,” Justice Fisher told the defendant, “is that that was the impression that you had” (*Guilty of manslaughter*, 1990). Underlying the jury’s decision seems to be some notion of “male sexual proprietariness” (c.f. Wilson and Daly, 1996) or women as sexual property and that men’s use of violence to enforce that property right may be, to some extent at least, condoned. Moreover, men can act as judge and jury on such issues. It did not matter that the defendant’s wife had not been unfaithful: it was sufficient that he had thought she had been.

But perhaps more interesting is the notion that the defendant was considered to have lived an exemplary life, even though, by the judge’s own words, he had a history of beating his wife. Evidently, a life-time of battering was not inconsistent with an exemplary lifestyle. Moreover, the man was held to be no risk to the public. The category “wife” clearly puts one on the wrong side of the public/private split if one is looking to the courts for protection (Family Violence Prevention Co-ordinating Committee, 1991).

New Zealand judges’ attitudes to domestic violence have been thoroughly discussed by Ruth Busch (1994) who based her analysis on decided cases and interviews with judges. A distinction made between violence against family members and violence against strangers is one theme which emerged in her analysis. Another is the tendency of judges to make invisible the violence women experience (e.g. by the use of euphemisms such as “the recent crisis” to refer to a rape or “the parties’ discord” to refer to a history of violence, (Busch, 1994, p. 132)). A third theme is a family dysfunction or “two-to-tango” (p. 116) analysis of battering in which both parties are held to be equally responsible for an escalating conflict, in which violence is merely a symptom of some underlying relationship problem. A related theme is that judges often regard counselling and mediation as preferable to the imposition of penalties which might hold batterers accountable for their use of violence.

Both here and in overseas jurisdictions, the sentences imposed on convicted batterers are often relatively minor with suspended sentences, community service, directions to counselling and discharges being preferred to sentences which more clearly convey the message that violence against women is unacceptable (e.g. see Busch, 1994; Harvard Law Review, 1993; Pagelow, 1993b). As Busch’s (1994)

analysis suggests, this is partly due to general attitudes towards domestic violence held by sentencing judges. It is also partly due to the way in which police officers and prosecutors make decisions about which charges are to be laid in any particular instance. In the United States, where there is an important distinction between felony and misdemeanour assaults, it has been shown that the lesser category is regularly used for domestic assaults in circumstances in which the offender would have been charged with a felony had the assault been committed on a non-related victim (Fagan, 1996; Hart, 1996a). (In New Zealand, a similar distinction is available between common assault charged under the Summary Offences Act and common assault charged under the Crimes Act, and as I show in Chapter 10, the lesser charge is sometimes used in domestic violence cases.)

The disparity between the way the courts view violence between spouses compared to violence between strangers is also a reflection of what Pence (1996) has called the incident-focused nature of the criminal justice system: that is, a de-contextualised approach in which slaps, punches and kicks are weighed as if they occurred, if not in a vacuum, then on some presumed level playing field. Seen in this way, single acts of violence may be regarded as relatively trivial, especially if compared with the injuries sustained in other assaults brought before the court (Fagan, 1996). The black eye which is inflicted in the course of battering may appear no worse than other black eyes sustained in "minor" pub brawls (see discussion of *Kelby v Police* in Busch, Robertson & Lapsley, 1992, p. 189). The full meaning of such injuries and the violence which caused them can only be understood if they are placed in the context of a continuing domestic relationship characterised by fear, intimidation and other terrorist tactics. However, in general, the approach of the criminal law is to exclude such contextual factors.

Screening out of prosecutions

Of course the majority of batterers never appear before the courts. As I have suggested in the previous chapter, the criminal justice system can be thought of as a series of filters, beginning with the police, who arrest only a minority of the batterers who come to their attention. Following arrest, the prosecuting authority screens out more offenders. As shown in Table 5.1, the vast majority of the men arrested in the Minneapolis, Milwaukee and Charlotte studies were not prosecuted. This is a common pattern. Various British and American studies have estimated that between

50% and 90% of domestic violence charges are dropped, often because victims are unwilling to testify (Corsilles, 1994; Dutton, 1987; Dwyer, 1995; Ford, 1991; Sigler et al., 1990). Even where prosecutions are pursued, further screening occurs when defendants are acquitted and when convicted defendants are discharged without further penalty. The cumulative effect of this screening is staggering. Drawing on data collected in various North American jurisdictions and general crime victimisation surveys, Dutton has calculated the odds of offenders progressing beyond each of the decision points. According to his analysis, "For every 100 wife assaults, about 14 are reported, 7 detected (by the police), 1 arrest is made, 0.75 men are convicted, and 0.38 men are punished by fine or jail" (1987, p. 200). Non-reporting of assaults contributes in large measure to the low likelihood of punishment, but even if the analysis is limited to those cases where the police have determined that there is prima facie evidence of assault, then the chance of punishment increases only to 5.8%.¹ Similarly, a study of policing in two London (UK) boroughs found that of 773 cases reported, only 17 (2.2%) were prosecuted (Edwards, 1986; cited in Dwyer, 1995).

The screening process works a little differently in New Zealand where the police are responsible for prosecutions (except in the most serious cases which are turned over to Crown counsel). Thus, as I show in Chapter 10, screening occurs before arrest and after offenders are brought to court (by way of diversion, withdrawing charges etc). That is, practically all arrested offenders are brought to court. But while there is no independent prosecutor screening cases, the overall effect is similar.

It is clear that prosecutions for domestic assaults are dropped much more frequently than prosecutions for non-domestic assaults (Cretney & Davis, 1996). In relation to domestic violence cases, prosecutors have been criticised for encouraging victims to drop charges, for promoting reconciliation and encouraging victims into counselling with their abuser, for regarding domestic violence offences as trivial cases which clog the courts and for appearing in court inadequately prepared (Corsilles, 1994; Fagan, 1996; Hart, 1996a; Harvard Law Review, 1993; Schmidt & Steury, 1989; Sigler et al., 1990; Tolman & Weisz, 1995). When prosecutions are pursued, prosecutors often

¹ "Punishment" is here used as Dutton defined it: that is, sentences of imprisonment or fines. Probation, suspended sentences and therapy programmes were excluded.

prefer lesser charges than would be the case with offenders who used comparable violence against a stranger (Corsilles, 1994; Hart, 1996a).

This pattern of decision making is considered to reflect generalised attitudes towards domestic violence held by prosecution authorities. These include beliefs that the state should not intervene in family matters; that prosecution will unnecessarily lead to the break up of families and economic hardship; that victims are at least partly to blame for the violence they experience; that prosecutions rarely succeed, usually because women fail to give evidence (discussed further below); and that the answer to violence is separation (a view, implicit in the words of the Maryland judge quoted above) (Corsilles, 1994; Dwyer, 1995; Fagan, 1996; Harvard Law Review, 1993; Schmidt & Steury, 1989). Empirical investigations of decision making in domestic violence prosecutions have shown that batterers are less likely to be charged when they attend the charging conference, when they are still cohabiting with the victim and when the injuries she sustained are relatively minor. Conversely, factors increasing the likelihood of prosecution include the use of weapons, the availability of medical or other corroborating evidence, and drug or alcohol dependency on the part of the batterer (Corsilles, 1994; Cretney & Davis, 1996; Schmidt & Steury, 1989).

Victim preference

The belief that many victims do not want their partners prosecuted is sometimes thought to be an important factor in decisions not to proceed. Victim preference may have an influence, but it is hardly decisive. In their investigation of prosecutorial screening in Milwaukee, Schmidt and Steury (1989) found that the fact that the victim did not want the prosecution to proceed was cited as the reason for not prosecuting in half of the cases which were dropped. On the other hand, the prosecution was dropped in more than half the cases in which the victim wanted it to proceed. It is interesting to note that in Milwaukee, victim wishes were usually ascertained at the charging conference, at which the offender was often present. One can only speculate what it might mean to be asked, in the presence of one's batterer, if he should be prosecuted. That such a procedure was routine underlines the general comment that prosecutors and other court officials often lack understanding of the dynamics of abuse.

Intimidation by the batterer is obviously an important factor in the reluctance of some women to have him prosecuted. Of course, many victim-witnesses of violent crime fear perpetrators will take reprisal action against them but battered women have particular reasons to fear this. Unlike other victims, they may live with the perpetrator or at an address known to him; they may share parenting with him; and they have typically been assaulted and terrorised by him over a substantial period before the assault for which he is being prosecuted (Hart, 1996a). Such heightened fears are well-founded: compared to victims of other types of violent crime, battered women have a dramatically higher risk of experiencing further assaults from the defendant while the prosecution is pending (Corsilles, 1994; Hart, 1996a; Jaffe, et al. 1993). Moreover, batterers have available to them tools of intimidation not well understood by criminal justice system personnel (Pagelow, 1993b). For instance, many of the women my colleagues and I have interviewed have referred to “the look” by which their partners or ex-partners can communicate their authority, reminding them of their vulnerability of past assaults, a tactic which can be both effective and unnoticed by others, even within the courtroom (Busch & Robertson, 1994a; Busch, Robertson & Lapsley, 1992). One woman we interviewed described having a gun put to her head by her ex-partner and told not to turn up to court. This was a man with a law degree, who presented in court as the middle class, professional he was, and who was able to establish rapport with the presiding judge (they shared a common interest in tennis) (Robertson & Busch, 1997).

Besides concern for their physical safety, there are other reasons women may be reluctant to have the batterer prosecuted. They may be economically dependent upon him and fear imprisonment will impoverish them (Cretney & Davis, 1996; Hart, 1996a). The stigma of conviction may be considered by some women to be too high a price for the batterer to pay, especially if they believe that police intervention and the threat of prosecution is enough to deter him from further violence (Cretney & Davis, 1996). Women who have children by the batterer may not want to see their children’s father humiliated in public (Hart, 1996a). Prosecution may be seen as conflicting with other important goals such as the desire of some women to reconcile (Cretney & Davis, 1996; Harvard Law Review, 1993). For some women, particularly those from certain ethnic and religious communities, having the batterer prosecuted may result in them being ostracised (Hart, 1996a). The costs of participating in a prosecution may simply be considered too great. These include stress, public

exposure, inconvenience, transport, time off work and arranging child-care (Cretney & Davis, 1996; Hart, 1996a). These costs increase the longer the case takes to resolve and may be exacerbated by indifference or insensitivity on the part of prosecutors (Hart, 1996a). Typically, women will face competing demands, especially if they are separating, such as finding a new home, job-hunting and organising child-care (Hart, 1995). And some women may withdraw from prosecutions because of positive changes in the abuser's behaviour: for example, he may have left her alone, sought counselling or agreed to divorce (Ford, 1991). For such women, the laying of charges has proved effective and they judge that no further official action is needed.

These then, are some of the reasons women may prefer not to have the batterer prosecuted. But as the Milwaukee example cited above suggests, it is important to consider how victim preference against prosecution is ascertained. While the batterer usually has legal representation, the victim does not. Indeed, in many instances, the only person who is available to mediate the relationship between her and the court is the defendant's lawyer. As was observed in Bristol, it is not uncommon for the defence lawyer "to produce the complainant like a rabbit from a hat, advising the court that the couple are now reconciled" (Cretney & Davis, 1996, p. 167). The same happens in New Zealand, despite a clear understanding that defence lawyers will have no dealings with complainants without the express permission of the police (Personal communication, Inspector Athol Paul, 24 February, 1997). Without support and independent advice, it is likely that some women will be coerced into expressing a preference against prosecution. Even if that preference is made without direct coercion, the various pressures facing battered women involved in the criminal courts, including the threat of reprisal, means that, at best, a preference against prosecution is one made under significant constraints. The restoration of victim autonomy requires the removal of such constraints.

Attempts at reform

The major thrust of reform has focused on attempts to increase the willingness of the victim to participate in the prosecution of the batterer. This is usually vital to the prosecution's case. There are often no other witnesses to the assault. Other evidence such as a confession from the offender and the testimony of doctors who have treated the victim's injuries may be available but is seldom sufficient to gain a

conviction without the victim's testimony. But while various strategies have been used to increase victim participation, none has been an unqualified success.

Some courts have attempted to reduce victims' exposure to intimidation while the prosecution is pending. A typical example of this is Liverpool, where prosecutors routinely oppose bail or ask for conditions of bail which will prevent the offender from having contact with the victim (Lyon, 1995). Many courts have instituted fast-tracking of domestic violence cases which has the effect of reducing the time victims are at risk of intimidatory attacks (Hart, 1996a; Lyon, 1995; Salzman, 1994). Some American jurisdictions allow for protection orders to be issued during remands (see discussion of protection orders in the following chapter) (Harvard Law Review, 1993). Of course, issuing protection orders or imposing non-contact conditions of bail will not necessarily ensure victim safety. Moreover, blanket provisions prohibiting bail altogether are generally seen as infringing the defendant's civil rights. Instead, Barbara Hart advocates that bail decisions be based on systematic assessments of lethality and that the safety of victim witnesses be periodically reviewed (1996a). There are two other measures which courts may use to help ensure victim safety during remands: denying firearms to any defendant on bail (American Psychological Association Presidential Task Force on Violence and the Family, 1996) and ensuring that the defence does not have access to the victim's address (Hart, 1996a).

A second group of reforms have concentrated on relieving victims of some of the responsibility for the prosecution. So-called no drop policies limit the prosecutor's discretion to drop prosecutions: once formal charges have been laid, the victim cannot withdraw the complaint. In some jurisdictions, prosecutions can be initiated without requiring the formal consent of the victim (Cahn, 1992; Davis & Smith, 1995; Jaffe, 1993; National Council of Juvenile and Family Court Judges, 1992; Tolman & Weisz, 1995). This is the case in New Zealand. In general terms, such reforms parallel pro or mandatory arrest policies which remove from victims the onus of determining whether or not the batterer should be arrested. The rationale is similar. Because the victim is seen as having no control over the prosecution, the offender has less motivation to harass or intimidate her (Community Law Reform Committee, 1996). No drop policies recognise the fear and ambivalence victims may

feel when asked to testify against the abuser and are thought to convey an official commitment that domestic violence is a serious offence (Corsilles, 1994).

A contrary view is that no drop policies are paternalistic and dis-empower women (Cahn, 1992; Ford, 1991). While on a philosophical level this may be true, one can equally argue that it is not possible to remove power from someone who does not have it: a victim's decision to drop charges made under duress is not an assertion of her power but of the offender's power (Community Law Reform Committee, 1996). A more telling criticism of no drop policies is that, rigidly and insensitively enforced, they may result in women being imprisoned for contempt of court if they fail to testify (Cahn, 1992).

In practice, no drop policies vary somewhat from jurisdiction to jurisdiction and most allow some flexibility. For example, in some courts, charges are dropped on the request of the victim but only after she has been given full information about the implications and referred to a domestic violence programme for support (Cahn, 1992; Corsilles, 1994). In other courts, a victim who wants charges dropped will be subpoenaed to appear in court where the prosecutor will question her in a way which simultaneously elicits the reasons for her reluctance to testify and informs her and the defendant that she is not responsible for the prosecution continuing (Corsilles, 1994). Some courts limit the option of withdrawing prosecutions to first time offenders (Corsilles, 1994).

Cretney and Davis (1996) have provided an interesting picture of a no drop policy in practice. In this case, Bristol, police routinely stressed to women who wanted the prosecution dropped that they would have to make a statement in court. Indeed, reluctant women were sometimes required to go into the witness box. Officially, this was justified as a protection against intimidation. In fact, none of the professionals involved could recall a case in which intimidation was disclosed in the witness box. Informally, police and prosecutors admitted that it was to protect themselves that they required women to make a retraction in court: that is, the authorities could be shown to have done everything possible. Some of the professionals interviewed conceded that another reason for putting women in the witness box was to punish those who had made and withdrawn complaints previously. Despite the official policy, binding-over was commonly used (i.e. the charge withdrawn and the

defendant required to be of good behaviour for a specified time) when the victim seemed reluctant to testify or was living with the defendant.

Even strong advocates of no-drop policies maintain that they need to be implemented with flexibility and sensitivity to victim needs. For example, in some cases, dropping charges may be crucial to the safety of victims (Hart, 1996a). It is inappropriate to imprison victims for failure to testify or to threaten them with refusal to prosecute in further cases of violence (Hart, 1996a; Harvard Law Review, 1993). But maintaining a public stance of not dropping prosecutions means that some offenders will plead guilty and others cease harassing the victim when they learn that she does not control the case (Corsilles, 1994; Hart, 1996a). At a minimum, no drop policies force prosecutors to examine each case on its merits, rather than acting out of some generalised idea of what victims do (Corsilles, 1994). Certainly, no drop policies have significantly reduced case attrition and increased the number of convictions (Corsilles, 1994; Cretney & Davis, 1996) and although their contribution to reducing recidivism is less clear (e.g. see Ford & Regoli, 1993), there is no evidence that they lead to an increase in victimisation (Corsilles).

Rather than compelling participation, a third group of reforms seek to gain the cooperation of victims through the provision of support and information. Various described as advocacy, support, education and outreach, these initiatives operate under varying structures and employ a range of strategies but all are founded on the observation that women are more likely to participate in prosecution processes which they understand (Hart, 1996a; Harvard Law Review, 1993). A typical example is the Family Violence Project within the Seattle City Attorney's Office. Project advocates liaise between victims and the criminal justice system, provide victims with information about the court process and refer victims to appropriate support services (Hart). In Ontario, a victim-witness programme based in the courts fulfils a similar role for victims of domestic violence (and other crimes) (Ministry of the Attorney General, 1993). In other places, victim advocates are based in community organisations independent of the prosecution and the courts (e.g. Duluth, Minnesota. See Pence, 1989). One strategy is to provide victim-witness clinics

wherein victims learn about the criminal justice system, their role in it and the likely dispositions upon conviction or a guilty plea. They learn how to craft victim impact statements and how to articulate the specific dangers they believe are posed by their assailants. They learn how to become more effective witnesses. Most significantly, they begin to network and bond with other victims, thereby

gaining support and eliminating the isolation that domestic violence perpetrators use to dissuade battered women from participation. Clinics often provide child care and are available at times convenient to victim-witnesses. (Hart, 1996a, paragraph 191)

Another victim support strategy has been described by Hart as outreach: that is, programmes in which victims are routinely contacted shortly after an incident in which the police were involved. Outreach workers inform women about their legal options and available services, help mobilise their natural support networks, assist them to make realistic assessments of their safety and help them develop safety plans. In addition, outreach can obtain further information about the assault which may assist the prosecution obtain a conviction (Hart, 1996a).

As noted above, a significant problem in the criminal courts is the minimal penalties which convictions for assaults on women attract. Thus a fourth group of reforms have attempted to restrict the discretion available to the courts in imposing sentence on convicted batterers. In Hawaii, this has taken the form of legislation which sets a minimum sentence for misdemeanour family assaults of 48 hours jail and participation in court-ordered treatment (National Council of Juvenile and Family Court Judges, 1992). In addition, there are sentencing guidelines which set out the factors which should be taken in to account by judges in passing sentence.

The Hawaii example is somewhat unusual in that the legislature has been willing to fetter judicial discretion by establishing a minimum sentence in law. A more common approach has been to introduce administrative guidelines for judges, prosecutors and/or probation officers who make sentencing recommendations to judges (e.g. National Council of Juvenile and Family Court Judges, 1992). These do not have the force of law, so that, in absolute terms, judicial discretion is retained.

In other respects the Hawaii example is more typical in that it is an attempt to balance punitive and rehabilitative goals. As has already been shown, batterer treatment programmes have had equivocal results in ensuring victim safety but courts commonly refer offenders to them (Fagan, 1996). There is an increasing consensus that acknowledges that treatment programmes which meet appropriate standards do have a role to play but that these should not be seen as an alternative to more punitive measures (Harvard Law Review, 1993; Stark, 1993). In particular, pre-trial diversion to batterer treatment programmes has been opposed because the fact that there is no conviction may send the message that an assault on one's partner is not as

serious as an assault on a stranger (Harvard Law Review). A related concern is the conditions under which directions to treatment are made. For example, the high rate of attrition from treatment programmes, even when attendance is court-mandated (Hamberger & Hastings, 1993) would suggest that there is often little consequence for non-attendance.

There are at least three ways of addressing this problem. In some jurisdictions, protocols call for directions to treatment to be made alongside suspended jail sentences which can be invoked if the offender does not complete the programme satisfactorily (Pence, 1989). In other cases, treatment orders are made as a condition of probation which will be revoked if the offender does not complete; as is the case with local Hamilton protocols (see Chapter 10; and Robertson, 1996). A third strategy is to suspend sentencing until the programme has been completed (National Council of Juvenile and Family Court Judges, 1992).

Sentencing protocols have been developed to address other problems in sentencing batterers. These include guidelines for sentencing repeat offenders: for example, in Du Page County, prosecutors recommend supervision and treatment programme attendance for first offenders but jail and programme attendance for repeat offenders (Tolman & Weisz, 1995). There are guidelines about the level of supervision which batterers released on probation should receive (Salzman, 1994). And some guidelines set out the minimum standards of suitable treatment programmes (e.g. Hart 1992b).

The development of specialised guidelines and protocols has, in some courts, been associated with the establishment of specialised prosecution units and courts dedicated specifically to domestic violence cases. In the United States, the National Council of Juvenile and Family Court Judges (1992) has published a description of a number of such initiatives, many of which involve close co-operation between police, prosecutors, probation officers, women's advocates and providers of treatment programmes. Such arrangements recognise the limitations inherent in any single intervention and the need for a comprehensive, co-ordinated response to battering. Experience so far suggests that specialisation has generally improved the investigation and preparation of prosecutions, led to better relationships between prosecutors and victims, institutionalised practices which seek to safeguard victims from further abuse, and increased the number of successful prosecutions (Hart, 1996a; Harvard Law Review, 1993; Salzman, 1994).

Conclusions

From both overseas and local studies, it seems very clear that the criminal courts have not served battered women well, often exposing them to considerable danger while simultaneously failing to hold their batterers accountable for their use of violence. Prosecutions against batterers are often dropped. Men who assault their women partners routinely face lesser charges, and lighter sentences, than men who assault strangers.

In various parts of the world, reforms have been attempted to address some of the problems described here. Such reforms have the potential to back-fire but there is some evidence that the responsiveness of criminal courts can be enhanced. In Chapter 10, I present some data on a local initiative to improve the responsiveness of the criminal court – this in the context of a broad focus criminal justice intervention project.

However, thus far, the discussion has been limited to the criminal courts. In most jurisdictions, civil remedies are also available to battered women. It is to the civil courts that my discussion now turns.

Chapter 7

The civil courts' response

It is almost inevitable that battered women will become involved in civil proceedings if they separate from their abuser and have children and/or significant property in common with him. Additionally, many battered women will make use of civil remedies designed specifically for domestic violence such as protection orders and occupation orders. Such remedies have some advantages for battered women over redress through the criminal courts. For example, in the New Zealand context, Family Court hearings are held in private. Some remedies are available without giving notice to the batterer. Unlike the criminal court, where the standard of proof required is beyond all reasonable doubt, the Family Court can make findings on the balance of probabilities. In general terms, this means that legal remedies may be available to battered women in a wider range of circumstances than is the case in the criminal courts.

There is another important difference. Whereas in the criminal court the victim is not a party to the proceedings (which are between the defendant and the Crown) she does have party status (e.g. as an applicant) in the Family Court, and as such, is entitled to legal representation. Arguably, there is opportunity in the Family Court for battered women to exercise agency in a way not available to them in the criminal courts.

Conversely, the civil courts have disadvantages compared with the criminal courts. On a philosophical level, it has been argued that the use of civil remedies may serve to trivialise violence against women by treating it as less than criminal (e.g. Harvard Law Review, 1993). This is particularly evident in New Zealand where the prevailing philosophy of the Family Court is a no-blame orientation to the resolution of family disputes (Busch, Robertson & Lapsley, 1992). As I have shown in Chapter 5, the enforcement of civil orders is very weak and protection orders are almost routinely breached without consequence for the batterer. Moreover, many courts have adopted mediation as a preferred method of resolution. While mediation between parties in conflict has advantages over judicial arbitration in many situations, it is widely recognised as inappropriate in cases of domestic violence.

The problem of mediation and court-ordered counselling

In collecting information for our study of breaches of protection orders (Busch, Robertson & Lapsley, 1992), Ruth Busch and I visited a court in a major New Zealand city. We were interested in exploring women's experiences of obtaining protection orders. We asked the counselling co-ordinator to describe the process. We had already been told that, in this city, the Family Court judge rarely made ex-parte orders (that is, he preferred that the respondent was given notice of his partner's application and had the opportunity to be heard). It was reported to us that the judge's attitude was well-known so that lawyers made ex-parte applications only in the most extreme cases. To do otherwise would risk the ire of the judge. Thus, in this city, it was commonly the case that when women arrived at the court for the hearing of their application, their batterer would be there also.

But when women arrived, they did not go directly to meet with the judge. The counselling co-ordinator explained that the couple would first be shown a video. She was keen for us to see it and ushered us into a small viewing room. The video was entitled, *Kids need two parents*. It consisted almost exclusively of apparently middle class, pakeha children explaining to the camera how they loved *both* their parents and how they wished their parents would resolve their problems amicably. These problems were clearly portrayed as mutual: there was no mention of violence and no suggestion that the children may have been afraid of a batterer parent. Instead, the message I took from the video was that a parent contemplating separation was acting in a selfish manner, inconsistent with the best interests of her or his children.

One can only guess the effect of all this on a woman applicant. In lodging an application for protection orders, she has, in effect, challenged the presumed authority of the batterer by breaching the secrecy he has enforced upon her and seeking the intervention of the state to call him to account. But instead of meeting directly with the judge, she is asked to watch what I would characterise as a guilt-inducing video, *in the company of her batterer*, in a small, private room, without anyone else present. (As the co-ordinator blithely told us, she had seen the video dozens of times and saw no need to do so again.) Then, when the applicant does meet with the judge, one of his first questions, as he later told us himself, is "Do you think this can be resolved by counselling?" The judge told us that most couples agreed to try

counselling and that this was often “successful” because few women returned to pursue their application for protection orders.

In the judge’s view, the fact that women commonly did not return to Court was seen as indicating “successful” reconciliation. On the other hand, an analysis of battering which emphasises the controlling and isolating tactics of batterers and the social supports for their behaviour leads me to see the fact that women do not return as indicating that they have been confirmed in their powerlessness and in their batterer-encouraged belief that effective external intervention to stop the violence is unlikely.

I do not suggest that the strength of this judge’s commitment to counselling and mediation and his apparent blindness to the dynamics of battering are typical of all Family Court judges. Moreover, a recent visit to that city indicates that the practices I have just described have changed somewhat in the last six years. But I tell this story to illustrate the sort of problems inherent in applying a mediation framework, a framework basic to the Family Court, to the resolution of the problems battered women face.

As Mildred Pagelow (1993) has pointed out, mediation is now widely used to resolve custody, property and other matrimonial disputes. This is certainly true in New Zealand, although here, the term counselling is used (except for mediation presided over by a judge). But while mediation may have considerable benefits in many situations, even many of its proponents argue against its use in cases of serious violence (Buzawa & Buzawa, 1990; Lerman, 1984). There are three main reasons for this view.

Mediation (or in the New Zealand context, counselling) carries an implication of no fault on either side, when in fact, in cases of battering, one party has committed criminal acts on the other (Buzawa & Buzawa, 1990).

Mediation assumes equality of power but this is not the case in battering (Pagelow, 1993). The terror invoked by the batterer means that his victim is unlikely to feel safe to state her case effectively (Jaffe, Wolfe, & Wilson, 1990). This was certainly so in our earlier research (Busch, Robertson & Lapsley, 1992) in which we identified instances of women being harassed in mediation sessions and afraid to talk openly for fear of reprisal. In custody and access disputes, the imbalance of power may be exacerbated by what is at stake. Typically, the battered woman has been the principal

caregiver and has grave fears for the safety of her children should the batterer gain access to them. Conversely, the batterer may have nothing to lose by seeking custody and may use such applications to further his control over his partner (Busch & Robertson, 1994; Pagelow, 1993).

Mediation sessions may physically endanger victims when mediation is face to face or when the batterer knows the time and location of his partner's meetings with the mediator. This was borne out in our earlier research (Busch, Robertson & Lapsley, 1992). Kathryn Coughlin was killed as she left a court-ordered counselling/mediation session, gunned down by her estranged husband who was waiting outside. (See the following chapter.) Another woman was chased as she left the counsellor/mediator's office. The practice of some local counsellors to schedule individual meetings with the parties one after the other facilitates such opportunities for abuse (Seuffert, 1996).

Our earlier research identified other problems with mediation, some of which are also evident in other jurisdictions. Because mediation (within the context of the New Zealand Family Court) is often termed counselling, abusers are encouraged to believe that they can achieve a reconciliation with their partners (Busch, Robertson & Lapsley, 1992; see also Seuffert, 1996). Some counsellor/mediators lacked an understanding of the dynamics of battering and inappropriately encouraged reconciliation. We learned of counsellors who disbelieved women's accounts of violence, or ignored the violence in preference for a focus on communication and the dynamics of the relationship. Some advised women to be better wives or to give their abusers credit for trying to change. A similar lack of specialist training in the dynamics of abuse have been noted elsewhere (Lerman, 1984; Pagelow, 1993; Saunders, 1994). Maori women were particularly disadvantaged by the lack of accredited Maori counsellors or even suitably-skilled non-Maori counsellors. Battered women told us of feeling under pressure to co-operate with informal resolution methods. To do otherwise was to risk being seen as provocative and obstructive (see also Seuffert, 1996; Pagelow, 1993).

There is a gender asymmetry here. While battered women commonly feel compelled to co-operate with mediation efforts, batterers do not necessarily feel so constrained. Instead, it was our conclusion that the more outrageous the batterer's behaviour, the more he gained from the court. This seemed to be a logical consequence of the

emphasis on mediated settlements. Judges appeared to bend over backwards to avoid antagonising batterers in an effort to promote reconciliation or the negotiated settlement of custody and access disputes. Consider, for example, *Lynch v Police* (1986). Convicted for breaching a non-molestation order, Lynch appealed to the High Court. Justice Ellis concurred with the District Court judge that a breach had indeed occurred but discharged Lynch without conviction because “a conviction ... may well militate against final resolution of the problems that have arisen between the husband and wife” (p.3). Some of the judges we spoke to said that they were often reluctant to make ex-parte protection orders, partly because they did not want to unnecessarily antagonise the respondent. In some instances, judges gave the applicant protection orders but made reciprocal orders against her to the benefit of the batterer. Such reciprocal or mutual orders were seen as another way of avoiding antagonising the batterer and maintaining his co-operation.

Perhaps the most graphic example of the Court's eagerness to placate a batterer is Judge McAloon's decision in *R v R* (1988) which involved an estranged husband's application for an order excluding Mr B., a friend of his wife, from the matrimonial home which Mrs R. was occupying pursuant to an occupation order. Mr R. had made overt threats to kill Mr B., threats repeated in the court. Of course, threatening to kill is an offence. But there was never any suggestion that Mr R. might be charged, although Judge McAloon was in no doubt that the threat was genuine. Instead, the judge acted with great urgency (the court sat late and the judge had no time to check relevant case law) to give Mr R. the order he wanted. (See Busch, Robertson & Lapsley, 1992, p. 230-231, for a more extended discussion of this case.)

Certain developments over the past few years can be seen as moving somewhat in the direction of modifying the Family Court's emphasis on mediation, at least in cases of domestic violence. The Boshier committee, appointed to review the operation of the Family Court, concluded unambiguously “that mediation should be avoided” in cases of domestic violence (Boshier, Beatson, Clark, Henshall, Priestley, & Seymour, 1993, p. 119). In 1994, Sir Ronald Davison was appointed by the Minister of Justice to inquire into the deaths of the Bristol children, killed by their father while in his custody pursuant to an order of the Family Court. Davison concluded that consent orders (that is, orders confirming arrangements consented to in mediation) should not be made in cases of domestic violence unless the Court is

satisfied that “such consent was freely and willingly given” (1994, p. 46). The 1995 Amendment to the Guardianship Act adopted this recommendation to the extent that where an allegation of violence is made in the course of custody and access proceedings the Court is required to determine whether the allegation is proved. (A finding that the allegation is proved triggers certain presumptions discussed below). The Domestic Violence Act explicitly prohibits requiring an applicant for a protection order to attend a counseling or programme session at which the respondent is also present. However, these are modest amendments to a general approach in which mediation remains the preferred method of resolving disputes.

Protection orders

Protection orders which restrain the batterer's behaviour in various ways are now widely available in most Western jurisdictions (Sigler et al., 1990). The New Zealand provisions, contained in the Domestic Violence Act 1995, are typical of modern statutes. Under the Act, a person who is or has been in a domestic relationship (defined broadly (s.4) to include same sex relationships, family relationships, flatmates and other close relationships) with another can apply to the Family Court for a protection order against that person. The court may make such an order if it is satisfied that the respondent has used domestic violence (broadly defined to include psychological abuse, intimidation and threats) and if it is satisfied that the making of the order is necessary for the protection of the applicant or a child of the applicant's family (s.14). The standard conditions of the protection order (s.19(1)) prohibit the respondent using any of the following against the applicant: physical or sexual violence or threats of physical or sexual violence; damaging or threatening to damage property; intimidation or harassment which amounts to psychological abuse; or encouraging anyone else to engage in prohibited behaviour. The respondent must surrender weapons in his (or her¹) possession (s.21) but may apply for their return. An additional set of conditions, referred to in the Act as non-contact conditions, apply whenever the applicant and respondent are not cohabiting. These conditions (s.19(2)) exclude the respondent from the applicant's residence, workplace and other places she (or he) may visit often, prohibits the respondent from accosting the applicant or contacting her (or him) except under certain circumstances (including

¹ The Domestic Violence Act is written in gender neutral terms.

emergencies or as provided for in custody and access arrangements). The court may also impose any special condition (s.27) which is reasonably necessary for the protection of the applicant.

Compared to the criminal law, protection orders have significant potential benefits for battered women. Arguably, the civil court process is more empowering as the victim is an active participant in the litigation (Gondolf, McWilliams, Hart & Stuehling, 1994), whereas in the criminal court, she may be valued only as a witness in the state's case. The relief available may be more comprehensive, directly addressing her need for protection and support. This is particularly the case when auxiliary orders are available such as those giving her occupation of the home (e.g. Domestic Violence Act, 1995, ss.52-61) or providing for child or spousal support payments (Harvard Law Review, 1993). It has also been argued that protection orders may not antagonise the abuser as much as criminal charges (Gondolf et al., 1994).

However, it is clear that protection orders frequently fail to produce real benefits for battered women. Too often, they are, in effect, "just a piece of paper" (Harvard Law Review, 1993, p. 1511). Studies in the United States, Australia and New Zealand have consistently shown that orders are repeatedly breached by respondents who are seldom held to account for their breaches (Busch, Robertson & Lapsley, 1992; Buzawa & Buzawa, 1990; Davis & Smith, 1995; Fagan, 1996; Harvard Law Review, 1993; Ralph, 1992; Wearing, 1992). While it is difficult to quantify these problems - women fleeing abusive partners often go underground, are typically very mobile and therefore beyond the reach of standard quantitative survey methodologies - something is known about the nature of the problems in enforcement. Our earlier research (Busch, Robertson & Lapsley, 1992) identified the following. (These have been canvassed more extensively in Chapter 5.)

Police attitudes: Police officers often minimised the dangers women faced.

Enforcing protection orders was not seen as real crime. Many sympathised with the respondents. Officers frequently second-guessed the Family Court, making their own judgements about whether a woman was in need of protection and whether or not her order needed to be enforced. They regularly warned offenders rather than arresting them.

Resource constraints: For many women, the police response was slow.

Respondents had often left the scene by the time the police arrived. Following up such offenders was a low priority for police faced with competing demands. In remote areas, police were particularly reluctant to arrest offenders because they would have to transport them long distances to the nearest supervised holding cells.

Ambiguity in the law: Under the 1982 Domestic Protection Act, non-molestation orders were held to lapse if the couple resumed cohabitation. Police often encountered respondents who contended that the applicant had invited them to return to the home. Without a statutory definition of cohabitation, Police often gave respondents the benefit of the doubt. The legalistic language of the Act was difficult to understand and police often gave incorrect advice to women who had protection orders.

Minimal consequences for breaching orders: Nearly 40% of respondents charged with breaching protection orders were never convicted. Those who were, were typically discharged without further penalty. Judges often seemed to accept pleas in mitigation in which abusers argued provocation, provided explanations for their presence at the applicant's address and/or minimised their use of violence.

For many women, the problems with protection orders are more elementary: they do not even obtain the orders they seek. In what was described as a model (Pennsylvania) court, Gondolf and his colleagues (1994) found that 24% of petitions for protection orders failed and many of the others succeeded only in part. For example, fewer than half the women seeking a provision prohibiting their partners from contacting them had this included in their order. The cost of applying for orders, including legal fees, is a barrier for some women (Kjervik, 1992), at least in jurisdictions where legal aid is not available or is limited in scope. Other barriers are less tangible but no less potent. Consider the barriers placed in the way of women applying to the court whose practices I have just described. What does it mean if ex-parte application is known to be futile and the batterer must be given notice that a protection order is being sought against him? (The phrase, *a red rag to a bull* comes to mind.) There is no legal protection in the interim. What does it mean to be subjected to the not-so-subtle pressure of a guilt-inducing video, the batterer's entreaties and intimidation, and the judge's invitation to consider counselling? Such barriers may not be apparent to the decision makers involved but they are presumably strong

disincentives to battered women seeking protection, as the judge's observations tend to suggest.

Until 1995, most New Zealand women seeking protection faced a two-stage process. Under the now revoked Domestic Protection Act, only interim orders could be made in respect of ex-parte applications. These expired within 3 months. To obtain a permanent order required a further application. In an analysis of applications in the Auckland region, Cureen (1990) found that while about 90% of applications resulted in an ex-parte order, only a third resulted in a permanent order. In most instances, interim orders lapsed for the lack of a further application. Refuge workers and Family Court staff I have spoken to commonly attributed the failure of women to seek final orders to various factors including reconciliation with the respondent, the cost and effort of making an application for final orders and ignorance of the law; that is, many women assumed that their ex-parte orders were permanent. A common pattern described by key informants in our 1992 study was that of applicants who made repeated applications for protection orders. In these cases, earlier orders had lapsed, either because no permanent order had been made or because of a temporary resumption of cohabitation.

The Domestic Violence Act (1995) has ameliorated some of these problems. Resumption of cohabitation does not invalidate the new protection orders (s.20). The maximum penalty for breaching an order has been increased and higher maximums apply for repeat offences (s.49). A simplified process has been introduced such that interim orders automatically become final unless the respondent successfully opposes the making of a final order. Similar reforms have been made in other jurisdictions, including mandatory arrest for order violations, incremental penalties for repeated violations, and minimum sentences for breaches involving assaults (Harvard Law Review, 1993). However, an essential problem remains. Monitoring protection orders is universally left to victims who remain reliant on a prompt, effective response from the police, backed up by courts prepared to impose meaningful consequences on violators (Harvard Law Review).

Despite these problems and the evident limitations of protection orders, they remain an important option for battered women. Interviews with Illinois women who sought protection orders suggested that the orders held significant symbolic meaning for the women concerned in terms of taking a stand against battering (Fischer, 1992).

This applied even to women who did not seek continuation of their initial temporary orders. In Pagelow's words, obtaining protection orders is akin to breaking the "veil of secrecy" (1993, p. 70) which characteristically surrounds the battering relationship. As I write this, I am part way through a stint facilitating a batterer's education programme. At this week's session, several of the men spoke of having protection orders made against them as the single most important factor in bringing them to recognise that they had to change their behaviour.

Custody and access arrangements

The deaths of the Bristol children tragically illustrate the problems battered women face in seeking custody of their children. On 5 February, 1994, Tiffany, Holly and Claudia Bristol (aged 7 years, 3 years and 18 months respectively) were killed by their father, Alan Bristol. (He gassed them and himself in his car.) At the time, the children were in his custody pursuant to an interim order made by the Family Court. At a press conference following the discovery of the bodies, Alan Bristol's lawyer described his client as "a devoted father" who had a good chance of retaining custody of the children (*Father devoted to his children*, 1994). The lawyer was both right and wrong. One might assume that as an absolute minimum, a father who killed his children is not entitled to be described as "devoted". On the other hand, given prevailing views about what is in the best interests of children and dominant discourses about domestic violence, the lawyer may well have been right in saying that Alan Bristol would have had the interim custody order in his favour confirmed.

Five months after the children's deaths their mother, Christine Bristol, contacted my colleague Ruth Busch. Christine wanted her story told. Ruth and I met with Christine several times over the next 18 months, firstly, as we prepared our article (Busch & Robertson, 1994), and later as we discussed strategy in the political debates which marked the progress of the Domestic Violence Act through the legislative process (see Busch & Robertson, 1995).

Although in her case the final outcome was extreme, Christine experienced many of the problems which are commonplace in the lives of battered mothers attempting to establish stable lives for themselves, and their children, independent of the batterer. Like many other battered women, Christine had to contend with the dichotomy between the public and private personas of her abuser. To outsiders, Alan was a

successful and popular Wanganui businessman but at home, he was controlling, abusive and episodically violent. As Christine said, "He had to dominate every situation. He just had to have the upper hand" (unpublished interview data; but see Busch & Robertson, 1994, for a full description of the Bristol case). He hit her where the marks would not show. He exerted close control over her movements and checked her mail. Christine described a pattern of close surveillance and harassment (including a suspected arson attack) during the several periods of separation which punctuated the 10-year relationship. Despite police involvement on a number of occasions, Alan was never charged with an offence during those 10 years.

Like other battered women, Christine found that her personal safety was a secondary consideration for the decision makers involved. After she separated for the final time, Christine made ex-parte applications (under the now superseded Domestic Protection Act) for non-molestation and non-violence orders. She was granted the non-violence order (a limited order which made the respondent liable for arrest and detention for 24 hours for the use or threatened use of violence) but the application for a non-molestation order, which would have (in general terms) banned Alan from Christine's home and prevented him from harassing her, was put on notice. Christine never got her non-molestation order. Twice the application was deferred, specifically so that the issue of custody and access could be resolved first. This was consistent with the advice of both counsel for the children and Christine's own counsel (she later changed lawyers). Her safety was seen as secondary to placating Alan in the interests of seeking a negotiated resolution. Alan himself used Christine's safety as a bargaining chip, agreeing at one stage to arrangements for the children on the condition that Christine would not seek protection orders.

Like other battered women, Christine found herself negotiating from a position of limited power. Alan had engineered the final separation so that he retained possession of the family home and, initially, the custody of the children. (He delivered Christine and her bags to her father's home.) Thus, in addition to having to contend with Alan's intimidation and others' collusion with it, Christine found herself dependent on his goodwill to have any contact with her children, and had to begin negotiation about the custody of children in a position where the status quo was that they were in Alan's care.

Like other battered women, Christine found that Alan's access to the children provided opportunities for him to further abuse her. In negotiations, he always insisted that Christine came to his house (the matrimonial home) to collect or return the children. Moreover, he insisted that she came alone. At access changeovers, he interrogated her, especially about friendships with other men, verbally abused her, and, on a number of occasions, physically assaulted her. A charge of indecent assault was laid after the last assault. Most of this abuse was witnessed by the children. Far from being defensive about his behaviour, Alan would point to Christine's distress as evidence to the children of their mother's failings: "See what I mean about your mother. See how crazy your Mum is." While the children were clearly distressed by the violence, Christine felt that by the end, Alan had effectively turned the eldest, Tiffany, against her.

While the Bristol children paid with their lives, sometimes it is the mother who is killed. In Tauranga, in September 1992, Leone Neylon was killed by her estranged husband when she arrived at his flat to collect her children after an access visit. Custody and access arrangements had been agreed to in court-ordered mediation 6 weeks earlier. In 1995, a Taranaki woman, Nicola Goodwin was killed by her estranged husband (and his new partner) as she delivered her children to him on court-ordered access. Almost half of the women interviewed in our earlier study of protection orders reported assaults on themselves and/or their children during access change-overs (Busch, Robertson & Lapsley, 1992; see case studies of Esther, Deb, Sandra, Lynette, Diana, Jane, Tania, Judith and Roslyn). Overseas studies confirm this pattern. For example, among approximately 100,000 shelter residents and hot-line callers in California, 34% reported the batterer threatening to kidnap the child(ren), 11% reported actual kidnaps, and 10% reported assaults on themselves during visitation (American Psychological Association Presidential Task Force on Violence and the Family, 1996). British and Canadian studies have found similar patterns, including batterers who grill their children about their mother's life, who hold children hostage in an attempt to secure their mother's return to the marriage and who manipulate legal proceedings as a way of further harassing her (Hester & Radford, 1992; Hilton, 1992; Jaffe, Wolfe & Wilson, 1990).

Viewed in the light of such abusive and violent behaviour, batterers' attempts to seek custody or access to their children can be seen as an attempt to further their control

over their estranged partners (Hester & Radford, 1992). It appears that batterers are more likely than non-abusive fathers to seek custody of their children (Liss & Stahly, 1993). As the above cases show, despite the strong evidence of the deleterious effects on children of being exposed to spousal violence (for a review, see Robertson & Busch, 1994), batterers frequently *do* gain custody of or unsupervised access to their children. In a general sense, they are helped in this by a preference, evident in many jurisdictions, for joint custody arrangements (Clark, 1990). As the above discussion of mediation suggests, batterers are also often able to use the processes of the courts to their advantage. On the other hand, battered women who express concerns about the safety of their children if placed in the care of the batterer, risk being labelled as uncooperative and obstructive (Hester & Radford, 1992; Pagelow, 1993). There is even a name for it. *Parental alienation syndrome*, a term coined to describe “parental programming” (Gardner, 1994, p. 9-10) of children by one parent to undermine the other, has been used to dismiss battered women’s concerns about the safety of their children (e.g. *A v A*, 1991).

In brief, battered women are too often disadvantaged in custody disputes because the violence that they have been subjected to remains hidden, or if it is evident, it is considered irrelevant. Many of the judges my colleagues and I interviewed during 1991 told us that spousal violence was, at most, only marginally relevant to determining custody and access (Busch, Robertson & Lapsley, 1992). This view was made quite explicit in a decision by Judge Inglis.

A parent's performance as a parent is not to be judged by that parent's behaviour to a spouse in the stress of a collapsing marriage; now that it is accepted that the marriage is finished, the real question is the quality of parenting each of these people will be able to offer in the future. As I have already indicated, there has been no suggestion that the father's qualities as a parent should be judged by the events between the husband and wife which led to the recent crisis. (*N v N*, 1986, 2 FRNZ, 537.)

The “recent crisis” referred to was a rape, for which the father was serving a sentence of 3 years imprisonment. From prison, he had applied to the Court for an order that his son be educated at a Catholic school. Despite concluding that there was no educational advantage in attending the Catholic school and that transporting the child to and from school would be inconvenient for the mother, Judge Inglis made the order sought.

Ironically, when evidence of battering does come to that attention of the court, it may sometimes be to the disadvantage of battered women. Battered woman's syndrome has been used against mothers seeking custody as indicating an inability to provide an adequate environment for their children (Kjervik, 1992). A similar phenomena was evident in *G v G* (1993) where the mother's reported low self esteem, anxiety and protectiveness towards her children were held to be indicative of inferior parenting compared to that of the confident, astute, assertive and successful father, who had battered her for many years and had allegedly sexually abused the children. He was never charged but the Accident Compensation Corporation was sufficiently satisfied that the allegations were true that it funded counselling for the children. (See Robertson & Busch, 1997, for a more detailed description of this case.)

Recent reforms have focused on restricting the discretion available to judges in determining custody and access. The New Zealand cases cited above were decided under the Guardianship Act (1968) before the 1995 amendment. Before the amendment, the Court was required to give paramount consideration to the welfare of the child in determining custody or access (s.23).¹ The 1995 Amendment inserted new sections which limit judicial discretion. In particular, under the new section 16B, where the Court is satisfied "that a party to the proceedings has used... violence against the child, or a child of the family or against the other party to the proceedings" then it shall not give the violent party either custody or unsupervised access unless it is satisfied that the child will be safe.² This amendment brings New Zealand Family Law into line with progressive jurisdictions overseas (Hofford, 1995).

Lawyering and battered women

For many citizens who enter them, the courts are "a foreign and impersonal world" (Pagelow, 1993. p. 73) where business is conducted in specialised language not readily understood by outsiders. Moreover, for battered women,

¹ Specifically, s.23 states, "... the Court shall regard the welfare of the child as the first and paramount consideration. The Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child."

² As can be seen from the wording of section 23, (previous footnote) the unamended Guardianship Act did give scope for judges to consider spousal violence in custody and access decision-making, but this depended on them making a finding that such violence was relevant to the welfare of the child. The point is that judges rarely did this. The 1995 amendment removed this area of judicial discretion.

The laws regarding property, divorce, custody, financial obligations, and criminal culpability are separate acts, rather than integrated codes focusing on the problems encountered in domestic violence. While new domestic violence statutes have reduced this confusion and increased integration in jurisdictions in which they have been adopted, an attorney is still an essential requirement for successfully negotiating the system. (Sigler et al., 1990, p. 444)

However, sometimes, lawyers become part of the problem rather than part of the solution, as Seuffert's (1996) interviews with 15 non-Maori women showed.¹

For these women, approaching a lawyer for help was not necessarily easy. Some equated it with coming out of the closet. The imposing, formal offices of some practitioners were felt to be intimidating. Some offices were considered to be a risk to the clients' safety: for example, women met with their lawyers in rooms easily visible from the street with large windows. Some women felt that their lawyer did not listen to them, discounted their stories or disregarded the threats which had been made against them. Often, it was difficult to ask the lawyer questions. The women sometimes felt they were just taking up the lawyer's time. Important points were sometimes not explained to them, such as the conditions of protection orders and the need for them to be served before they could be enforced. Many of the women considered that their lawyer gave them no preparation for appearing in court so that the process, including the legal jargon used, was unnecessarily intimidating and confusing. On the other hand, lawyers who listened, who supported the client and her decisions, who understood the client's situation, and who explained things clearly, were evaluated positively (Seuffert, 1996).

Recent developments

This chapter has provided a brief overview of some of the problems battered women have faced within civil jurisdictions, and particularly in the New Zealand context, the Family Court. While the Family Court offers certain advantages to battered women (e.g. party status, privacy, specialised remedies such as protection orders), this jurisdiction has also proved to have significant limitations in protecting the safety and autonomy of women abused by their male partners. Some of these limitations have been addressed, particularly with the enactment of the Domestic Violence Act and the associated amendments to the Guardianship Act. This legislation, which

¹ The results of parallel interviews with Maori women have not yet been published.

incorporated most of our recommendations for statutory change (Busch, Robertson & Lapsley, 1992), widened the definition of domestic violence, broadened the categories of people eligible to obtain protection orders, simplified the process of getting protection orders, increased the penalties for breaching the orders, and provided more meaningful consequences for respondents (mandated referral to stopping violence programmes). Above all, in certain areas, judicial discretion has been significantly reduced (e.g. requiring judges to take a contextualised view of domestic violence; requiring them to consider violence towards a spouse or child relevant to custody and access determinations).¹

It is too soon – and beyond the scope of this thesis – to make definitive assessments about the effectiveness of the new legislation, although Ruth Busch and I have undertaken initial analyses of the operation the new legislation. (See Busch & Robertson (1997) and Busch & Robertson (in press).) These analyses suggest that there are indeed certain advances for battered women, and for the other classes of people now covered by the legislation. For example, judges are now paying much more attention to psychological violence than they did previously (e.g. *Gill v Welsh*, 1996; *G v G*, 1996; *Kellog v Tidey*, 1997). A power and control analysis of domestic violence is quite explicit in certain decisions which has evidently led to a much more critical appraisal of attempts by batterers to minimise their violence (e.g. *Cocker v Middleton*, 1997; *D v D*, 1997). Careful consideration of the safety of children and custodial mothers is evident in certain decisions (e.g. *D v D*). State-funded programmes are now available for applicants and their children.

On the other hand, some old problems remain and, as batterers respond to the new statutory provisions, new problems are appearing. Certain decided cases seem to suggest that victims “provoke” domestic violence incidents (e.g. *Bayly v Bayly*, 1997) or that the cause of violence within a relationship lies in communication problems between the parties (e.g. *Simmons v Foote*, 1997). Some women have been characterised as suffering from battered woman’s syndrome and this has been used

¹ One Family Court judge, who shall remain nameless, told me that the Domestic Violence Act and the Guardianship Amendment Act had reduced his role to that of “a mere technician.” I would argue that is a somewhat limited reading of the legislation which has effectively re-focused areas of judicial decision-making. For example, under the new section 16B(5) of the Guardianship Act, judges are now required to make complex risk-assessment judgements – determining whether a child will be safe in the custody or unsupervised care of a violent parent.

to justify the removal of children from their custody (e.g. *E v S*, 1997). Some decisions suggest that judges may place undue weight on the respondent's participation in a stopping violence programme in determining his suitability as a custodial or access parent (e.g. *Simmons v Foote*).

Moreover, there are certain problems which lie not in the legislation per se, but in administrative arrangements. For example, although the Domestic Violence Act provides for the prosecution of respondents who fail to attend a stopping violence programme, administrative arrangements are such that very few men have been prosecuted, despite large numbers of them failing to attend (Oettli, 1999). The take up of programmes by applicants remain quite low, partly because the programmes are not actively promoted by Court officials (Barnes, 1999a). Some supervised access centres are failing to provide adequate supervision of respondents, such that both children and custodial parents are being placed in potentially dangerous situations (Jolley, 1999).

The civil courts and the remedies available through them offer certain advantages to battered women over the criminal courts, not that these should be thought of as being mutually exclusive. In the New Zealand context, many batterers who come to notice do so in both jurisdictions. The implementation of the Domestic Violence Act, 1995, and the associated amendments to the Guardianship Act have been important reforms, offering new and improved remedies for battered women and the potential for more effectively holding batterers accountable for their use of violence. But important though law reform is, administrative arrangements are also crucial in ensuring the safety and autonomy of women. In particular, the administrative linkages between the various state and community agencies – or more often, the absences of such linkages – are an important component of the response to battering. The significance of such arrangements in ensuring the safety of battered women is discussed in the following chapter.

Chapter 8

The problem of isolated action

Kathryn Coughlin died on 31st January, 1991, six weeks after she had left her husband, David. During those six weeks, both had been involved with various agencies: the police, a psychiatric service (which was treating David), the Family Court, and a family counselling centre. It was on the doorstep of the counselling centre that David confronted Kathryn, shot her and then himself. The couple left two sons, Samuel, then just three weeks short of his fourth birthday, and Timothy, two and half years old.

At the time, the deaths were described by the police as being neither predictable, nor preventable (*Killer was believed suicidal say police*, 1991). However, when Samuel was told that his mother was dead, his immediate response was “Did Daddy shoot her?”

I was interested in how a child almost four years old could apparently be wiser than the police. As the case study which is presented in this chapter shows, each of the institutional players who dealt with Kathryn and/or David - police officers, court officials, counsellors, psychiatrists and social workers - viewed the case through their own distinctive institutional lens, valuing only that information which served immediate institutional purposes. Indeed, in some cases, institutional policies were such that information which addressed victim safety and offender accountability were systematically screened out. Moreover, each institutional player operated largely in isolation, without the benefit of crucial information available to others, either within their own organisations or in what might be considered allied organisations

This provides a graphic illustration of the sort of dangers battered women face as a direct result of inadequate administrative linkages between and within the various state and community agencies which interact with them and/or their partners. By placing Kathryn's death within the context of inter- and intra-agency relationships, it is possible to see how effective protection requires not only law reform, but also reform in certain administrative arrangements.

Case study: Kathryn Coughlin¹

Abuse in the relationship

Kathryn Palleson married David Coughlin in 1982. They met while they were both students at university. While Kathryn completed a degree in Business Studies, David dropped out in his third year. Kathryn went on to work as an Auditor with the Audit Office but apart from one position, David failed to keep jobs. However, the fact that Kathryn was the main breadwinner did not prevent David from exercising considerable power over her. From the few glimpses outsiders got of the relationship it seems that David was very controlling. He contributed nothing to the household finances but spent money Kathryn was saving towards a house on a new car. He insisted on them moving house. He discouraged visitors to the home. He evidently made a habit of checking up on Kathryn while she was at work: workmates noted that frequently he would phone or visit Kathryn's office, such calls or visits often ending with Kathryn in tears. David apparently determined what Kathryn wore, forbidding her to wear makeup or bright clothes. A former colleague recalled times when Kathryn socialised with workmates. What was so striking to my informant was the transformation which Kathryn would undergo if David arrived to join the group. Bubbly, out-going, and seemingly confident one minute, once in David's company, Kathryn would become demure, quiet, and with down-cast eyes.

It is difficult to estimate the extent of David's physical violence towards Kathryn. Certainly, she made little mention of it to either her family or friends. Yet one of Kathryn's colleagues saw David hit her in the side of the head with a saucepan. Another recalled being chased away from the home by David when she visited to see why Kathryn had not been at work. After she separated from David, Kathryn confided in her

1 Initially, I prepared a much shorter version of this case study as part of the Domestic Protection Study (Busch, Robertson & Lapsley, 1992), under the pseudonym "Roslyn". Subsequently, Kathryn's parents, Dorothy and Donald Palleson, made several public statements identifying Kathryn as the subject. This chapter is based on a re-analysis of the original case study material and of some information collected later. I have drawn on (a) interviews conducted by Ruth, Hilary and me with some of the key players within the various agencies, (b) conversations I have had with various people who knew Kathryn, and (c) extensive archival material. The latter includes police records, sworn statements presented to the inquest, transcripts of the inquest, affidavits, judicial decisions, notes made by Dorothy Palleson and correspondence between the Pallesons and various officials. Some of the documents were made available to me by officials: others by the Pallesons, who have helped fill in some of the gaps.

parents that he had once knocked her unconscious. Sometimes, the violence was directed towards inanimate objects as David destroyed things of personal value to Kathryn: a spinning wheel, a rocking chair.

Leaving

According to her mother, by May 1990 Kathryn was determined to leave David. She consulted a solicitor but was advised that if she separated, David would be likely to get custody of the children because he was a house-husband and she was working. The solicitor organised counselling through the Family Court. Four free sessions were made available. Kathryn told her parents that she wanted to have three individual sessions and then perhaps one joint session but in the event, David attended all four sessions with her.

In August 1990, the family moved to Christchurch. In December, Kathryn's return from a short business trip was delayed by one day due to illness. When she did return, she found that David had assaulted Samuel, leaving the child's nose black with bruises and his shoulder sore from being picked up by the arm and thrown. David admitted to having bruised Samuel's nose and later, both boys confirmed that he had kicked Timothy. David told Kathryn to leave and never return.

On 21st December, Kathryn filed for a separation order in the Family Court. She stayed overnight with her uncle and aunt taking the children with her. David called the police, but eventually agreed that the children could stay with Kathryn in the meantime. The following day, Kathryn and the children left Christchurch to spend Christmas with her parents in Nelson, some six to eight hours drive away. (See Figure 8.1 for a time line of key events from this time until Kathryn's death, 6 weeks later.)

David began what could best be described as a persistent telephone campaign. He rang the Pallesons' home frequently, sometimes several times a day. David sometimes spoke to Samuel, less often to Timothy, and always to Kathryn, keeping her on the line for up to two hours at a time. Eventually, on Boxing Day, Kathryn's parents unplugged the telephone.

Early the following morning, Mr Palleson discovered David inside the house. David had driven to Nelson, had woken one of the boys and was trying to leave with him. Mrs Palleson blocked his exit. Eventually, David agreed to leave the boy, but then grabbed

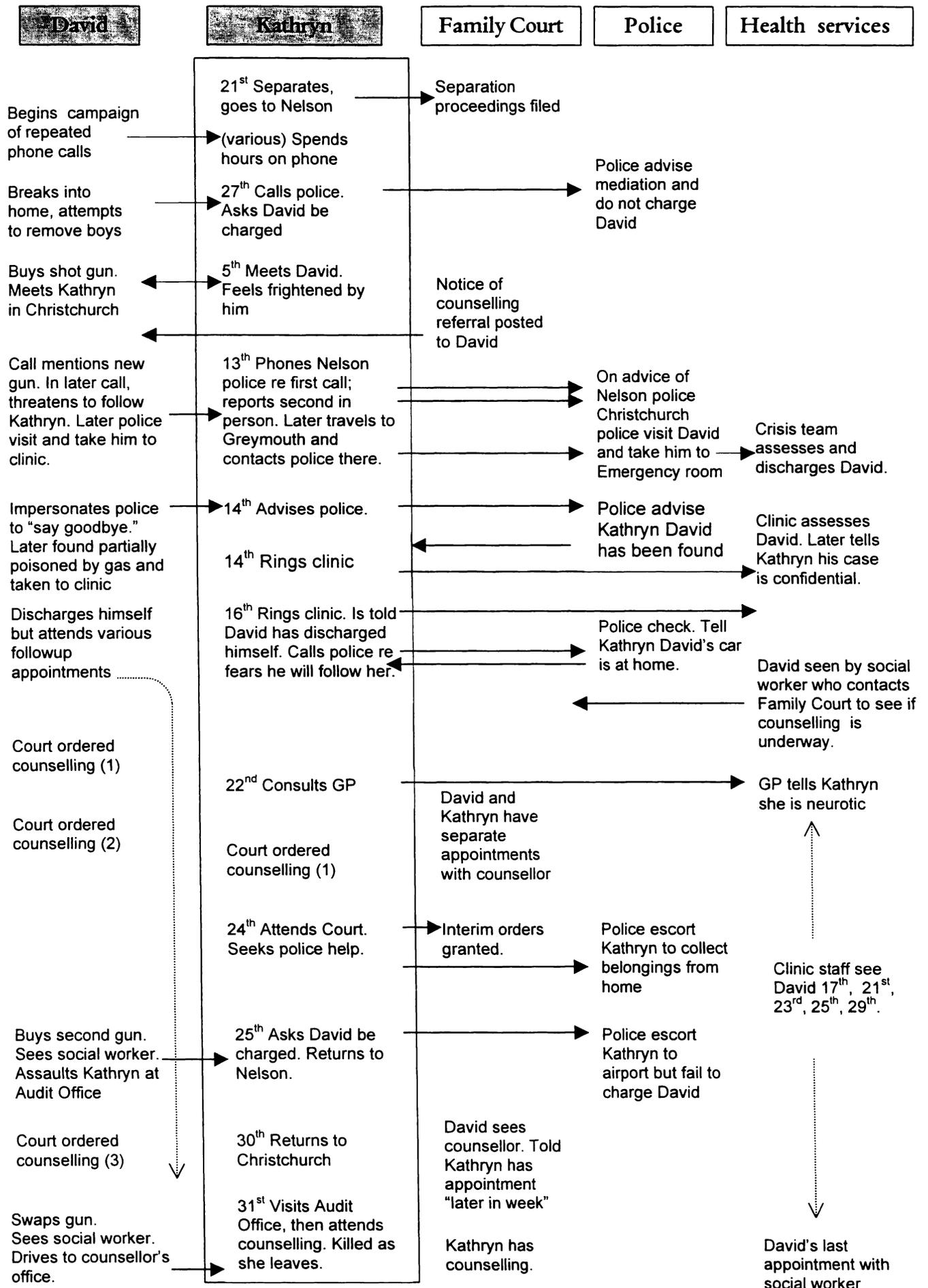


Figure 8.1
Coughlin case study: Key events

Kathryn and tried to drag her through the house. The police were called. Eventually, David agreed to leave and come back to see the children the following weekend. Kathryn and her parents were advised by the police not to lay charges.

David kept phoning Kathryn. She agreed to return to Christchurch to discuss the marriage and the children with him. He kept ringing to confirm the arrangements. Kathryn did meet with David on the 5th of January, her parents taking her to Christchurch for the meeting. No agreement was reached about the children. Kathryn later told her mother that David kept talking in circles and that she felt frightened by David, although she did not quite know why. Subsequent police enquiries found that he had bought a shotgun the day before this meeting and had, two days earlier, made a will naming the boys as the only beneficiaries.

The phone calls continued. In some of these, Kathryn thought that David sounded suicidal. During one two and a half hour conversation, he talked of having “made arrangements for (him)self.” But other statements carried implied threats against Kathryn. In one call early on the 13th of January, David told Kathryn “I’ve bought another gun that will do a better job.” This statement, according to Mrs Palleson, was made in the hearing of the boys, although David had refused to talk to them. Kathryn rang the local police, explained what David had said, and asked that his guns be removed. She was assured that action would be taken.

David rang back within a few minutes. Kathryn had left the house. David refused to believe that Kathryn was not in the house and threatened to follow her to Greymouth where she was due to go on business. This threat was reported in person to the Nelson police who again assured Kathryn that David’s guns would be removed. Later that day, Kathryn, together with her sons and her parents, travelled to Greymouth where they checked into a motel. The motellier gave them a unit which could not be seen from the road. They contacted the Greymouth police to advise them what had happened that day.

Meanwhile, the police in Christchurch did take action. A sergeant visited David, spending about an hour with him discussing “his problems.” According to the sergeant, he arranged for a call to be put through to Kathryn but she refused to speak to David. The sergeant checked “the more obvious places” for firearms and took David to the Accident and Emergency Department of the Christchurch Public Hospital where he was

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assessed by a member of the Psychiatric Crisis Team. David was assessed as not being committable and was discharged, having been given an appointment for two days later.

At work in Greymouth the next day, Kathryn gave the telephonist instructions not to put through calls from David. However, he did telephone her, and because he pretended to be a police officer, he was put through. He told Kathryn, he was “just phoning to say goodbye.” Kathryn rang the police who rang back that night to say that David had been found in his car trying to poison himself with the exhaust fumes and that he had been admitted to Princess Margaret Hospital.

Kathryn rang the hospital, wanting to find out what was happening to David. According to her mother,

Kathryn was firmly told she would not be allowed to have any contact with any of the psychiatric service doctors – nor would she be told where David was or anything about his treatment.

Against medical advice, David discharged himself on the 16th of January, but he did attend several appointments over the following two weeks. He collected his car, which Kathryn had earlier arranged to be looked after by her aunt. When Kathryn learnt what had happened, she rang the police again, concerned that David might be on his way to Greymouth. The police rang back the following day to say that David’s car had been observed parked in his driveway when they checked during the early hours of the morning.

Seeking protection

On the 17th of January, Kathryn consulted a solicitor and applications for a non-molestation order, a non-violence order and an interim custody order were prepared. The papers were ready the next day but no Family Court Judge was available in Greymouth. Kathryn, and her parents and her sons, returned to Nelson for the weekend. The applications were subsequently heard in Christchurch late the following week.

Kathryn took sick leave for the first two days of the next week, the 21st and 22nd of January. On the Tuesday, she went to consult the family doctor in Nelson. He was away, and instead she was seen by a locum. According to Kathryn’s mother, the locum was in

... a completely unreceptive frame of mind... When Kathryn went into the surgery she was treated as being neurotic and roundly told her off even though by this

time she had told him of the attempted suicide, and although she was in tears, he still kept up a barrage of insensitive and completely unhelpful remarks.

Later in the week, Kathryn went to Christchurch. During this visit she attended her first session with the counsellor to whom she and David had been referred pursuant to her earlier application for a separation order. By this time, David had had two appointments. For her part, Kathryn was quite clear: she wanted out of the marriage. She encouraged the counsellor to put her energy into working with David, reportedly telling her, “He needs it more than me.”

Also during this visit, Kathryn consulted a solicitor who filed the application for orders in the Christchurch Family Court. The application was considered, and granted, on the 24th of January. Kathryn appeared in person. According to the lawyer, this was crucial to the decision. Only by talking with her could the judge get a clear impression of the fear Kathryn was experiencing.

The lawyer’s assessment here is probably accurate. Under the Domestic Protection Act, judges had tended to require evidence, preferably medical evidence, of recent physical violence against the applicant before they would grant orders *ex-parte*.¹ In Kathryn’s case, the only recent physical violence against her was David “grabbing” her during his early morning attempt to remove the children from their grandparents’ home. Presumably because of the need to show recency, Kathryn’s affidavit made no explicit reference to physical violence during the marriage; only to the marriage having “been in difficulty for a considerable period.” Instead, her application relied heavily on her fears of what might happen in the future. Specifically, the application stated that Kathryn had “grave fears for the safety of (her)self and the children.” According to the lawyer, the orders would not have been granted had the judge not been able to assess Kathryn’s fear in person. The judge’s decision reads, in part:

¹ Under the Domestic Protection Act (1982), the court could make a non-molestation order *ex-parte* if it was satisfied

- (a) That the delay that would be caused by proceeding on notice would or might entail risk to the personal safety of the applicant or a child of the applicant’s family, or
- (b) That the delay that would be caused by proceeding on notice would or might entail serious injury or undue hardship. (s.14)

Evidence of recent physical violence was usually required to satisfy the Court on this point. The situation has since changed. The broader definition of domestic violence included in the Domestic Violence Act 1995 means that someone in Kathryn’s position would probably have little difficulty in obtaining protection orders *ex-parte*.

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It is clear that the respondent at the present time is in a fragile emotional state and that the orders are necessary for the protection of the applicant and her children.

The judge also noted that she would “make no referral to counselling at this stage.” This is unusual in the context of an interim custody order. Normally, there would have been a referral to counselling to seek a negotiated resolution.¹ The judge here appeared to be cognisant of the perils posed by mediation where violence and abuse are present.

A woman who had business at the Family Court that day confirmed the judge’s impression. She did not know Kathryn, but while completing forms at the public counter, she turned to notice someone sitting behind her crying quietly. The two talked. Later, when news of the murder and suicide broke, it became obvious that the woman in tears was Kathryn, who had that day shared with a stranger her fears about David and his guns.

After getting her orders Kathryn asked for, and was given, police protection while she visited the matrimonial home to collect personal possessions for herself and the children.

Breaches and the killing

The non-molestation, non-violence and interim custody orders were never served, although police records suggest that attempts were made to do so on the 26th and 27th of January. David was not located and there is no record of subsequent attempts to serve the orders. This does not mean that David was completely unaware of the orders. According to his psychiatric social worker, he did know that Kathryn was applying for a non-molestation order.

There were just two breaches of the orders: Kathryn was killed on the second occasion.

The first breach occurred the day after the order was made, while Kathryn was still in Christchurch. David went to the Audit Office and confronted Kathryn on the stairs as she was leaving. He grabbed her and began pulling her down the stairs, but let go when

¹ Before the Domestic Violence Act, judges rarely exercised their discretion (Family Proceedings Act, 1980, s.10) to order that a referral to counselling **not** be made.

she screamed. He quickly left the scene. Kathryn called the police and asked them to charge David.¹ Kathryn's mother commented:

She was terrified when she rang us from (her work place) to tell us that she would be on a later flight and still so when she rang from the airport. I had never heard her voice so frightened and this was a girl who never panicked in emergencies.

Kathryn was due to fly back to her parents' home. At her request, the police escorted her to the airport. On the way back, they checked David's address but he was not there. Two further checks were made: one that evening and another the following afternoon. David was not located. Neither was he charged for this incident. At the subsequent inquest, a police officer said that a complaint for breach of non-molestation had been taken from Kathryn. Presumably because David had not been served with his order, this was not pursued.² It is not known if a charge of assault was ever considered.

Subsequent police enquiries showed that earlier on the day David assaulted Kathryn at her workplace he had purchased another shotgun from a second city store. Other evidence presented at the inquest showed that he had also, that morning, kept one of his follow-up appointments with his psychiatric social worker.

Kathryn returned to Christchurch six days later, on the 30th of January. She had some business to do and she had an appointment with the Family Court-appointed counsellor. She stayed overnight with friends and went to the counselling centre in the morning.

The Pallesons were reasonably relaxed about this trip because as far as they knew, David did not know she would be in Christchurch. In fact, he did. Not only did he know she was coming to Christchurch, there is very strong evidence that he knew the exact time of her appointment with the counsellor, who he himself had consulted on the 28th of January.

¹ A police officer at an informal case conference held after Kathryn had been killed reportedly stated that Kathryn did not want David charged because she did not want anything more to do with him. Similarly, a police job sheet relating to this incident but prepared after Kathryn's death makes no mention of Kathryn asking for David to be charged. On the other hand, a police witness at the inquest said that a complaint of breach of non-molestation order had been taken and according to her mother, Kathryn had asked for David to be charged.

² Under the Domestic Protection Act, 1982, non-molestation orders took effect from the time they were granted. However, in practice, a respondent who had not been served with an ex-parte order could easily argue that he did not know it existed and would therefore have a strong defence to a charge of breaching the order. In general terms, protection orders which have not been served are unenforceable.

Kathryn's appointment was for late morning. David also had an appointment that morning, not with the counsellor but with a social worker at the psychiatric clinic. He kept that appointment, visiting the clinic after having returned the second shotgun to the store where he had purchased it the previous week. He said the gun did not work. He swapped it for another weapon, this time a pump-action shotgun, capable of firing a number of shots in quick succession.

Kathryn finished her counselling session at about 12:40pm. As she left, David, who had been waiting in his car opposite the counselling centre, confronted her in the driveway. She turned to run back inside. She was shot in the back and after collapsing was shot twice more in the chest. David then shot himself. Kathryn died a few minutes later in the arms of a neighbour who came running when she heard the shots.

Agency responses

Kathryn was killed, and David chose to die, despite the quite intensive involvement of several agencies over the last six weeks of their lives. In fact, in the following pages, I will argue that some of the actions – or inaction – of various practitioners contributed to the deaths. Certainly the deaths raised questions for some of the practitioners involved. Several attended an informal meeting initiated by the counsellor to consider what could be learnt. A more formal process was initiated by the Christchurch Coroner who conducted an inquest.¹

The inquest itself is part of the story. The Pallesons were devastated to learn that a single inquest was to be held to inquire into both deaths. They protested vigorously, and eventually, separate inquests were scheduled. The initial determination to hold a single inquest seemed to reflect a theme which emerged consistently in our analyses of institutional responses to violence against women: Kathryn was seen by the authorities simply as David's wife, not as a citizen in her own right.

¹ The following analysis makes extensive use of a transcript of that hearing, witness statements admitted as evidence, and other police and court documents. A potential limitation of this analysis is that although inquest evidence is given under oath, the information presented may nevertheless include self-serving distortion, omission or elaboration. Certainly, I have found some discrepancies between documents prepared before and after the deaths. However, overall, the various documents are reasonably consistent, and while they undoubtedly do not tell the whole story, they do provide quite rich information about the various agencies' interactions with Kathryn and/or David.

Police

As mentioned earlier, the police portrayed the deaths to the media as unpredictable and unpreventable. Yet the police were in possession of a significant amount of information which could have alerted them to the danger David posed to Kathryn. However, this information was never collated. Instead, each of the incidents in which the police were involved was treated as unique. In some cases, Kathryn received quite good service. In others, the sorts of problems discussed in Chapter 5 were very evident.

The first time the police were involved it was at David's instigation. When Kathryn left, he rang the police to seek the return of the children. I have little information about this but clearly the children remained with their mother.

The second incident involving the police was David's attempt to remove his children from the Pallesons' home in the early morning of the 27th of December. This was not an attempted kidnapping; in the absence of a custody order, David was legally entitled to take the children. However, he did commit at least two assaults: one on Mr Palleson, one on Kathryn. Notably, the Pallesons wanted David charged. The police specifically advised against it. Instead they negotiated an agreement by which David could visit the children a few days later. To the police, this may have seemed a trivial family matter best resolved through mediation. But to Kathryn and her family it was much more serious. David had driven through the night from Christchurch to Nelson, entered the house and was using force to have his way. One can only speculate as to what message David got from the police (non) response.

The police were involved a third time on the 13th of January. David's threats about guns were reported to the police in Nelson and relayed to Christchurch where a police sergeant visited David and took him to hospital where he was assessed by a member of the psychiatric crisis team. The nature of the threats is contested. Police documents speak only of threats of suicide. For example, the report filed by the sergeant who visited David stated that "Coughlin's estranged wife was concerned that he had a firearm and might do himself some harm." There is no suggestion in this report, prepared two months after the murder and suicide, that David might have been a danger to others. It is possible that this is consistent with the first conversation Kathryn had with the Nelson police that day. But that was quickly

followed by a further conversation in which Kathryn reported David's second call; the one in which he talked about following her to Greymouth.

I do not know if the nature of David's second call was relayed to the Christchurch sergeant. We can be more certain about the failure of the Nelson Police to pass on another seemingly relevant piece of information. Under cross examination at the inquest, the sergeant testified that he had not been given any information about the incident two and half weeks earlier in which David entered the Palleson's house and assaulted Mr Palleson and Kathryn in the course of his attempt to remove the boys.

Such information may have been helpful but in any event, as he went to David's house, the sergeant did have available to him information suggestive of lethal risk to others: David had made threats of suicide, he felt he was losing his relationship, and he had access to weapons (c.f. Hart, 1992a¹). The sergeant's report of his visit to David's home makes interesting reading.

He was visibly upset and distressed about his wife's recent departure and particularly the fact that she had taken the children with her. I spoke with him for, it must have been going on for an hour, about his problems. He advised me that all he wished to do was speak with his wife. I arranged though the Control room and the Nelson Police for this to be done but when contact was made she refused to speak to him... I was not entirely happy about his mental state and decided against leaving him alone. I attempted to obtain details of friends or relations in (the) Christchurch area that I could contact but he stated that he had no relations in Christchurch and refused to give me the names of friends saying that he didn't want them involved.

A police officer attentive to assessment of risk might have identified here two more risk factors: David seemed depressed and Kathryn seemed to be central to his life (c.f. Hart, 1992a). But instead of seeing David as a potential homicide risk, the sergeant seemed to respond to David as an abandoned spouse. He even attempted to engineer

¹ The indicators of **lethal** risk cited by Hart (1992a) are:

- (a) Threats of homicide or suicide.
- (b) Fantasies of homicide or suicide.
- (c) Access to weapons, previous use of weapons and/or threats to use weapons.
- (d) "Ownership" of the battered partner.
- (e) Centrality of the partner.
- (f) Separation violence.
- (g) Depression.
- (h) Access to the battered woman and/or to family members.
- (i) Repeated involvement with the justice system.
- (j) Increase in personal risk taking.
- (k) Hostage-taking.

a further opportunity for David to speak to Kathryn. Again, one might wonder what the message for David was in this.

The sergeant later told the inquest that he had looked for firearms. Under cross-examination, he conceded that the search

...was not particularly thorough. Mr Coughlin assured me he had no firearms and while I didn't necessarily believe him, I didn't want to upset him or inflame the situation more, by if you like, tearing the house apart in a search. So I had a look in the more obvious places and I accepted his word.

The priority here is interesting. Certainly, in the absence of a warrant, the sergeant was needed David's permission to conduct any sort of search. But the officer's concern that he not upset David reflects a common problem. Displays of strong emotions, particularly anger and despair, can give batterers significant power, especially when others are reluctant to ask "difficult" questions.¹ Moreover, the sergeant missed a potentially significant opportunity for intervention. He could have referred the matter to a commissioned officer who would have had the authority to revoke David's firearm licence and order the seizure of his firearms (Arms Act, 1983, s.27; Police Commissioner, 1992). The revocation of a firearms licence is not an absolute guarantee that one will not have access to firearms, but it would at least have prevented David from buying and trading guns as readily as he did.

On the next three occasions on which the police were involved, the service they provided was much more helpful to Kathryn. Firstly, in response to Kathryn's call from Greymouth, Christchurch patrols were alerted to look out for David and Kathryn was informed when he was found and taken to hospital. Secondly, after David discharged himself, they responded to Kathryn's concern that he was on his way to Greymouth by checking the location of his car and informing Kathryn. And thirdly, at her request, they provided an escort for her as she collected belongings

¹ In my role as a member of the Men's Action Network, I was once asked by police officers to attend a domestic related call out. There was no woman present. She had left earlier and the police were concerned that the man might harm himself. When I arrived, it was dusk. The man sat in the semi-darkness with a carving knife on the table in front of him. The police had neither removed the knife nor turned on the lights. Instead they were responding to the man's apparent despair with statements of reassurance. I removed the knife, turned on the lights and redirected the conversation by inviting the man to reflect on why his partner may have left. It quickly became obvious to all of us that she had left because of his violence towards her. With his tactics of blaming his partner and minimising his violence exposed, the question then became what was the man going to do to make himself safe to live with.

from the matrimonial home. By ensuring her physical safety and providing safety-relevant information, the police seem to have been more effective in these instances

Kathryn's last encounter with the police was more problematic. Responding to a call to the Audit Office after David had assaulted Kathryn, they did escort her to the airport but failed to arrest David. Neither did they warn him, despite making three attempts to talk to him. As mentioned earlier, arresting him for breaching the protection orders was not an option, considering that the orders had not been served, but an arrest for assault was.

In total, there appears to have been three occasions on which David interacted with the police. In my view, it is likely he was able to play the role of victim on each occasion. On the first, he was the parent whose children had been unfairly taken from him. On the second, he was the parent who was just trying to see his children. On the third, he was the distraught, abandoned husband whose wife refused even to talk to him. It seems that while indicators of dangerousness were consistently overlooked, David never received a clear message from the police about the unacceptability of his behaviour, despite the fact that he had committed criminal offences on at least two occasions on which they dealt with him. And he was left in possession of his firearms.

Of course, Kathryn may still have died had the police taken the opportunities available to hold David accountable for his behaviour. But in failing to do so, I believe that they significantly failed her.

A final point about the police response should be noted. The police's dealings with David and Kathryn were never recorded in an easily retrievable way, such that each incident is likely to have been treated as unique. Had the officers in each case been aware of the history, it is possible that they may have been quicker to appreciate David's dangerousness.

Family Court

The fact that Kathryn was killed at a counselling centre vividly displays the risks of exposure which can be presented by court-ordered counselling. David had not been staking out the counselling centre. He knew exactly when Kathryn was due there, arriving while she was meeting with the counsellor. The counsellor admitted having told

David at his last appointment that Kathryn was coming in “later in the week.”¹ How he narrowed down the time was unclear. Two possibilities were suggested to us: either he looked in the appointment book which was plainly in view on the reception desk, or he phoned the receptionist and asked when Kathryn was coming in. In addition, he would have been able to confirm that Kathryn had indeed kept the appointment. The room in which she and the counsellor met was easily visible from the street.

However, apart from the risk of direct exposure, this case raises a number of other issues in relation to counselling where violence is an issue in the relationship.

When Kathryn filed for separation (21st December), a standard referral for counselling was made in respect of guardianship and separation. When the protection orders were made (24th January), the counselling centre was not notified. As it happened, the counsellor did find out, but only through a chance meeting with Kathryn’s solicitor. There was no system in place for passing on this information which would clearly alert counsellors that the case that had been referred to them had subsequently been identified as involving domestic violence. Kathryn and David’s counsellor certainly felt that this was important information; without it, it would have been easier for the violence to remain invisible.

In counselling, David never admitted to any violence. He did tell the counsellor that he had gone to Kathryn’s workplace but not that he had grabbed her or tried to pull her down the stairs. Neither did he acknowledge the incident as a breach of the non-molestation order. Instead, the incident was described in terms of “I only wanted to talk to her.” The incident in which David entered Kathryn’s parents’ house and tried to take his children was characterised by David as a “horrible” incident; not as violence. Nothing emerged in counselling about violence or other forms of abuse until Kathryn went to the counsellor, by which time David had had two appointments. On his third appointment, David told the counsellor, “Kathryn just makes a mountain out of a molehill.”

However, Kathryn was not very forthcoming about David’s violence and her fears for her own safety. She did mention David assaulting her earlier in the marriage and his habit of smashing things precious to her but made rather more of her fears that David

¹ Statement to inquest.

would harm himself. On the other hand, there were suggestions that she was afraid for herself. In retrospect, the counsellor recalled a “quiver” in Kathryn’s voice and “a sense of absolute mental exhaustion.” She wanted David to leave her alone. She clearly stated that she did not want to meet with him. She told the counsellor that she did not want David to know where she was and that, while she was in Nelson, her parents were accompanying her everywhere. In the counsellor’s view, Kathryn “was an incredibly generous caring person. I think in many ways she put his needs above of her own.” With the benefit of hindsight, the counsellor felt that she would now question all clients very carefully about their personal safety, even if there was no explicit mention of violence.

It seems very likely that David initially saw the counselling as a means of achieving reconciliation. According to the psychiatric social worker who was dealing with him over the last two weeks of his life, David became more hopeful when he received notice of his first appointment for counselling. Conversely, he was described by the social worker as losing hope when the counsellor later reported to him that Kathryn wanted neither joint sessions, nor any contact with him at all. The counsellor was of the view that David had expected that counselling would focus on salvaging the marriage and became angry at her for not promoting reconciliation. (After the killing, David was found to have the counsellor’s car registration number in his possession.)

Psychiatric service

For the last two weeks of his life, David was under the care of a psychiatric health service. He was formally assessed on three occasions: by a charge nurse on the 13th of January when police brought him in following Kathryn’s phone call to them; by a psychiatrist on the 15th of January following his admission to hospital with carbon-monoxide poisoning; and by a second psychiatrist on the 29th of January after the social worker who was working with David had become concerned by his “sense of powerlessness and despondency.”¹ The social worker also made ongoing assessments of David as he kept his appointments with her. To varying degrees, all of these

¹ Statement prepared for inquest.

assessments considered David to be at some risk of suicide. None of the assessments considered him to be a risk to others.¹

For example, the psychiatrist who conducted the last assessment said, in a statement to the inquest:

On examination, David Coughlin was a quietly spoken man who stared at the floor for most of the interview, at times on the verge of tears. He appeared depressed in his presentation and conveyed a sense of quiet despair. Apart from the depressive symptoms I have just described, there were no other symptoms of serious psychiatric impairment, that is, he did not show any psychotic symptoms or cognitive damage. *I understood that he was still suicidal in thought but had no intentions of harming his wife or his children.*

I formed the conclusion that David had to be considered a significant suicide risk. He was limited in his degree of support and did not appear to want voluntary admission or psychiatric treatment. It appeared to me that his depression had been precipitated by and had its underlying basis in the separation from his wife and children. I perceived in him a sense of powerlessness to alter what was happening to him. This was evidenced by the fact that he had taken no steps to obtain legal representation for himself at that time. *With the information available to me I had no indication that he was a serious threat to the safety of his wife or children.* (emphasis added)

Clearly David was homicidal as well as suicidal. How could this have been missed?

Part of the answer lies in the way the service related to Kathryn. As I have already mentioned, Kathryn had rung the service on the 14th of January and had been told by a nurse that David's treatment was confidential, that she would not be allowed contact with the staff and nor would she be told where David was. Kathryn made no further attempt to contact the service. Neither did the service attempt to contact her, for David had explicitly said that he did not want staff to do so. In effect, the service was cut off from the very source of information which may have best allowed it to assess whether David was "a serious threat to the safety of his wife and children."

In telling Kathryn that she could have no contact with staff, the nurse who took her call on the 14th of January seems to have gone beyond the service's policy. As one of the psychiatrists told the inquest, patient-doctor confidentiality meant that he would not have disclosed information about David to Kathryn had she got in contact, but

¹ Of the four mental health professionals who dealt with David and gave evidence at the inquest, only two described actively canvassing the risk to others. The charge nurse who first saw him gave evidence that he had asked questions (unspecified) to determine the risk to others. The social worker, in a statement made to the police (but not repeated at the inquest) said "I had previously (i.e. before his final appointment) asked him about harming anyone else and he said he loved his family and he wouldn't harm them."

that he would have been prepared to listen to her. Under cross-examination, he explained that there were certain limits to confidentiality.

If I had been confident of his potential to harm either to himself or others I believe that the issue of safety of other people has to take precedence over the issue of confidentiality.

Of course, considering what Kathryn had been told earlier and considering that the psychiatrist felt bound by David's wish that no-one contact her, it was unlikely that he was ever going to have access to the very information he needed to alert him to the danger which might have justified breaching confidentiality. Catch 22: safety was never going to take precedence over confidentiality because confidentiality had obstructed a proper investigation of safety.

The psychiatric service's failure to recognise David as homicidal was also a product of what I would argue was an overly narrow view of its responsibility in at least two ways. Firstly, as the social worker said under cross-examination, she saw her role as monitoring David's mental health. She specifically said that it was not her role to enquire into David's history. Instead the aim "was to keep him focused on his every day events keeping structure in his life." Yet by not investigating the immediate background, the social worker remained ignorant of David's history of violence.

A second point about the service's narrow focus relates to inter-agency relationships. Shortly after being allocated David's case, the psychiatric social worker contacted the Family Court. While this may be seen as an example of the sort of inter-agency co-operation I will argue for in the following chapter, it resulted not in co-ordination but in fragmentation. While the service would monitor David's mental health, the legal issues of separation and custody were to remain the responsibility of the Family Court and the associated counselling. It was, she said, "important that our agency did not attempt to duplicate their work and by that I mean joint marital work."¹ Certainly it would not have been appropriate for the psychiatric service to have initiated joint counselling but one might ask, on whose behalf was the service monitoring David's mental health? There were no arrangements for reporting progress or the lack of it to the Family Court, to the counselling centre, and definitely not to Kathryn. Moreover, there was no suggestion that the Family Court might provide information which

¹ Transcript of evidence given under cross-examination.

would help the psychiatric service. For example, one potentially very useful piece of information would have been the fact that, subsequently, David had had protection orders made against him. That a judge had found (on the balance of probabilities) that David posed a risk to Kathryn would, one might imagine, be quite useful information for the psychiatric service “monitoring” him.

Like the police and the Family Court, the psychiatric service was working essentially in isolation, and as a consequence, missed out on information which could easily have helped it identify the risk David posed to Kathryn and possibly to their children.

Yet even within this largely self-imposed isolation, the service did have in its possession certain pieces of information which, if not sufficient to make a confident determination that David was a danger to Kathryn, should have been enough to alert properly informed practitioners to the need for further investigation.

There was a note written by the nurse who spoke to Kathryn when she phoned. It read, in part

She says he is capable of being violent, even though he may appear co-operative. She called the police to remove firearms from his house. (I think she thinks he should be committed.)

This note was read by the first psychiatrist to assess David. Despite this, the psychiatrist concluded that “At that stage I had no reason to be concerned about a risk to other people.”¹ Presumably the note was available to the other professionals who dealt with David. (It was produced as an exhibit at the inquest.) None seem to have given it any more weight.

Like the police officer who first visited David, the staff of the psychiatric service appear to have overlooked several things which were suggestive of a potentially lethal batterer (c.f. Hart, 1992a – see footnote on page 200 for a list of indicators of lethal risk). They considered David to be depressed. They knew that he had made threats of suicide. Indeed, by the time of the second psychiatric assessment, he had actually attempted to kill himself. Consider too the observations made by the social worker:

From the outset I observed in David Coughlin a person whose main concern was his children and trying to re-establish contact. It also appeared to me that he was anxious to pursue a reconciliation and that *he preferred to have his problems*

¹ Statement prepared for the inquest.

resolved outside the Court process... I inferred that his wife did not wish to have a reconciliation although he still appeared hopeful that if he could *discuss matters directly with his wife* a reconciliation might take place. David appeared to be suffering a real sense of loss because, having been a house husband and primary care giver to the two children while his wife worked full time, he had now lost that role in his life and indeed contact with his children. (emphasis added)¹

All this is strongly suggestive of a man who believed that he was losing a partner who was central to his life (c.f. Hart, 1992a). Moreover, the italicised phrases above are interesting. David did not want any interposition between himself and Kathryn. He had already told staff that they were not to contact Kathryn. Here, he is reported as wanting to deal directly with her. Of course he would: that was his best chance of re-asserting his control and “ownership” (c.f. Hart).

David himself volunteered to the social worker two pieces of information suggestive of danger to Kathryn. Firstly, he told the social worker that Kathryn was seeking protection orders against him. (The social worker evidently did not confirm that orders had been granted.) Secondly, he told her that “he had approached his wife at work and she had run away from him.”² Why would one “run away” and seek protection orders unless one felt endangered? But rather than seeing danger to Kathryn, the intervention of the psychiatric service focused on helping David cope with his “sense of powerlessness”³ and “real sense of loss”⁴

Because his psychiatric condition was clearly related to the circumstances of the separation I felt it likely that he would *achieve some degree of control* and thereby some resolution of the symptoms by dealing with his sense of powerlessness regarding his current situation. I felt that he could be appropriately managed by continuing his very intensive out-patient contact with PMH (Princess Margaret Hospital) and that this would also allow him to initiate contact with a solicitor for his own legal representation. That, I felt, would *provide some sense of control over the situation* which would diminish his likelihood of attempting suicide. (emphasis added)⁵

“Control” certainly was an important issue, but how much more useful it might have been had the efforts of the mental health professionals been directed at helping

¹ Statement prepared for the inquest.

² Social worker’s statement to the police.

³ Statement prepared for the inquest by the psychiatrist who assessed David on the 29th of January.

⁴ Statement prepared for the inquest by the social worker.

⁵ Statement prepared for the inquest by the psychiatrist who assessed David on the 29th of January.

David distinguish between what he could legitimately control (his own behaviour and feelings) and what he could not (“the situation”, Kathryn).

Inter-agency co-ordination

None of the agencies dealing with Kathryn and David could understand what their young son *did* understand – that David posed a lethal risk to her. This failure to recognise the risk and to respond to it was partly attributable to the problems within the agencies discussed in the preceding sections. It was also partly attributable to the lack of co-ordination between agencies.

As Figure 8.1 shows, there were three state systems dealing with Kathryn: the Family Court and the counselling centre working on its behalf; the Police (in three districts); and the health service (mainly a psychiatric service which spanned two hospitals). Each operated essentially in isolation, pursuing its own objectives and relying on the limited information it had available to it. By compartmentalising its response, the State ultimately failed Kathryn.

In Figure 8.1, I have attempted to represent how information about David and Kathryn was passed on.¹ In particular, the horizontal arrows show instances in which contact was initiated by one player with another. The figure is dominated by two forms of contact. Firstly, there are the numerous occasions on which David made contact, usually unwanted, with Kathryn. Secondly, there are the various occasions on which Kathryn made contact with one or other of the agencies. Rarely did any agency initiate contact with her and rarely did an agency make contact with another agency, despite the fact that they held information important for Kathryn’s safety which was potentially useful for her and/or other agencies. It seems inconceivable, for example, that the psychiatric service could have persisted in dismissing the risk of homicide if staff were aware of the various interactions the police had with David and Kathryn, or indeed, if the staff had sought information from Kathryn about David’s behaviour.

¹ Figure 8.1 does not tell the whole story about information flows. Phone calls organising appointments at the counselling centre are not shown. Neither are calls made to David by the psychiatric social worker. Certain repetitive events (notably David’s phone calls to Kathryn) are represented by a single arrow. Nevertheless, the arrows do identify important points at which potentially useful information was made available to an agency or, more rarely, to Kathryn.

There was some inter-agency communication but this was incomplete and sometimes unhelpful. For example, the first occasion was on the 13th of January when the police sergeant took David to be assessed by the emergency psychiatric team. This may well have been a responsible action, but it is interesting to note what happened to information about David's access to guns. David told the sergeant that he had no guns. The sergeant was not convinced and made a search, albeit a cursory one. Yet, his comment about this to the psychiatric charge nurse who assessed David that day became, within the psychiatric service, a belief that David's firearms *had* been removed. The psychiatrist who first assessed David was certainly under that impression¹ and under cross examination said that he would have been "very concerned" if he had known that David did have a firearm in his possession

I have already discussed a second occasion in which one agency communicated directly with another, the psychiatric social worker's conversation with the Family Court counselling co-ordinator. This conversation may have clarified responsibilities but without any commitment to pass on safety-relevant information, this opportunity for co-ordination resulted only in fragmentation. The failure of the Family Court to tell the psychiatric service that a non-molestation order had been made is an important case in point, as indeed was its failure to tell the counsellor to whom Kathryn and David had been referred.

The fragmented way in which the agencies dealt with David and Kathryn is also a reflection of diverse institutional objectives. As I have already argued, the psychiatric service had an overly narrow focus on David as their sole client, and in particular, on his mental health. Kathryn's safety was never a priority, and despite an avowed policy to the contrary, safety never took precedence over confidentiality. The counselling agency's mandate was focused on exploring the possibility of reconciliation, and failing that, attempting a negotiated agreement on custody and access. Its methods of handling information about appointments significantly disregarded Kathryn's safety. While the police did provide protection to Kathryn in certain situations, no consideration seems to have been given to her safety beyond those immediate circumstances, so that they, too, ultimately failed her (e.g. by failing to charge David or revoke his firearms licence).

¹ Statement prepared for the inquest.

Across the board, Kathryn's safety generally took second place to other priorities, such as David's mental health, the achievement of a mediated agreement and the informal resolution of domestic disputes. Moreover, none of the agencies paid particular attention to the need to hold David accountable for his use of violence.¹ Communication between agencies is not of itself sufficient. Effective intervention also requires a common set of priorities across agencies: the safety of battered women and holding batterers accountable for their violence. In the following chapter, I outline a model of intervention which attempts to institutionalise such priorities across the key agencies which deal with battered women and their abusers.

¹ A partial exception was the Family Court which made protection orders against him, although of course, these were never served.

Chapter 9

Co-ordinated intervention

In Chapter 2, I described the nature of violence against women within the domestic sphere. It was a picture of battering as a deliberate pattern of behaviour on the part of the batterer to achieve power and control over his partner; a pattern in which he makes the rules and uses physical violence, psychological abuse, threats, and intimidation to enforce those rules. His position is supported by the ideology of patriarchy which legitimates the oppression of women. He ensures that his partner is isolated both from personal support and competing ideologies. The battering relationship was described as an example of the *total institution* (Avni, 1991).

The image of the total institution suggests the difficulty for intervention. From time to time, one might succeed in breaching the walls to introduce competing ideas or to challenge the power of the institutional authority in specific instances but considering the all-controlling, all-encompassing nature of the institution, such one-off interventions are unlikely to permanently upset the power relationships within it.

The discussion of community-based services in Chapters 3 and 4 rather tends to confirm this pessimistic view. Providing advocacy for battered women has been shown to have beneficial effects but, of itself, may not effect positive change. Women's refuges, although they provide crucial physical and psychological shelter from the batterer, may not be sufficient, especially if women lack the resources to establish independent lives for themselves. Providing treatment programmes for men who batter may produce meaningful changes for some women, but equally, such programmes may, in some cases, actually make things worse.

When the analysis moves to formal institutional responses to violence against women, the picture is arguably worse. Historically, battered women have been poorly served by police, who have been reluctant to intervene in the domestic sphere. In recent years, policies requiring the arrest of men who assault their partners have been introduced in many parts of the world but as my analysis of New Zealand policing shows, such policies have not always been well-implemented (Chapter 5). Even when the police do make arrests, problems in the prosecution of abusers has meant significant gaps remain in the ability of the criminal justice system to hold abusers accountable for their violence and ensure the safety of women, despite some promising reforms (Chapter 6).

The alternatives available in civil jurisdictions have been equally problematic. Protection orders are often simply a piece of paper (Chapter 7).

From an ecological perspective, the modest success of these various interventions is not surprising. Why should we be surprised that some women leave refuge to go back to their abuser if the alternative is poverty? Why would we expect arrest to stop a man using violence if he is then told he is not going to be prosecuted? Why would we expect women to co-operate with aggressive prosecution programmes if they are not afforded protection during the sometimes lengthy delays in bringing cases to trial? Why would we expect men to complete treatment programmes if they have regained their relationship simply by attending a few sessions? Why would we expect violence against women to end if women remain intimidated, vulnerable to threats, economically dependant on their abusers and lacking the resources needed to live their lives independently?

The implication is clear: single interventions are weak and may sometimes endanger women. This is true even of many of the apparently promising reforms I have described. The power of the *total institution* enforced by the batter remains essentially intact. A more comprehensive approach is needed, but as shown in my analysis of the failure of various agencies to protect Kathryn Coughlin, even if several agencies are involved, they often work in isolation, fail to share important information, and pursue disparate institutional goals. Increasingly, activists and researchers are arguing that effective intervention requires a *co-ordinated* response *across* agencies (e.g. Gamache, Edleson, & Schock, 1988; Hart, 1995; Pence, 1989), an approach exemplified by comprehensive community intervention projects. In this chapter, I outline the key elements of intervention projects and describe how these were implemented in Hamilton.

Comprehensive community intervention projects

In contrast to isolated reforms of parts of the justice system, comprehensive community intervention projects attempt broad social change across the entire system (Syers & Edleson, 1992). They are *intervention* projects because they intervene in what has previously been regarded as the private domain of the family. They are *comprehensive* because they involve all of the relevant agencies charged with protecting victims and controlling offenders. They are *community* projects because reform is

driven from the bottom up, by the needs and aspirations of victims. The overall goal of comprehensive community intervention projects is to reform the systems which respond to battering. Based on a power and control analysis of battering, the specific aims of intervention are to increase the safety of victims, to enhance the autonomy of victims and to hold offenders accountable for their use of violence (Busch & Robertson, 1993).

Ellen Pence has identified seven key elements to effective intervention (Busch & Robertson, 1993).

A shared philosophy. Underpinning intervention is a power and control analysis of violence in which violence is seen as inherent in the culture, not in individual pathology. Moreover, there is a commitment to attend to the violence rather than the relationship between victim and abuser.

Agreed protocols. A set of carefully prescribed procedures is laid down for cases of family violence. These procedures limit the discretion of individual decision makers to ensure that at all times, priority is given to victim safety and holding offenders accountable for their actions.

Networking between agencies. A consistent approach is enhanced by agencies sharing information about specific cases.

Monitoring. A crucial component is the role of victim advocates in closely monitoring the work of key agencies to ensure that the protocols are maintained. It is this victim referencing that keeps the system “honest.” Monitoring also applies to individual abusers, so that at all times, the safety of victims is paramount.

Services to women. Advocacy services, support groups and education programmes are provided for victims of violence to help them live violence-free lives.

Rehabilitation of abusers. Structured education programmes in which abusers are closely monitored are provided for those men who can benefit from them.

Evaluation. Regular evaluations assess the implementation of the protocols and their effectiveness in ensuring victim safety and autonomy.

This approach was pioneered by the Duluth Abuse Intervention Project (Pence, 1989). To varying degrees, it is now evident in a number of similar projects around the world.

The Hamilton Abuse Intervention Pilot Project

Largely as a result of lobbying by the National Collective of Independent Women's Refuges, the New Zealand Government established the Family Violence Prevention Co-ordinating Committee in 1986. This committee, serviced by the Department of Social Welfare, provided a unique national-level forum in that it brought together key government departments (e.g. police, justice, health) and community activist groups (e.g. women's refuges, rape crisis, men for non-violence).¹ One of its terms of reference was to "co-ordinate and oversee the development of an inter-agency approach to family violence" (Family Violence Prevention Co-ordinating Committee, n.d., p. 1).

After reviewing various initiatives around the world, the Family Violence Prevention Co-ordinating Committee decided to establish a pilot intervention programme modelled closely on that in Duluth, Minnesota (Smith, 1991). The pilot project, which was to be established in Hamilton, was described at the time as having three main elements.

The Police are required to bring family violence cases to court, or in the event of insufficient evidence for an arrest, to the attention of a "monitoring group."

The abusers are automatically sentenced to a structured education programme as part of a sentence of supervision. Failure to attend the course is a breach of supervision and court sanctions are then automatically applied.

The name of the victim is supplied by the Police to the "monitoring group" who ensure s/he is safe, receives appropriate support through any court procedures and, if s/he wishes, attends an education course. (Smith, 1991, p. 6)

¹ Membership included: the Chief Executives of Social Welfare, Education, Health, Manatu Maori, Women's Affairs, Justice and Youth Affairs; the Principal Judge of the Family Court; the Commissioner of Police; the General Manager of the Accident Compensation Corporation; and representatives of the National Collective of Independent Women's Refuges, the National Collective of Rape Crisis and Related Groups of Aotearoa, Te Kakano o te Whanau, the National Men for Non-Violence Network, Runanga Tane and the Pacific Island Women's Project. The Maori Women's Welfare League was also represented at meetings in an advisory capacity (Family Violence Prevention Co-ordinating Committee, n.d.).

Smith's (1991) description of what was to become the Hamilton Abuse Intervention Project (HAIP),¹ includes two essential elements: a standardised approach which reduces the discretion available to individual decision makers, and a monitoring group to oversee the work of the statutory agencies. But in HAIP, intervention involved a wider group of agencies than might be assumed from Smith's description. That is, HAIP brought together the women's refuges, the police, the criminal courts, the Family Court and the Probation Service. A project office was established in the city centre (easily accessible to transport) which employed paid staff to co-ordinate and monitor the intervention efforts of the participating agencies, provide advocacy services for women and manage a large pool of volunteers who staffed a crisis service and facilitated the men's and women's educational programmes. A set of protocols was developed with participating agencies. Initially, these were verbal understandings, but they have been subsequently committed to paper. In brief, these protocols are as follows.

Police. The protocols require the arrest and charging of abusers, who are to be held in custody overnight. This is to be done without requiring the victim to make a complaint. In addition, whenever they make an arrest, police are expected to immediately notify a crisis line maintained by HAIP (in association with the women's refuges).

Women's Refuges. The crisis line dispatches call out advocates (refuge volunteers) to visit women, provide immediate support, inform them of the services which are available, collect information about the assault and admit women to a refuge if that is necessary. The call out advocates are thus the first step in the monitoring function of HAIP. They seek victims' views about the service they received from the police.

The District Court. A HAIP advocate attends court hearings where she can make available to the court concerns about the victim's safety and the information about the impact of the assault. She informs victims of what is happening to their abusers and supports women who are required to give evidence. The court advocate is a key part of the monitoring function of HAIP. At an individual level, she monitors the

¹ Initially, the project was known as the *Hamilton Abuse Intervention Pilot Project* but the word *Pilot* was dropped in 1992 when the project lost its status as a national pilot. For simplicity, I will use the shorter name throughout.

processing of abusers on behalf of their victims, and reports back on progress. At a systems level, she monitors the performance of police prosecutors, probation officers and judges.

While judges have been more reluctant than other decision makers to have their discretion fettered by intervention protocols, a reasonably standard approach is envisaged, whereby defendants remanded on bail are ordered not to associate with their victim, family violence cases are given priority to reduce the time to final disposition, and convicted abusers are ordered to attend the HAIP men's education programme, either as a condition of a sentence of supervision or as part of a parole programme following a term of imprisonment.

The Probation Service.¹ Probation officers advising judges on sentencing are expected to recommend the HAIP men's programme for all domestic abusers. As supervisors of sentenced offenders, they are expected to enforce attendance at the programme.

The Family Court. Under intervention protocols, applicants are referred to the HAIP women's programme and respondents directed to the HAIP men's education programme.

These protocols and their subsequent development are described in more detail in the following chapter, in which I evaluate the extent to which they were implemented and succeeded in enhancing the justice system's responsiveness to battered women. But first, it is important to understand four other important elements of HAIP – HAIP's policy of parallel development, the women's education and advocacy programme, the men's education programme, and inter-agency meetings – as these provide part of the context in which the protocols have been implemented.

Parallel development

An analysis of battering as one of a set of culturally-supported behaviours by which men maintain power and control over their partners has implications for other types of power relations. Especially relevant is the relationship between Maori and Pakeha.

¹ Early in the life of HAIP, the Probation Service was renamed *Community Corrections* and in 1998 took the title *Community Probation*. Because it is probably the most commonly understood term, I will use the earlier title throughout.

Significant parallels exist between battering and colonisation. For example, a “colonisation wheel” has been developed by HAIP staff. Instead of “male privilege,” the colonisation wheel identifies “white privilege” by which the dominant Pakeha group assumes decision making power over Maori and regards Pakeha culture as normal. Within the context of colonisation, practices such as racist jokes and trampling on Maori kawa and tikanga can be viewed as forms of emotional abuse. The confiscation of land and the exploitation of fisheries can be viewed as forms of economic abuse. Rewriting the history of Aotearoa from a Pakeha perspective, attacking Maori activists as irresponsible radicals bent on destroying good race relations can be viewed as minimising and denying the reality of colonisation and blaming Maori for its effects.

At its inception, HAIP adopted a policy of parallel development, modelled on the policy developed within the National Collective of Independent Women’s Refuges.¹ The policy affirms “the right of Tangata Whenua (people of the land) to determine their own future” (Hamilton Abuse Intervention Project, 1992, p. 2). This is given effect within the structure of the organisation by having parallel Maori and non-Maori caucuses. Each caucus manages the programmes for Maori and non-Maori respectively. Thus, there are parallel Maori and non-Maori education groups for abusers and parallel Maori and non-Maori victim advocacy programmes. The structure and curriculum of the parallel programmes are very similar but the group processes differ and culturally appropriate examples are used in each.

In managing their respective programmes, the caucuses act somewhat independently, but decisions which affect the agency as a whole are made through discussion and negotiation. Furthermore, the Maori caucus has the right to veto the appointment of any person to the staff if it is believed that the policy of parallel development would be compromised by the appointment. In other words, while the policy of parallel development clearly calls for negotiation, the policy itself is non-negotiable and a commitment to the policy is a prerequisite for working in the agency.

¹ The co-ordinator of HAIP, Roma Balzer, was previously the Maori co-ordinator of the National Collective of Independent Women’s Refuges. Roma’s experience in and commitment to parallel development has undoubtedly helped cement the policy in place within HAIP.

HAIP women's programmes

While HAIP project staff and volunteers provide one-to-one support to women in crisis, working in groups¹ is preferred. Group activity breaks down the isolation abusers typically impose on their victims. Many battered women have been “punished” for visiting friends and family and having interests outside the home. They have been told who they are allowed to speak to and what they can say at social events with or without the abuser being present. Through meeting women who are in similar situations, participants can more easily come to understand the systematic (and sometimes systemic) nature of the violent and controlling tactics to which they have been subjected. The result is that they are less likely to accept abusers’ attempts to make them feel responsible for the violence. Over time, members of women’s groups are able to understand their own stories against the backdrop of the commonplaceness of domestic violence as well as the justifications often accepted by the justice system for that violence. Participation in women’s groups allows women to see their partner’s behaviour in its social context, to give and receive support, to learn how to get and action protection orders, to make personal safety plans, and, for many of them, to plan for a life independent of the abuser. Some of the women who have attended the groups return as project volunteers, facilitating groups, working as advocates and engaging in social action in support of women’s rights.

HAIP men's education programme

The Maori and non-Maori men’s education programmes also operate out of the HAIP office. The programmes follow a common curriculum which runs for 26 weekly two-hour sessions and follows the principles of best practice set out at the conclusion of Chapter 4. That is, an explicitly feminist analysis of battering is adopted, in which violence is seen as part of a pattern of tactics utilised by abusers to control their partners. In groups, men are encouraged to re-examine the notions of hierarchy implicit in their belief systems which characteristically condone the use of violence. The curriculum explores the consequences of adopting a “one-up, one-down” model of relationships. For abusers, such consequences may include the loss of their partner’s intimacy, trust and love. Ultimately, it may result in the loss of

¹ Usually, parallel Maori and non-Maori groups are run. However, in certain circumstances, (e.g. shortage of staff, low numbers of clients) combined groups have been held

the relationship itself and in the loss of father-child relationships as well. By exploring the contradictions in their rationalisations and the self-defeating nature of their violence (including arrest and conviction), men are introduced to an alternative model of relationships based on equality and respect.

An important part of the education programmes is that participants are monitored. Participation is conditional on giving facilitators addresses and telephone numbers of partners or ex-partners, who are regularly contacted to ensure that they are safe and to solicit feedback about the abuser's behaviour. The group sessions are also monitored: women's advocates sit in on the groups from time to time and at least one of the two co-facilitators of each group is a woman. In these ways, the men's education programmes maintain accountability to victims.

Inter-agency meetings

The HAIP protocols provide a localised policy for guiding agency practice. However, as was evident in my analysis of the implementation of the police arrest policy, practice does not necessarily reflect stated policy. Fundamental to the intervention model is the monitoring of agency performance by battered women's advocates. Some of the arrangements by which this is achieved are described in the following chapter but one important ingredient which needs to be mentioned here is the monthly inter-agency meeting (which I have attended regularly throughout the life of the project).

Typically, the meetings are attended by HAIP staff, representatives of the Maori and non-Maori women's refuges, the police officer who holds the family violence portfolio, a senior registrar of the criminal court, the Family Court counselling co-ordinator, and a probation officer.¹ That is, the agency representatives have generally not been the local manager but rather a senior member of staff with a particular interest in or responsibility for their agency's response to domestic violence.

Early in the life the project, the meetings were quite formal. Many of the participants had not met previously, or if they had met, had been on opposites sides of a conflict,

¹ In recent years, the inter-agency meeting has been extended to include other groups, most notably child protection services (Children, Young Persons and Their Families Agency: and Parentline) and the local community-based sexual abusers' treatment programme (Steps to Safety).

9: Co-ordinated intervention

as was the case, for example, with senior police officers and refuge workers. However, over time, participants seemed to relax as they got to know each other on a more personal level. The fact that meetings have been held over a lunch provided by the HAIP office has probably helped, which was exactly the intention.

The meetings have provided an important opportunity for inter-agency problem-solving. Examples include:

- The failure of police officers to make prompt referrals to the crisis line.
- Complaints from the police that the crisis line phone number has been unobtainable.
- The failure of specific probation officers to initiate enforcement action against offenders who have failed to attend the men's education programme.
- The failure of the men's education programme co-ordinators to give adequate feedback about attendance to probation officers.
- Strategising about specific cases in which particularly determined and sophisticated batterers are managing to evade arrest.

Not all the business is about problems. Particularly good service is sometimes commented on and the meetings are also useful for participants to keep abreast of changes in personnel or practice in other agencies.

Inter-agency issues are not canvassed solely in the monthly inter-agency meetings. Often, detailed negotiations to refine protocols, close gaps or resolve complaints happen bi-laterally but commonly it is at the inter-agency meeting that issues are first identified. It is, therefore, one of the important ingredients in maintaining a co-ordinated response across the justice system and related agencies.

The project went through rapid growth during the first year. Most spectacular was the exponential growth in the number of men attending the men's education programme. This produced strains within the organisation as I and my colleagues have described in a series of process evaluation reports (Robertson & Busch, 1992; Robertson, Busch, Ave & Balzer, 1991; Robertson, Busch, Glover & Furness, 1992; Robertson & Busch, 1993).

During the second year of the project, HAIP lost its status as a national pilot and the Family Violence Prevention Co-ordinating Committee which had funded it was disbanded. HAIP reorganised as an independent trust and sought alternative funding locally. These changes lead to budget cuts and the loss of the support of senior national agency managers who had been represented on the Family Violence Prevention Co-ordinating Committee. Nevertheless, the project survived and continues today.

Within New Zealand, HAIP represents a unique attempt at reforming institutional responses to violence against women. As I have briefly described, these reforms were instituted through a series of protocols which committed the police, the courts and the Probation Service to a standardised approach to domestic violence cases. Significantly, these protocols were to be monitored by a community-based agency outside the justice system, namely the HAIP project office. The extent to which these monitored, inter-agency protocols succeeded in reforming the justice system's response to battering is discussed in the following chapter.

Chapter 10

Evaluating reform

Has HAIP been effective? That is, has the justice system become more responsive to the needs of battered women in Hamilton? Are their batterers held more accountable for their use of violence? These are difficult questions to answer.

They are difficult questions to answer for several reasons. Firstly, we lack good information about the pre-HAIP status quo. As noted in Chapter 5, police record keeping in relation to domestic violence cases has been inadequate. There is no easy way of identifying domestic assaults from other assaults in criminal justice statistics. The privacy of the Family Court has impeded research into its operation.

Secondly, it is difficult to separate out changes directly attributable to the advent of HAIP from other changes which have occurred within the community. The passing of the Domestic Violence Act (1995); the incremental refinements in the national police policy on domestic violence; the promulgation of inter-agency guidelines on interventions in family violence; the various advertising campaigns which have raised community awareness of family violence over the past few years; greater media scrutiny of judges' decision making in domestic violence cases; public debate: all these are significant national developments which can be expected to have had an impact on the way the justice system has responded to the needs of battered women. (Indeed, it may be both fruitless and misleading to attempt to separate HAIP from broader national developments, some of which have been significantly influenced by the experience of the project. See, for example, Family Violence Unit, 1996, p. 1).

Thirdly, the answers to these questions lie ultimately in the experiences of battered women. Unfortunately, almost by definition, battered women are difficult to recruit for evaluation studies. For example, Tolman and Weisz (1995) abandoned victim interviews in their evaluation of an Illinois intervention project because so few women were recruited. Battered women are typically highly mobile, some go underground in their attempts to flee their abuser, they may be subject to intimidation and the isolating tactics of the abuser, and they are likely to have priorities other than participating in research.

Despite these problems, it has been possible to provide some tentative answers to the questions posed above. In this chapter, I assess the extent to which the protocols described in the previous chapter were implemented. In doing so, I am attempting to answer the question, *To what extent did HAIP succeed in reforming the justice system's response to battering?* This question is answered in respect of the four relevant statutory agencies: the Police, the District Court, the Probation Service and the Family Court.

Police: arresting batterers and ensuring crisis support for victims

When HAIP was launched in July 1991, the police pro-arrest policy had been in place for 4 years: that is, it was police policy to arrest batterers if there was evidence of assault, without requiring victims to make a complaint, and to refer victims to “an agency that can provide on-going support” (Police Commissioner, 1987, p. 3). The HAIP protocols conformed with that policy but included three refinements.

Firstly, a local directive was made that offenders should be charged with male assaults female (Crimes Act, 1961, s.194(b)) unless the violence was of a minor nature, when a charge of common assault could be brought. The charge of male assaults female could be seen as reflecting a power and control analysis of domestic violence, one which focuses less on the specific act of violence (a slap qualifies equally well as a punch or a kick) and more on the relationship between assailant and victim (a parallel provision in s.194(a) covers assaults on children under 14). In practice, the main import of the local directive was that offenders so charged faced a maximum penalty of 2 years imprisonment as opposed to a maximum of 1 year if charged with common assault under the Crimes Act (s 196) or 6 months if charged under the Summary Offences Act (1981, s.9).

Secondly, the local directive required that arrested offenders should be held in the cells overnight. As described in Chapter 5, police had previously given police bail to at least some of the men they arrested on domestic violence charges. (It was also agreed that a HAIP staff member could interview offenders held in the cells each morning before court. See discussion below.)

Thirdly, it was agreed that HAIP would be the agency to which referrals would be made in domestic violence cases. Specifically, police would call the HAIP crisis line as soon as they had made an arrest. They would pass on details such as the name and

address of the victim, the name of the offender, the charge he was to face, when he was due to appear in court and when he was likely to be bailed.

A further refinement was that police would make available to HAIP information which would allow advocates to monitor police performance. As discussed below, this was possibly the most contentious part of the police protocols. Yet without the ability to monitor, it was unlikely that HAIP was going to achieve significant changes. After all, the other police protocols were really little more than refinements of existing police policy, which, as has been shown, was poorly implemented.

In addition to securing these commitments from senior local police managers, HAIP was able to negotiate participation in police in-service training. At the time, the uniform branch of the Hamilton police was divided into five sections which were rotated through the shift rosters and a regular training day in a five-week cycle. From time to time, HAIP staff would attend these training days and present material on the dynamics of domestic violence and the protocols which had been negotiated. Repeating the training was important, not only to reinforce the message, but also to reach new officers. The Hamilton police district typically experiences almost 50% turnover annually among front line staff.

Monitoring police performance

Initially, it was agreed that either *Offence Reports* or *Incident Reports* (whichever had been completed) for domestic violence arrests would be passed on to HAIP. If correctly filled in, these forms had the information necessary for monitoring, including names and addresses of the offender and victim, a brief description of the event and the outcome. With such information, it would normally be possible to contact victims and ask them if they were satisfied with the performance of the police. However, in many instances, these forms were either not being completed or not being passed on to HAIP. This became clear from the *Police Diary* published in the *Waikato Times*. This daily summary of police activity would regularly note significantly more “domestic incidents” than had been notified to HAIP.

As noted in Chapter 5, the most inclusive data on police attendance at domestic violence events is contained in *Telephone Logs*. Until recently, the *Telephone Logs* consisted of hand-written telephone message forms, which were, unlike other police records, almost invariably completed every time a 111 call was received. HAIP had

originally asked for the *Telephone Logs* but had been denied these because they contained all 111 calls, not just those relating to domestic violence. Police revised this in the light of the demonstrated failure of some officers to pass on the domestic violence-related *Incident Reports* and *Offence Reports* and for a short period, copies of domestic violence-related telephone messages were handed to HAIP. However, this improved the situation only slightly in that the HAIP cell visitor¹ and the Court Advocate still regularly encountered men arrested on domestic violence offences for whom there was no matching telephone message form.

Eventually, the police agreed to a HAIP staff member each morning reviewing the *Telephone Log* for the previous 24 hours and photocopying those message forms which she thought related to domestic violence calls. Consistently, the advocate identified events as domestic which had not been so coded by the officers involved. Two types of relevant events were commonly excluded in the police classification: partner assaults which occurred outside the home and burglaries committed by men on the homes of their estranged partners.

The *Telephone Logs* were important because they were the only reliably completed set of information relating to events in which no arrest was made. For this reason, in the following analyses, *Telephone Logs* have been used to calculate the frequency of arrests. However, the *Logs* have significant limitations. The description of the event is limited to the telephone operator's brief summary of the call: it is usually not possible to form a strong view as to whether or not an arrest would be justified. Frequently, names and/or addresses are missing or incomplete, so that follow up with the caller is impossible.

Approximately 18 months after HAIP was established, another source of data became available, *Family Incident Reports* (commonly referred to as the *Pol400*). This form is a template for collecting information about family violence incidents which can then be entered into the police family violence database. Where completed, the *Pol400* provides quite an extensive set of data from the incident. Importantly, it usually contains sufficient information for HAIP staff to identify and locate victims.

¹ The cell visitor was a HAIP staff member who attended the police cells each morning to talk to domestic violence offenders arrested overnight. His role was explain the court process to defendants and to describe the HAIP men's education programme.

Unfortunately, it quickly became apparent that these forms were not being filled in consistently. Anecdotally, it appeared that the *Pol400* was being completed in probably fewer than 50% of the incidents attended, although senior police managers insist that this has improved over the past few years.

The introduction of the *Pol400* has not been the only change in relevant record keeping which has occurred during the life of HAIP. In recent months, the way police handle 111 calls changed dramatically with the introduction of centralised call-handling and computer-aided dispatch. Now, emergency calls in the Hamilton district are answered by operators in Auckland who dispatch cars via the computer system. Instead of hand-written telephone message forms, the *Telephone Log* now consists of computer-generated text entered by the Auckland operators.

There were other ways in which police performance was monitored. Call out advocates routinely asked women about the police attendance. Women's education and support groups would discuss police action (or inaction) from time to time. In providing support for individual women, HAIP advocates would often come across evidence of police failure to follow protocols. Through these means, problems in policing could be identified and raised with the police inspector who held the family violence portfolio and was responsible for liaison with HAIP.

It can be seen, therefore, that the day-to-day monitoring of police performance was no straight-forward matter. It would be surprising if it was. The advent of HAIP represented a type of external accountability never before experienced by the police in this country. It is not surprising that there was some resistance to it (see discussion below). Moreover, it should be noted that the varied, incomplete and evolving record keeping systems of the police have significantly hindered the formal evaluation of police performance. The most inclusive data (the *Telephone Logs*) are somewhat ambiguous. Records which include more detailed information are either limited to arrest cases (as in the case of *Offence Reports*) or have gaps (that is, *Pol400s* are often missing and were not used prior to 1992).

Making arrests

What impact did the advent of HAIP have on the likelihood that men who assaulted their partners would be arrested? Answering this question is complicated by the problems in record keeping discussed above. Indeed, one consequence of HAIP was

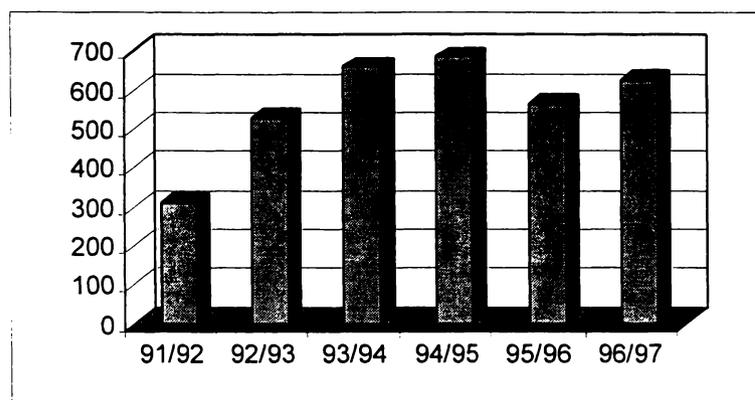


Figure 10.1
Number of domestic violence arrests by year (July - June)

that the project database provided an unique set of data related specifically to domestic violence cases. As shown in Figure 10.1, the number of domestic violence arrests recorded in the HAIP database increased significantly over the first 3 years of the project and has since appeared to remain relatively stable. Of course, by itself, this set of data does not necessarily mean that the increase can be attributed to HAIP. The increase may have begun before HAIP and/or may have occurred without HAIP, but as shown below, there is some evidence supporting the view that HAIP was an important factor

The increase in the number of arrests was far less steady than Figure 10.1 might suggest. When the same data is presented month by month (Figure 10.2), it quickly becomes apparent that there are seasonal variations. Typically, the number peaks over Christmas or shortly after Christmas, declines during the autumn and increases again in the spring. This coincides with the experience of women's refuge workers who commonly report high occupancy level over the mid to late summer. There is an important implication for researchers here: domestic violence statistics need to be monitored over a period of years, not months, if seasonal fluctuations are not to be mis-interpreted as long-term trends.

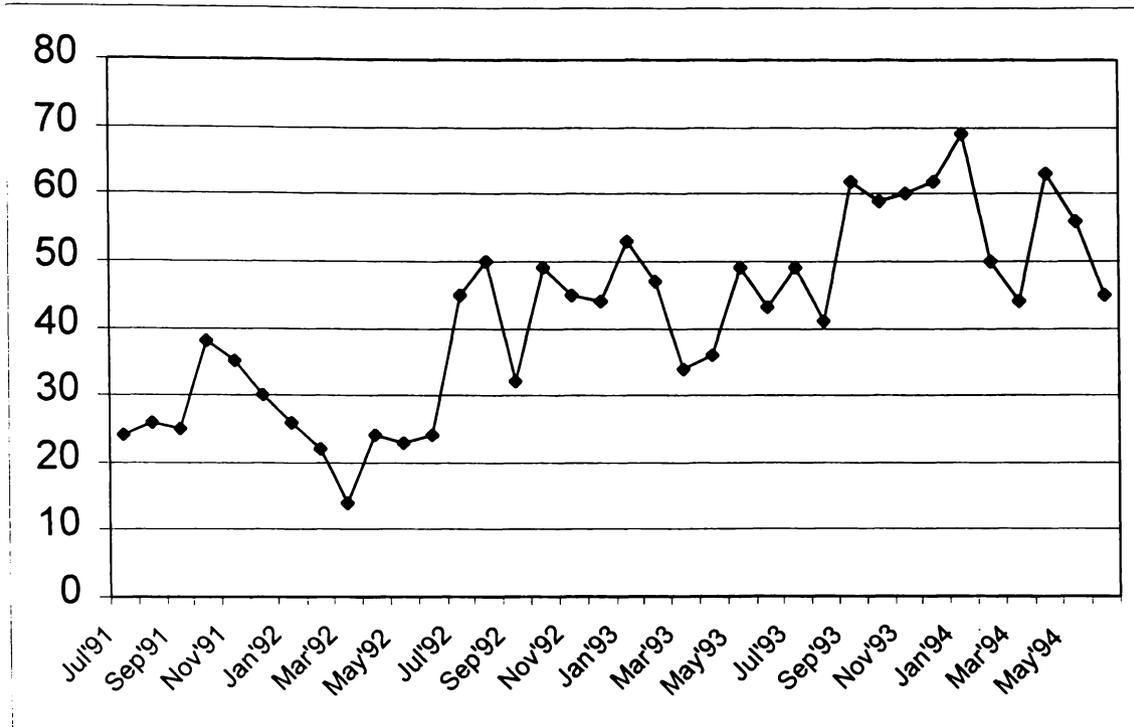


Figure 10.2
Number of arrests by month

While one might debate the contribution HAIP has made to the increase reflected in Figures 10.1 and 10.2, the fact of the increase seems incontestable. The HAIP database is very accurate in recording domestic violence arrests in the Hamilton district. Even if police have not notified HAIP of an arrest, such arrests are almost invariably picked up by either the HAIP monitor (who reviews records of police call outs as described earlier) or the HAIP Court Advocate (who attends the District Court daily).

For the reasons just discussed, we know much less about the incidents which do *not* result in arrest than those which do. This means that it is quite difficult to determine the extent to which the increase in arrests reflects an increase in the *number* of incidents reported to the police as opposed to the extent to which it reflects an increase in the *proportion* of such incidents resulting in arrest.

There is some evidence of a modest increase in the proportion of reported incidents resulting in arrest. In late 1992, a research assistant working under my supervision collated data from police *Telephone Logs* for the period January 1991 to July 1992. Thus our data covered the first 12 months of HAIP's operation and 6½ months of baseline, pre-HAIP data. Unfortunately, we were unable to extend our retrospective baseline data any earlier: by the time of our analysis, the telephone logs for 1990 had been shredded.

We sampled 7 days from each month (so that each month's sample included one Sunday, one Monday etc) and identified every domestic violence-related incident for the sampled days. We included in the sample all incidents categorised as "domestic" by the police as well as other incidents in which there was an indication that the alleged offender was in a dating, marriage or marriage-like relationship with the victim, or had previously been in such a relationship. (Thus certain incidents which had been assigned by police into categories such as burglary, wilful damage and trespass were included.) The outcome of the police intervention was coded as either arrest or non arrest.¹ From this data, it was possible to calculate the proportion of incidents resulting in arrest, both before and after HAIP's establishment.

Given the seasonal variation mentioned above, the most appropriate comparison is one between corresponding months from the same time of year. During the period January to June 1991 (that is, the 6 months before HAIP began), 14.6% of our sampled incidents resulted in arrest. During the corresponding period in 1992, the proportion was 16.6%.

The 2% increase in the proportion of incidents resulting in arrest is suggestive but the difference between the samples failed to reach statistical significance (using chi square). Certainly, any increase in the propensity of police to arrest is unlikely to have contributed very much to the increase in the overall number of arrests.

Of course, these samples come from early in the life of HAIP. One might expect that the rate of arrests might have increased over subsequent years as the protocols

¹ This may have meant a slight under-estimate of arrests. Among the incidents we coded as non-arrest were those which the police on duty at the time had assigned the outcome code 6 ("offence report"). According to police supervisors, a small percentage of such incidents are followed up and some of these may result in an arrest during a subsequent shift but such "delayed" arrests are rare.

become more routine. Unfortunately, I have been unable to repeat this analysis with later samples because of the changes in police record keeping procedures.

Neither is it possible to say what proportion of incidents *should* result in arrest if the protocols were fully implemented. As explained in Chapter 5, police cannot make an arrest unless there is evidence that an assault (or other offence) has occurred. For some unknown proportion of reported incidents this will not be the case, either because an offence did not occur (e.g. when police are called by neighbours concerned by shouting) or because there is simply insufficient evidence (e.g. when there are no obvious injuries and both victim and offender deny violence occurred). However, a further analysis of the 1992 data produced strong evidence that at least some police were not making arrests when they could have done so. In this analysis, I compared the data from the five police sections. This showed that while one section had arrested the offender in 22% of the incidents they attended, for the other four, the proportion ranged from 9% to 13%. (This difference was significant at the 0.025 level.¹) According to some of the police officers I interviewed, this difference was largely attributable to the priority the respective section sergeants gave to arresting perpetrators of domestic violence.²

Holding abusers in custody

The data suggest that, at least initially, the first part of the protocols were implemented unevenly: that is, police could not always be counted on to make an arrest when warranted. However, they could generally be counted to implement the second point of the protocols. That is, they almost invariably detained arrested perpetrators overnight. An analysis of the HAIP database shows that of the 1497 arrests made over the first 3 years of the project, police bail was denied the offender in all but 60 instances. Half of these failures to observe the no-bail protocol occurred within the first 6 months of the project. During the third year of the project, only 6 of the 660 offenders arrested were given police bail.

¹ Chi square. This data covered a 5-week period, which meant that each section had rotated through the various shifts exactly once and thus had had equal exposure to busy and less busy parts of the week.

² Unfortunately, the changes to centralised call-handling and a computer-aided dispatch system has made it impossible to replicate this analysis.

Numerically, the failure to detain perpetrators overnight was a small problem. Yet to the women concerned, it can be a major concern, especially if perpetrators are released without the police notifying victims. For “Peggy” (see Chapter 1), it was fatal.

Referral to the crisis line

The third part of the protocols called for police to refer victims to HAIP. The crisis line was to be called as soon as practicable so that call out advocates could visit the victim. This was seen as an important part of the intervention process. The call advocates were to:

1. Provide immediate support to victims of domestic violence.
2. Arrange for women who needed safe housing to be admitted to the appropriate women’s refuge (Te Whakaruruhau in the case of Maori women, Hamilton Refuge and Support Services in the case of non-Maori women).
3. Explain to women what was likely to happen as their partners were processed by the criminal justice system (e.g. bail practices, court processes).
4. Seek women’s views about the perpetrator being on bail (e.g. What fears did she hold for her safety? Did she want the standard non-association order varied so that he could return home?)
5. Collect information about the impact of the assault and the perpetrator’s previous history of violence, information which could be used in victim impact reports and in briefing probation officers preparing a pre-sentence report on the offender.
6. Solicit feedback from women about the police response to her call.

Thus, the call out advocacy service was a crucial step in the intervention process. It helped to meet the immediate safety and autonomy needs of victims. It assisted the process of holding perpetrators accountable for their violence. It provided a means of monitoring police performance and a measure of accountability to victims.

Effective intervention required the police to be both consistent and prompt in calling the crisis line. If a referral was not made or if the call to the crisis line was delayed

(e.g. when police called from the police station at the end of their shift), it was unlikely that HAIP advocates would be able to make contact with victims. Many women leave their homes almost immediately after their partners have been arrested, either to seek support and/or to avoid their partner's return.

In the early days of the project, a consistent complaint from call out advocates was that police either forgot to make a referral or delayed in ringing the crisis line. Consistent with the analysis described above, these problems seemed to be particularly associated with one police section. By the end of the first year, referrals to the crisis line were being made fairly consistently. For example, 15 of the women we interviewed early in 1992 had called the police during the preceding 6 months. Three of them had not received a visit from the call out advocates. Two of these women told us that they had left their homes immediately the police had departed and the third said she left approximately two hours later.

Some police went beyond what the protocols called for and made referrals to the crisis line when an arrest had not been made. This did not necessarily mean that the women concerned were visited by call out advocates. The crisis line policy was not to dispatch advocates if there was a risk that the abuser would be present in the home or return to it during a visit. The referral of women whose partners had not been arrested did, however, mean that women could be sent information about HAIP and other supports available to them.

Maintaining the call out advocacy service has been a major undertaking for the two Hamilton refuges. There have been times when the service has been close to collapse. The work is stressful and potentially dangerous. The danger was especially evident when call out advocates responded to non-arrest calls. In such cases, it was not always clear whether the perpetrator was still in the area (or even in the house) and what problems the call out advocates might encounter when they arrived at the scene. The failure of police to follow the protocols can endanger advocates. In one instance, a referral was made but the police failed to state that the abuser had not been arrested. He confronted and threatened the advocates when they arrived. Te Whakaruruhau has sometimes had a male accompany the women advocates if there is a possibility that the perpetrator is still in the vicinity.

Police responsiveness to women

The call out advocates recorded feedback from women about the responsiveness of the attending police officers. Twice during the pilot phase of the project I sampled the advocates' reports in which this feedback was collected: 39 reports from August 1992 and 111 reports from June to August 1993.¹ My analysis showed overwhelmingly positive evaluations of the police. For example, in the earlier sample, 25 of the 39 reports contained only positive comments: in the later sample, 85 of the 111 reports contained only positive comments.

Police officers who received positive evaluations were those who:

1. were supportive, patient, reassuring and explained things carefully;
2. followed up abusers who had left the scene to make an arrest;
3. treated abusers with respect, without condoning their behaviour, so that they did not become more aggressive;
4. remained with women while they packed their belongings and/or until the call out advocates arrived;
5. allowed women to have a support person present while being interviewed;
6. recovered firearms owned by the abuser;
7. provided transport to women (e.g. to accident and emergency clinics);
8. provide women with information about protection orders; and,
9. where the abuser was not in custody, provided protection to women who returned home to collect their belongings.

On the other hand, some aspects of the police response were problematic for victims. Some women reported that police officers attempted to conciliate between the couple instead of making an arrest (although it is not clear how often this happened where there was evidence to justify arrest). The advocates reported some

¹ In both cases, all reports from the designated period were included. However, it should be noted that these reports do not cover all police call outs during the periods concerned. Obviously, women who were not referred are not included. There were also a small number of cases in which the call out advocates failed to file a report.

police officers as having made derisive comments about victims in the advocates' presence. Some women were reported as feeling that the police officers did not take them seriously. Comments from call out advocates suggested that this was particularly likely if the victim and the assailant had been drinking before the assault occurred. Indeed, some of the feedback from the call out advocates suggested that certain police officers made distinctions between "good" and "bad" victims, and responded to women according to which category they fitted. The stereotypical "good victim" was quiet, submissive, polite and well-spoken. The stereotypical "bad victim" was drunk and aggressive or was small, had dyed blonde hair, was dishevelled, tired and had a partner who was gang-related or appeared to be a part of the drug or petty criminal scene.

A consistent concern from the call out advocates related to the way police officers conducted questioning at the scene. It was common practice for the officers to separate the parties and for one of them to question the woman privately. The officer would then ask her to repeat her story in front of her abuser. Advocates reported that many women were too terrified to do this. In at least one instance the advocates themselves witnessed an assault but the victim refused to say anything about it in front of the abuser. In another instance, the police had the abuser and the victim both sitting on the same bed while they questioned the victim. According to the advocate, it was only when she sat between the couple that the woman (reluctantly) told the police about the assault.

There is some ambiguity about the reasons for requiring the victim to repeat her allegation in the presence of the abuser. According to some of my police officer informants, the practice avoids problems with hearsay evidence. The abuser's response to the allegation can be used as evidence in court (e.g. an acknowledgement that he did assault the victim, being an admission made against self-interest, is admissible in court as an exception to the hearsay rules). In fact, in terms of the Evidence Act, the same objective could be achieved if a *police officer repeated the victim's allegation*. Indeed, according to a police legal adviser I spoke with, the only reason for requiring the victim (as opposed to a police officer) to repeat the allegation in the abuser's presence is that this tests the commitment of the victim to giving evidence. This seems contrary to the domestic violence arrest policy, which aims, among other things, to remove from victims the responsibility for initiating a complaint and giving

evidence. Thus it seems that police investigations would be more effective and safer if the victim's story was repeated to the abuser by a police officer, rather than by the victim herself.

A final, but very important point about police responsiveness to women is that some women who call the police, or who have the police attend in response to someone else's call, will themselves be arrested. Certainly, the implementation of arrest policies in some other jurisdictions has been accompanied by complaints from battered women that they have been arrested for defending themselves (Harvard Law Review, 1993; Shepard, 1993; Stanko, 1995a). Over the first 3 years of the Hamilton Abuse Intervention Project, there were 37 arrests of women for domestic offences, compared to 1,456 arrests of men.

As Table 10.1 shows, in 29 instances during the first 3 years of the project, women were arrested for an offence against an adult man, generally either a partner or boyfriend¹. Should these women be regarded as perpetrators of violence or were they using violence in defence of themselves or their children? My analysis of project records suggested a partial answer: the majority of the women who were arrested appear to have been themselves battered.

Table 10.2 (page 240) shows a summary of the cases in which women were arrested for offences against their partners, together with information about the history of both partners as recorded by HAIP during the period July 1991 to April 1998. Included in the analysis of personal histories are all recorded incidents which involved either party, irrespective of whether they were the designated perpetrator or the designated victim. Here, *incident* has been defined broadly to include any police call out, both those resulting in arrest and those which did not. But while *incident* has been defined broadly, in other ways, this analysis undoubtedly under-estimates the frequency of assaults as it does not include unreported assaults. Given the lapses in police referral procedures, it is also likely that some reported incidents have not been recorded in the HAIP database.

¹ While we can assume that most of the 29 cases involve intimate partners, this may not always be the case. In some instances, the information on the relationship between the parties is sketchy.

Table 10.1
Number of women arrested over first 3 years of project

Arrested for	Number
Offence against adult man ¹	29
Offence against adult woman	3
Offence against a child	2
Information on victim missing	3
Total arrests of women	37 ²

1. In 9 instances, the man was also arrested.
2. The number of women arrested = 36 (1 was arrested twice)

Within these limitations, the document analysis reveals compelling evidence that most of the women arrested were themselves battered. For example, as shown in the third column, most of the male complainants (24 of 28) have also been recorded as assailants, often on more than two occasions. Moreover, the admittedly incomplete information about the nature of the men's violence and/or the sentences imposed upon them suggests that many of the men committed very serious assaults. Ten of the men either served jail time, were sentenced to periodic detention and/or ordered to attend HAIP for assaults on their partners¹. Three were convicted of breaching protection orders. The violence these 24 men are recorded as inflicting on their partners includes strangling, sexual assaults and attacks with weapons. Equally concerning is that 5 of the men had prosecutions against them withdrawn or dismissed because their partner failed to testify against them. While it may be presumptuous to assume that all of these women failed to testify because they feared their partners, it seems reasonable to assume that this was often the case. One man twice avoided conviction under these circumstances and he assaulted his partner again the very evening after the second unsuccessful prosecution was dismissed.

¹ This is an under-estimation of the sentences imposed. The outcomes of some of the prosecutions against the men are unknown.

Table 10.2
Circumstances in which women arrested

#	Couple history		Other history	Plea	Outcome	Other notes
	Woman assailant	Man assailant				
12	1	3	(1)	N/k	3 mo jail	This offence involved a knife.
394	1	7		NG	N/k	Man's offences include breaches of protection order and of bail
684	2	1	(2)	G	12 mo CUICU	Woman twice convicted of assault, man once. Each got protection orders against other
709	1	7		NG	Dismissed on the evidence	Man served jail time for partner assault. At one stage police called for his violence on 2 consecutive nights
716	1	2	(3)	G	6 mo CUICU	Man's offences include breach of protection order
934	1	3		G	7 mo CUICU	One week before this incident, woman sustained head injuries in partner assault.
1042	2	0		G	8 mo CUICU	Police refer to woman having psychiatric history
1062	1	1		N/k	N/k	For his assault, man got 4mo PD, final warning (of imprisonment)
1294	1	1		G	Dismissed without conviction	Man not arrested after refusing to leave partner's address. She entered refuge.
*1368	1	4		NG	Dismissed on the evidence	Man twice avoided conviction for lack of partner's evidence. Police refer to him strangling her.
1380	1	3		G	Fined \$150	Man once avoided conviction for lack of partner evidence. He was convicted for assault on stranger
*1438	1	4		NG	Dismissed on the evidence	On this occasion, man ordered 12mo CUICU. His offences include breach of protection order.
1737	3	1		G	Diversion	Woman charged with trespass only - man convicted for sexual and other assaults
1846	2	0		G	6 mo CUICU	Woman charged with trespass (no violence)
*1900	1	2		NG	Withdrawn	Man's charge dismissed
1934	1	2	(4)	N/k	N/k	Man subsequently got 2 mo PD and HAIP. Also avoided conviction for lack of partner evidence
*2026	1	4		G	Community care	Man got identical sentence
2028	1	1		G	Diversion	Woman's offence was trespass. Man earlier discharged without conviction for partner assault
2053	1	7		G	Ordered to HAIP	Man's offences included breach of protection order. Served terms of PD and jail
2129	1	1		G	3mo PD, ordered to HAIP	Man subsequently ordered to HAIP and given suspended jail time for partner assault
*2261	1	4		NG	Dismissed	Man earlier sent to HAIP. Here and 12mo later avoided conviction for lack of partner evidence(6)
*2450	1	6		G	9 mo supervision	Man's charge withdrawn for lack of partner evidence. His offences included assaults on child, police
2496	1	4		G	To pay reparation.	Woman charged with wilful damage only (no assaults) Man twice jailed for serious assaults
*2528	1	2		NG	Withdrawn when woman left NZ	Man ordered to HAIP and subsequently 18mo imprisonment for assault on child
*2541	1	3		NG	N/k.	Man gets 6mo PD, 9mo supervision HAIP, and suspended imprisonment.
*2606	1	4		NG	Ordered to HAIP	Man gets identical sentence. Earlier sent to PD and HAIP for partner assault
2665	1	0		G	Fined \$200	
2677	1	0	(5)	NG	Withdrawn	

- Notes**
- (1) Woman recorded as also victimised by two other male partners
 - (2) Woman assaulted son.
 - (3) Man assaulted son
 - (4) Man assaulted step daughter
 - (5) Man breached another woman's protection order
 - (6) He committed one of his assaults the evening after court.

Key	
* = mutual arrests	PD = Periodic detention
N/k = not known	CUICU = Come up if called upon - suspended sentence
G = guilty plea	NG = not guilty plea

On the other hand, there is only limited evidence of serious violence perpetrated against the men in this sample. Certainly, the sentences imposed on those women who were convicted tend to suggest that judges did not regard the violence as being serious (which under section 5 of the Criminal Justice Act would have triggered a presumption of imprisonment). There was one important exception: one woman was imprisoned for 3 months for a knife attack on her partner. Another woman was sentenced to 3 months periodic detention. The rest of the women sentenced were either ordered to pay small fines, given suspended sentences or sentences in which rehabilitation appeared to be the focus. It is noteworthy that 5 of these arrests were for non-violent offences (3 instances of trespass, 1 of wilful damage and 1 of disorderly behaviour). Moreover, unlike the men, the women were generally one-time offenders. Thus the weight of evidence tends to support the view that the men were generally the primary aggressors in these relationships. There do seem to be some exceptions: four of the women offended against men who never appeared in the database as assailants (although in two cases, the women were charged with trespass only, and in circumstances consistent with a pattern of controlling behaviour by their partners).

As Table 10.2 shows, in 9 instances, both partners were arrested. These are particularly interesting situations. Are they instances of genuinely mutual violence or is there some misogynous bias operating such that battered women are arrested for the justifiable use of force in self-defence?

There is reasonably detailed information about just one of these 9 instances of mutual arrests. It makes interesting reading.

In respect of incident number 1368, the following is recorded on the call out advocate's report, completed in an interview with the woman victim/assailant.

Describe any threats made: To kill the 3yr old. Accusing her of all manner of things. Threat to kill. Swearing. Wishing she was dead.

Describe physical assault: He accused her of stealing his things. (He) did not look properly. He came in said he was going to call the police, get a trespass notice. He started pushing her, grabbed her by the throat. She fell backwards and stopped breathing. He loosened his grip but not much. She managed to get up begging to be allowed to breathe.

Describe visible injuries: Scratch on cheek. Finger scratch marks on back of neck.

In court, the charges against both parties were dismissed.

A second incident (1438) shows the sort of constraints some battered women may face. The crisis line operator has recorded the following information from the police.

Assault happened last night. He pushed her out of the door. She rang up last night but didn't want to do anything about it. Police went round today after Denise¹ went to her lawyer. (Male) arrested about 11pm tonight. If he makes a complaint Denise may be arrested too as she hit him.

Denise fared better when the case got to court. The charge against her was dismissed. Her partner was convicted, the first of three convictions for offences against her, and ordered to come up before the court if called upon within 12 months.

While there was limited information about the events immediately preceding the mutual arrests, there was some information about the broader context of the relationships. For example, one of the men involved in the mutual arrests was subsequently sentenced to 18 months jail for cruelty to a child. Two served terms of periodic detention. Together, these nine men accounted for 33 offences against their partners (mean = 3.67). On the whole, it is difficult to see how the violence in these relationships could have been particularly mutual.

There was a view among women's advocates that the arrest of women (usually) reflected a backlash against the project. This may well be the case: as discussed in the next section, certain police officers were suspicious and resentful of the project and the limits the protocols placed on their ability to exercise discretion. However, quite apart from the attitudes of individual police officers, it is perhaps not surprising that some women were arrested in questionable circumstances. The arrest policy is not only gender-neutral: it is a-contextual. According to the 1992 statement of the policy,

- (a) Police action at domestic disputes is to be centred on whether an offence has occurred. **The history of the relationship and alleged provocations are of little relevance.**
- (b) When an offence has been disclosed involving assault or danger to a victim from an offender, and there is sufficient evidence to arrest the offender, he/she should be arrested and charged. (Police Commissioner, 1992, p. 11) (emphasis added)

There were good reasons why police officers were instructed to disregard the history of the relationship. As shown in Chapter 5, too often police have accepted the rationalisations abusers made for their violence, appealing to notions of what was expected of reasonable women and arguing provocation if these expectations were

¹ Pseudonym substituted for real name.

not met. However, a power and control analysis suggests that context, including the history of the relationship, is very important to an understanding of the dynamics of domestic violence. An a-contextual focus on specific actions may mean that the woman who defends herself from imminent attack or who pushes away the batterer who is standing over her will be arrested.

In some jurisdiction, arrest policies have been amended to take account of these types of factors. One approach is to include a primary physical aggressor test. For example, the Dubuque, Iowa, police department policy states:

The duty of an officer to arrest extends only to those persons who are believed to have committed an assault; therefore, persons acting with justification (self-defence) as defined in State Code Chapter 704.3 are not subject to mandatory arrest. As described in Chapter 236.12 section citing mandatory arrest, the officer shall arrest the person whom the officer believes is the primary physical aggressor.

In identifying the primary physical aggressor, a peace (police) officer shall consider the following:

1. the need to protect victims of domestic abuse;
2. the relative degree of injury or fear inflicted on persons involved;
3. any history of domestic abuse between the persons involved.

The peace officer's identification of the primary physical aggressor shall not be based upon the following:

1. consent of the victim to any subsequent prosecution,
2. the relationship of the persons involved in the incident,
3. the absence of visible indications of injury or impairment. (posted to FIVERS discussion group, 25 October, 1995.)

It may be that introducing a primary physical aggressor test to the New Zealand policy would reduce inappropriate arrests of battered women.

Police relationship with HAIP

Historically, the relationship between women's advocates and the police has not been good. Implementation of the HAIP protocols required a level of co-operation well beyond that which generally prevailed in New Zealand. The quality of the relationship between police and HAIP was always likely to be an important factor in determining the effectiveness of reform.

At the highest levels, the police appeared to be very supportive of HAIP. The Police Commissioner's representative on the Family Violence Prevention Co-ordinating Committee became the convenor of the Intervention Working Party which oversaw the establishment of the pilot project. He had visited the Duluth project and actively

promoted the intervention philosophy within New Zealand (e.g. Smith,1991). As the officer in charge of family violence policy nationally, he made repeated trips to Hamilton to talk to local police and encouraged project staff to let him know about any problems with the police response.

Within the Hamilton police, the family violence portfolio was held by the second-ranking officer, an inspector. He attended the monthly inter-agency meetings where he regularly fielded complaints about his officers' actions (or inaction). He earned a reputation among women's advocates as being conscientious in following up these complaints. This does not mean that complaints were always resolved to the advocates' complete satisfaction. For example, if the complaint concerned a failure to arrest, the outcome of the inspector's inquiries was typically an explanation why an arrest could not be legally justified in the specific circumstances. On the other hand, recurring problems typically led to the issuing of an internal memorandum and the inspector actively monitoring the problematic practices. Women's advocates also described the inspector as being very helpful in organising effective police intervention in particularly dangerous cases.

But while senior police managers seemed supportive of HAIP, this was not necessarily the case at lower levels in the police hierarchy. My interviews with police section supervisors in February 1992, some 8 months after the launch of the project, revealed some quite negative attitudes towards HAIP and the new protocols. For example, in the words of one sergeant, the protocols were "just another thing to do," resented by front line officers who saw themselves as already overworked. Some officers clearly resented the monitoring role HAIP played. Others characterised HAIP staff as "do-gooders." One senior sergeant (the supervisor of one of the "low arrest" sections identified earlier) described himself as generally supportive of the arrest policy but adamant that "it cannot be black and white." He would not expect an arrest to be made where the parties gave conflicting accounts and there was no independent evidence of what had happened. Neither would he consider arrest where the violence was, in his terms, "trifling."

A major theme from these interviews was that HAIP was seen as anti-male. This was hardly surprising. In many ways, the police service is the epitome of a patriarchal institution. Within this context, the explicitly gendered analysis of domestic violence presented by HAIP staff in the initial police training was always likely to be perceived

by many as anti-male. The women working with HAIP were often perceived as lesbian, correctly in some cases, but more often not. It is very likely that homophobia among some police officers contributed to the negative attitudes towards HAIP. The point was made quite explicitly by one sergeant who said that the dress of some HAIP advocates conformed to a stereotype of butch lesbians. It seemed to me that he intended his comment to be helpful. He appeared to assume that we shared a common view: that lesbian women could be tolerated to a point but that it was only natural that they should not be “out” if they expected to be taken seriously.

The belief that HAIP was anti-male appeared to be confirmed among some police officers after the call out advocates declined to visit a man whose woman partner had been arrested for an assault on him. From the point of view of the advocates, this was not an appropriate case for them. Even if the man’s partner was the primary aggressor, it was not the role of *women’s* refuge workers to support *male* victims. On the other hand, some police seemed to believe that HAIP should provide a gender-neutral service. (Eventually, it was agreed that the (male) cell visitors could be contacted to provide support to male victims. I am unaware of this ever being used.)

The February 1992 interviews also identified some positive attitudes among police towards HAIP. After 8 months of operation, HAIP had earned some respect. As one sergeant told me,

They (HAIP call out advocates) have kept going, unlike some other do-gooders who tend to lose interest when they are called out in the middle of the night. Like you get nothing from Social Welfare now after hours.

One of his colleagues reinforced the point that consistency was important to gain police respect. “If they don’t hang in there,” he said, “they will be just another do-gooder.”

In the context of police culture, the term “do-gooder” is pejorative, but its use to describe the call out advocates should not be taken as indicating that their work was not valued at all. Each of the supervisors I spoke to felt that one of the positive things about HAIP was that the rapid response of call out advocates meant that police officers could hand victims over and attend to other work. In fact, in contrast to the earlier view, some sergeants considered that HAIP was saving police time. Moreover, while some officers resented the imposition of another accountability

system, others agreed that the police ought to be more accountable for their actions (or inaction).

HAIP may also have helped address one of the problems in policing domestic violence which was identified in Chapter 5: that is, a contributing factor to police reluctance to arrest abusers was frustration that arrested men were unlikely to be successfully prosecuted and even less likely to receive a meaningful sentence. Some of my informants were of the view that knowing the court would direct convicted abusers to a rehabilitative programme had helped some officers overcome the resistance they may have had to making arrests. HAIP fostered this by regularly reporting back to arresting officers the result of the prosecution and the sentence imposed.

It is important to understand the inter-linking nature of the criminal justice system. The courts cannot impose meaningful consequences on men who batter if the police do not make arrests. Conversely, the police will be discouraged from making arrests if the courts do not convict offenders and impose meaningful consequences. It is to the second part of this chain that the discussion now turns.

District Court: prosecuting batterers

If implementation of the police protocols was sometimes inconsistent, there was at least the major advantage that the police hierarchy were quite prepared to use its power to enforce compliance. Police managers were generally supportive of protocols which restricted the discretion available to patrol officers. On the other hand, without the support of legislative change or legal precedence, it was never going to be easy to persuade judges to accept protocols which reduced judicial discretion.

Of course, judges are not the only decision makers involved in the prosecution of abusers. Police, probation officers and court officials also play key roles. At the outset, HAIP negotiated with these groups the following protocols.

1. The police, as noted earlier, instituted a policy of normally charging offenders under section 194(b) of the Crimes Act and holding them in the cells overnight.
2. The police agreed to a project representative having access, each morning, to offenders arrested overnight. The cell visitor, as this role was designated, was to

outline to arrested men the court process, the likely consequences of a conviction and the men's education programme.

3. The police undertook to routinely seek non-association orders against men given bail so that offenders would be prohibited from making contact with their victims during any remand period. Two sorts of exceptions applied. Firstly, for the most serious offenders, the police would oppose bail outright. Secondly, police would not seek a non-association order if the victim had indicated to the call out advocate that she was happy to have the offender return home.
4. The police and court administrators undertook to give priority to defended domestic violence charges to ensure that these were disposed of as quickly as possible. The main point here was that regular space was reserved in the court calendar for domestic violence defended hearings, rather than having them join the end of the queue for hearing times. (This meant that the wait for a defended hearing was typically 4 to 6 weeks rather than the 6 to 9 months which applied to general criminal cases.)
5. The HAIP Court Advocate was to be given official status in court. That is, she was to be seated in the front part of the court usually reserved for police, defence counsel and probation officers and she was to be given access to the daily court list showing names of offenders and the charges they faced.
6. The Probation Service agreed to provide stand-down reports for domestic violence offenders. That is, when a pre-sentence report was required, probation officers would immediately interview the offender, make any vital enquiries and prepare a brief report so that he could be sentenced the same day that he was convicted rather than seeking the standard two-week remand for a full pre-sentence report to be prepared.
7. The Probation Service agreed that the standard recommendation for domestic violence offenders would be a sentence of supervision which included a direction to attend the HAIP men's education programme. This did not preclude a parallel recommendation for a concurrent sentence of periodic detention. Nor did it preclude a recommendation for imprisonment in the most serious cases.

Subsequently, there was a refinement to these protocols. Police prosecutors adopted a form of “no drop” policy in respect of prosecutions for domestic violence offences. Under this policy, women who asked for charges to be dropped and/or who told police that they would not give evidence against their abuser were advised to come to court and tell the presiding judge why they did not want the prosecution to proceed.

Before the launch of the project, the project co-ordinator, together with representatives of the Police, court officials and the Probation Service, met with the District Court judges. (I attended this meeting as part of the project group.) This was not the first time the project had been discussed with the judges as the judiciary was represented on the Family Violence Prevention Co-ordinating Committee and the project had been discussed with them from time to time by court and other officials. It was, however, the first time project personnel had met the judges and it appeared to be a key moment in that community and institutional representatives were making a unified submission to the judges.

The proposals described above appeared to be well received by the judges. This was confirmed in follow up interviews I conducted with them six months later. Without exception, the judges supported the integrated approach which HAIP represented. They welcomed the establishment of a programme for men who batter, seeing this as a positive sentencing option. They sought reassurance that probation officers would enforce directions to attend HAIP and bring back to court men who failed to attend. To this extent, they were supportive of attempts to improve the accountability of offenders. But, and this is crucial, they made it very clear that each case would have to be decided on its merits. They would consider police submissions on bail. They would peruse victim impact information collected by HAIP. They would have regard to probation officers’ recommendations. But the scope of judicial discretion had to remain unfettered.

Of course, the independence of the judiciary is a major constitutional principle, one which provides a measure of protection for citizens. But it is interesting to see how this was played out in the context of domestic violence intervention in Hamilton. Over the years, various invitations have been extended to judges to visit the HAIP office and/or to attend inter-agency meetings. (At one stage, inter-agency meetings were rescheduled, specifically to allow judges to attend during the mid-day court

recess.) With one exception, these invitations have been declined. While it has not been possible to talk to judges about this, it is the view of certain court officials that judges are concerned that attending HAIP inter-agency meetings would compromise their independence. This view is given some credence by the fact that on the one occasion a judge did attend an inter-agency meeting, he spent some time speaking about the importance of judicial independence. From time to time, my colleagues and I have been moved to speculate, facetiously, that judicial independence seems sometimes to equate with being neither for nor against the abuse of women. The cautious attitude of Hamilton judges towards HAIP contrasts, for example, with their readiness to accept invitations to Parentline, the city's largest non-statutory child protection service.

But to return to a theme: the attitudes of judges, like those of other relevant decision makers, is less important than their behaviour in carrying out their functions. The crucial issue is, did the implementation of the HAIP protocols mean that the District Court was more likely to hold batterers accountable for their use of violence? To answer this question adequately requires first an explanation of a key role in the monitoring of both offenders and the judiciary, that is, the Court Advocate.

The role of the Court Advocate

As has been noted earlier, victims have generally had little input into the decision making of the criminal courts (at least within British-derived justice systems such as New Zealand's). The contest is between the Crown and the defence. Victims may be required to give evidence in support of the Crown's case but are, themselves, not a party to criminal proceedings. They are not represented in court. A key objective of the protocols described above was to increase victim input into the decision making of the District Court. The HAIP Court Advocate was a crucial part of this.

As victims are not parties to criminal cases, the HAIP Court Advocate did not represent them in a formal sense. But, informally, she did indeed act as an advocate for women. In relation to individual women who had been offended against, the Court Advocate represented victims' views to police prosecutors, to probation officers, and, when invited to do so, to the presiding judge. By virtue of her monitoring role, she could also be seen as representing the interests of battered women as a class. Indeed, it is impossible to understand the implementation of the

District Court protocols without understanding the day-to-day practice of the Court Advocate.

Each morning, the Court Advocate would obtain information about the cases which were to be called that day in the District Court. The main source of information was the call out advocate reports completed overnight. In addition, the Court Advocate would search HAIP records to identify any defendants who had already come to the notice of HAIP and received comments from the cell visitor about his interactions with the defendant. If possible, the Advocate would telephone victims to explain what was likely to happen in Court, to canvas their need for protection and other orders, and to seek any needed clarification of the information recorded. Thus, by the time the court sitting began, the Advocate would know who the victim was, whether she had been previously victimised by the defendant and what concerns she had about her safety should he be given bail (or alternatively, if she was happy for him to return home during any remand). She would also have the call out advocate's report on the impact of the current assault on the victim. If the defendant had been ordered to HAIP on an earlier occasion, the Advocate would know if he had completed the men's education programme and whether or not he had been assessed as suitable for the programme should he be convicted again.

In theory, much of this information could be available to the Court without the HAIP Advocate's work. Police can and sometimes do collect victim impact statements. They may assess the safety of victims from repeated attacks. Probation officers, if given a few minutes to consult office records, can usually inform the Court about the response of offenders to previous community-based sentences. However, one of the unique features of the HAIP Advocate's role was that this information was collated in one place and, more importantly, collated, processed and presented specifically to represent the victim's perspective.

The information obtained by the Court Advocate was used in a variety of ways. She would inform the police prosecutor about the victim's views on bail. She would pass on to the probation officer information about the impact of the assault, the history of violence in the relationship, and, in the case of a repeat offender, HAIP's view about his suitability for the men's education programme. In time, certain judges seemed to accept her as having a legitimate and significant role to play informing the court and would direct questions to her.

The flow of information was two-way. As well as representing victims' views to Court officials, an important part of the Advocate's role was to inform women what was happening in court. Typically, she would telephone victims after court each day to explain what had happened and the likely implications of those decisions (e.g. decisions in relation to bail). While she did not give formal legal advice, she also provided information to women about protection orders and other legal remedies available to them. In a general sense, the Court Advocate demystified court processes for women.

Support and information for women was particularly important for those who were required to give evidence in defended hearings. For these women, the Court Advocate ensured that they received Law Society pamphlets about giving evidence. She maintained contact with women during the remand period, meeting with them to explain what was ahead, talking through the advantages and disadvantages of giving evidence, and accompanying them to the hearing. This role appears to have made a significant difference: as the analysis presented later in this chapter shows, during the first two years of the project, only one woman with whom the advocate worked declined to testify against her abuser.

The Court Advocate also played a general monitoring role. She systematically recorded the Court's decisions in respect of every appearance (i.e. details of remands, bail conditions, verdicts entered, sentences imposed.) The name of the presiding judge was recorded for each appearance, along with any remarks he (less frequently she) made about either the defendant, the victim or the offence. Problematic practices were thus identified and raised for discussion at inter-agency meetings.

Data collected by the Court Advocate has been used in the following analyses of compliance with project protocols.

Charging offenders under section 194(b)

As discussed in Chapter 5, the Crimes Act specifies a number of offences which may be relevant to domestic assaults. The specific offence with which the offender is charged determines the maximum penalty he will be liable for should he be convicted. I argued in Chapter 5 that in exercising their discretion as to what charge should be preferred in any given instance, police officers seem to invoke a notion of a "fair fight" such that bare-handed assaults (e.g. pushing, slapping, punching) are

seen as less serious than assaults involving weapons (e.g. boots, household objects, knives). I suggested that this notion of a “fair fight” was a male-centred one which did not fit domestic assaults. Without more specific guidelines, the discretion available to police in making decisions about charging domestic violence offenders often tends to minimise the impact of violence against women.

As mentioned above, the HAIP protocols restricted, but did not remove, police discretion in making decisions about charges. In general, domestic violence offenders were to be charged with male assaults female (s.194(b): maximum penalty 2 years imprisonment).¹ Where the assault was “minor”, common assault could be used. (Common assault attracts a maximum penalty of 1 years imprisonment if laid under the Crimes Act (s.196) and 6 months imprisonment if laid under the Summary Offences Act (s.9).)

Table 10.3 provides a summary of the charges laid against abusers during the first year of the project. It shows that 62% of those offenders prosecuted were charged with male assault female. A more complete picture is obtained if one adds the offenders who faced more serious charges (assault with intent to injure, threatening to kill, assault with a weapon, grievous bodily harm).² Doing this shows that 75% of the offenders were charged with male assaults female or a more serious charge.

What of the other 25% of offenders? Should they also have been charged with male assaults female? This cannot be answered conclusively without detailed knowledge of the circumstances of each offence. Some of the offences included in Table 10.3 such as breaches of protection orders and trespasses, may not have involved assaults on adult women, although in the light of the problems discussed in Chapter 5, it is likely that a proportion of such charges did. The most likely area in which there was slippage in the charging policy is those cases in which common assault was the most serious charge. Table 10.3 shows this was the case for 44 offenders. In fact, 10 of the common assaults were committed by women and/or against men, leaving just 34 men (9% of the total number of offenders) who assaulted adult women but who

¹ Under the protocols, more serious assaults, for example those in which there was a clear intention to inflict injury, could be charged with higher tariff offences (e.g. assault with intent to injure: s. 193, maximum penalty 3 years imprisonment).

² I am using “more serious” here to refer to offences carrying a greater maximum penalty. I am not making a judgement about the impact of the assault on the victim.

Table 10.3
The most common charges laid against abusers

Charge ¹	All charges faced		Most serious charge only	
	Number of charges	Percent of abusers ²	Number of abusers	Percent of abusers
Male assaults female	235	62%	217	60%
Common assault	53	14%	44	12%
Assault with intent to injure	24	6%	21	6%
Breach of non-molestation order	23	6%	17	4%
Threatening to kill	19	5%	17	4%
Wilful damage	36	9%	15	4%
Assault with a weapon	14	3%	7	2%
Grievous bodily harm	7	2%	6	2%
Threatening behaviour	6	2%	6	2%
Trespass	13	3%	5	1%
Assault on a child	9	2%	5	1%
All other charges	115	N/A	21	6%

1. This data has been extracted from the HAIP database and includes all charges which were laid during the first year of the project. Only charges faced by offenders on their initial appearance have been included. In a small number of cases, additional charges were laid after the first appearance. Where an offender was charged with two or more counts under one section, only one count has been included.
2. The percentages add up to more than 100% because of those offenders who were charged with more than one offence.

faced the lesser charge of common assault. Although fine-grained analysis of specific cases is also needed, these summary statistics do suggest a high level of compliance with the charging protocol.

On the other hand, there was evidence of resistance to the policy of charging men with male assaults female. This particularly emerged during the second year of the project and focused on the provisions of section 5 of the Criminal Justice Act.

Section 5(1) of the Criminal Justice Act (1985) amounts to a qualified presumption that violent offenders will be sentenced to a term of imprisonment. Specifically, it requires the Court to imprison an offender who has been convicted of an offence punishable by a term of imprisonment of 2 years or more *and* who has, in the view of the court, used *serious violence*, unless the Court is satisfied that there are special circumstances that mitigate against imprisonment. Male assaults female, because it carries a maximum penalty of 2 years imprisonment, brings offenders into the ambit of section 5.

In the first instance, section 5(1) is not a major hurdle for the defence of men who batter. Two options are available. Firstly, the defence may argue that the violence was not serious. Secondly, it may argue that there are special conditions such that the defendant should not be imprisoned. (See Busch, Robertson & Lapsley, 1992, Chapter 13 for a discussion of how the Courts have defined serious violence and determined what are special circumstances.) Certainly, most men convicted of male assaults female avoid imprisonment.

However, section 5(2) of the Criminal Justice Act poses an additional hurdle for repeat offenders because it does not include a *serious violence* test. Specially, this section requires that an offender be imprisoned - again with a special circumstances exception - if he (or she) has been convicted of a second qualifying offence (i.e. one carrying 2 years imprisonment or more) within two years and who has used *violence* in committing those offences. The implication of this is that unlike the "first-time" offender, the repeat offender cannot avoid imprisonment by arguing that his violence was not serious (although he may still advance special circumstances for not being imprisoned).

It has been the implications of a repeated conviction that has led to resistance to the charging policy. It was argued by some lawyers and some of my police officer interviewees that charging men with male assaults female means that, for example, a man who, within two years, is twice convicted of slapping his wife faces a term of imprisonment on his second conviction. This is contrasted with the hypothetical case of a man who has twice committed a similar assault against another man, who would in all probability be charged with common assault, thus putting him outside the provisions of section 5.

This argument can be seen to be based on a gender neutral view of the law. While this has some intuitive appeal, it is a context-free analysis. Presumably, in passing a gender-specific provision in the Crimes Act Parliament recognised that in the context of heterosexual relationships women needed special protection in the face of such factors as the (usually) superior upper-body strength of men, the general tendency of men to be more experienced in physical fighting and the pattern of male dominance/female submissiveness which commonly characterises heterosexual relationships. Viewed in this light, a gender neutral law may, in fact, be inequitable.

More recently, the charging policy has come under attack from the bench. During the later part of 1996, the police have been rebuked by the Hamilton bench for what has been described as a too inflexible policy. One case appears to have brought this matter to a head. The offender was charged with male assaults female. He had twice been convicted on similar charges. According to the summary of facts, on this particular occasion he had smashed a plate and held a piece of the broken crockery to his partner's throat. She retreated and the offender desisted only when the victim's mother intervened. Judge Spear considered that the extent of the violence did not warrant a charge carrying two years imprisonment. Despite the offender's guilty plea, the charge was dismissed and the defendant's name suppressed (*Police v X*, 1996).

It may be that the judge's decision was influenced by the fact that no physical assault had occurred. On the other hand, the facts appear to describe a deliberate act of terrorism, all the more terrifying when understood within the context of the previous assaults¹.

In assessing the implementation of the protocols, another aspect of charging offenders needs to be examined: informal plea bargaining such that more serious charges are withdrawn in anticipation of a guilty plea to a lesser charge.² There is only limited evidence of this happening. In only 20 of the approximately 400 cases monitored by HAIP during the first year were more serious charges withdrawn and prosecutions pursued in respect of lesser charges. In many of these cases, the police

¹ The facts would clearly fit the definition of domestic violence contained in section 3 of the Domestic Violence Act, 1995.

² Plea bargaining is not a formal part of decision making in New Zealand courts but does occur informally.

may have had no option. For example, the non-availability of a victim to give evidence could preclude some prosecutions for assault (depending on what other evidence was available) but might still allow other charges (such as wilful damage) to proceed. On the other hand, more questionable were the five cases in which men initially faced a charge of male assaults female but this was subsequently withdrawn and a charge of common assault substituted. If the prosecution had the evidence to support the latter charge, then presumably it had the evidence to support the former.

In short, despite some resistance, analysis of the HAIP database suggests quite a high level of compliance with the prosecution protocols in relation to the charging of offenders. Of course, this is only the beginning of the prosecution process.

Granting bail to offenders

In the majority of cases brought before the court, more than one hearing is required. About 35% of offenders are dealt with in a single hearing: that is, they plead guilty and are sentenced. The majority are remanded, either once (37%), twice (17%) or more (10%)¹ to obtain legal advice before entering a plea, for a defended hearing following a not guilty plea, and/or for a probation report to be prepared after being convicted. Unless the remand is in custody, the remand period is a potentially dangerous time for victims. The perpetrator may “punish” the victim for calling the police and/or intimidate her in an effort to have her withdraw the charges or to stop her from giving evidence. Under the HAIP protocols non-association conditions prohibiting contact with the victim were to be attached to bail orders unless the victim had indicated to call out advocates that she was happy to have the perpetrator home.

This part of the protocols was well-implemented. According to the HAIP Court Advocate, during the first year of the project, non-association orders were imposed in almost all situations in which they were requested. Table 10.4 gives a summary of the decisions made about bail for offenders remanded on domestic violence charges during the period July 1991 – June 1992.

¹ These estimates are based on an analysis of the first year’s prosecutions for domestic violence offences – July 1991 to June 1992.

Table 10.4
Outcome of remand decisions (July 1991-June 1992)

Remand	Number	Percentage
In custody	125	22%
On bail – with non-association order	336	60%
On bail – without non-association order	100	18%
Totals	561	100%

Successful prosecution

Prosecutions in which charges are withdrawn or which end in acquittal represent significant failures to hold batterers accountable for their violence. An important indicator of the effectiveness of the protocols is the extent to which they increased the success rate of prosecutions for domestic violence offences.

Unfortunately, there is no comprehensive baseline data available with which to compare the outcome of prosecutions under the protocols. As I have noted earlier, criminal justice statistics do not distinguish charges laid against domestic abusers from charges laid against other violent offenders. However, there is a partial exception: prosecutions for male assaults female. While not all domestic violence perpetrators are charged with male assaults female nearly all prosecutions for male assaults female are related to domestic assaults. Therefore, data on this offence provides the best indication available of the number of prosecutions against abusers which result in conviction. As Table 10.5 shows, by the second half year of the pilot project, 90% of such prosecutions resulted in a conviction. This is a significantly higher success rate than the 64% achieved nationally at that time. It seems very likely that this difference is attributable to one or more aspects of the intervention project: the support victims received from call out advocates, the restrictions placed on defendants given bail, and the support victims received from the Court Advocate.

My confidence in this conclusion is increased by being able to rule out the most likely alternative explanation for the figures presented Table 10.5. It would be possible to argue that a high success rate reflects not effective prosecution but a reluctance to

Table 10.5
Outcomes of prosecutions¹ for male assault female for HAIP and national samples

Outcome	HAIP (mths 1 - 7)	HAIP (mths 8 - 14)	New Zealand ²
Convicted	114 (78%)	104 (90%)	1648 ³ (64%)
Dismissed	11 (7%)	3 (3%)	316 (12%)
Withdrawn	22 (15%)	9 (8%)	522 (20%)
Other ⁴	nil	nil	76 (3%)
Totals	147	116	2562

1. The figures are for distinct offences. In both samples, the number of offenders is somewhat less than the numbers shown because some offenders appeared simultaneously on more than one charge of male assault female.
2. These figures were provided by the Department of Justice and include all prosecutions for male assaults female in New Zealand for the 1991 calendar year.
3. Includes 14 charges which were found to be proven in the Youth Court, but which, because they were finalised in that jurisdiction, did not result in conviction.
4. Includes discharge without conviction under S. 19 of the Criminal Justice Act, committals to hospital and charges struck out, acquitted or not proceeded with.

prosecute unless there is extremely good evidence. On the other hand, the experience of the HAIP Court Advocate did not support this explanation. She reported Hamilton police as being prepared to initiate a prosecution in situations where she previously would not have expected one.

Consistency in sentencing

As I noted earlier in this chapter, at a meeting before the launch of HAIP the Hamilton judges had made it clear that, while they were generally supportive of the project, they could not countenance any restrictions on their discretion. Analysis of the disposition of domestic violence cases recorded in the HAIP database during the first year of the project shows that the judges did, indeed, employ a wide range of sentencing options. Nevertheless, approximately 60% of convicted offenders were ordered to attend the HAIP men's education programme (see Table 10.6).

Table 10.6
Outcome for all domestic violence offences for the first year
 (n = 348)

Disposition ¹	Number	Percentage of all offenders	Percentage of convicted offenders
HAIP ²	145	42%	49%
Custodial sentence - HAIP ordered	29	8%	10%
Custodial sentence alone ³	23	7%	8%
Periodic detention (without HAIP)	32	9%	11%
Suspended sentence ⁴	26	7%	8%
Fines (or costs) only	26	7%	8%
Other sentences ⁵	15	4%	5%
Charge(s) withdrawn	34	10%	
Charges(s) dismissed	18	5%	

1. The outcomes are case-based, rather than charge-based. That is, for offenders who have faced more than one charge and have had more than one sentence imposed, only the sentence imposed on the most serious charge is shown. (For example, an offender who was sentenced to periodic detention on a charge of assault and was fined for wilful damage would be recorded only as being sentenced to periodic detention.)
2. In almost all cases, attendance at HAIP was ordered as part of supervision. Just over half of the offenders ordered to HAIP were concurrently sentenced to periodic detention.
3. Many of these were likely to have subsequently been ordered by the District Prisons Board to attend HAIP upon their release.
4. More formally known as an order to come up if called upon, this outcome means that the offender may be sentenced in the future if he is convicted within a specified period of a further offence carrying more than 3 months imprisonment.
5. Includes 6 men given community based sentences other than periodic detention which do not include attendance at HAIP, 4 men who were convicted and discharged without penalty, 2 men who were committed to a psychiatric institution and 4 men whose charges were withdrawn after attending HAIP under the diversion programme.

Did the sentences imposed amount to a clear message about the unacceptability of violence? In a minority of cases, this seems quite unlikely. For example, as Table 10.6 shows, for 26 offenders in the first year, a fine and/or costs was the most serious penalty imposed. Included among these men were 7 who had been convicted of common assault, 3 of male assaults female and 3 of breaches of non-molestation

orders. Among the 26 offenders who were ordered to come up for sentence if called upon, 13 had been convicted of male assaults female, 3 of common assault and 3 of breaches of non-molestation orders. The last group seems particularly problematic. As explained earlier, only subsequent offences which carry *more* than 3 months imprisonment trigger an order to come up for sentence. As a breach of a non-molestation order (under the now repealed Domestic Protection Act, 1982) carried a maximum penalty of 3 months imprisonment (not more) offenders could breach the order again without being called up for sentence on the original breach.

Some judgements appeared to minimise the violence victims experienced. For example, in the following case, a judge was sentencing a man for assault with intent to injure. The facts were that the offender learnt that his estranged wife had formed a new relationship. He phoned his employer to say that he was not going to work; instead, he went drinking. He then went to the victim's address. After an argument, he pushed her to the floor, put his hands around her throat and choked her, and kicked her in the face with his bare feet. The judge characterised the attack as serious violence but did not sentence him to imprisonment. Instead, he found that the knowledge that his estranged wife had formed a new relationship, while not a justification for assault, was a special circumstance in the terms of section 5 of the Criminal Justice Act.¹

Another judge, in sentencing a repeat offender who appeared to come within the provisions of section 5(2) of the Criminal Justice Act, characterised one slap as “force” rather than “violence” and stated that “force and violence are not the same thing.”

A third judge, in determining the applicability of section 5, found that an assault which consisted of strangling the complainant and several punches to the head and which required medical attention, including a neck brace, missed the serious violence threshold by a “bare margin.” The offender was sentenced to supervision with a condition to attend HAIP. The judge did not order a concurrent sentence of periodic detention which is often used for the more serious assaults which do not result in imprisonment.

¹ Here, and in the following cases, I am relying on the notes of the HAIP Court Advocate.

On the other hand, the majority of cases showed that clear messages were being given by the judiciary. For example, in the following case, the offender had delivered at least 12 punches to the victim's head resulting in bruising and swelling. Defence counsel argued that the offender had used some restraint (i.e. the blows were not as forceful as they might have been), that the defendant had taken out most of his frustration on the wall and that the couple's problems were due to communication problems and financial stress. The probation officer recommended supervision with special conditions relating to HAIP, as well as counselling for self-esteem and relationship enhancement. The judge, however, imposed a 6 month term of imprisonment and ordered the offender to attend HAIP upon his release. In passing sentence, the judge said that he considered the attack to be a "prolonged beating", that the head is a delicate and vulnerable part of the body and that repeated beating is liable to do serious harm. He also noted that there had been a history of violence by the offender against the victim and commented that 9 out of 10 men have financial stress at some time or other but do not resort to violence. While one might quibble with the judge's view of the relative rarity of domestic violence in New Zealand (c.f. Leibrich, Paulin & Ransom, 1995), he has at least clearly condemned such behaviour.

In another case, a judge rejected a plea for an offender not to be sentenced to imprisonment. Here, the claim of special circumstances under section 5 included a letter of forgiveness from the victim. The offender was facing three charges of male assaults female. One involved a push which knocked unconscious the then 8-month pregnant victim. A second incident involved head-butting which left the victim suffering headaches. (At the time of this incident, the victim was changing the baby's nappies.¹) A sentence of 9 months imprisonment was imposed.

In relation to sentencing decisions, the protocols covered another set of players: probation officers. It was agreed at the outset that attendance at the men's education programme would form at least part of the recommended sentence. Coincidentally, the Probation Service established a specialist team of pre-sentence report writers; previously, all probation officers were generalists who combined report writing with other duties.

¹ Diapers.

According to the HAIP Court Advocate, during the first year of the project there was a high level of consistency in the recommendations made to the District Court. (Note however, that pre-sentence reports were prepared for less than 20% of convicted offenders.) However, when probation officers were rotated to new specialist roles twelve months later, greater variability in recommendations was observed. Some members of the new pre-sentence report writing team appeared to be less inclined to recommend HAIP, especially in cases where they perceived the violence to be minor or where the offender expressed the view that he did not want to attend the men's education programme. (Under section 50(2) of the Criminal Justice Act, special conditions of supervision cannot be imposed without the consent of the offender, although this does not preclude a probation officer recommending a special condition.) It is difficult to know how much difference this made to sentencing decisions but one case provides an example of the sort of problems which can occur. In this instance, a convicted offender told the probation officer that he did not want to see his wife or children again, that he was fed up with women, and that he did not see the need to go to HAIP. On the probation officer's recommendation, the offender was sentenced to periodic detention. The following day, the offender "reconciled" with his partner.

Multiple players in the District Court

The prosecution of domestic violence offenders in the District Court is a complex process, involving numerous decision makers; police, judges, probation officers, court officials and defence lawyers. With the advent of HAIP, a new player was introduced; the Court Advocate. Her role was to provide information to the Court, to support and inform women, and to monitor the implementation of the HAIP District Court protocols.

Those protocols were designed to standardise the process of prosecuting and sentencing in an attempt to hold abusers accountable for their use of violence. There were clear successes. The protocols regarding the charging of offenders and the restrictions placed on bailed offenders were generally well-implemented. Most domestic violence cases were disposed of within one or two hearings and even defended cases were usually completed within 6 weeks. Hamilton men charged with male assaults female faced almost a 50% greater chance of being convicted than men appearing on similar charges elsewhere in the country. The majority of convicted

offenders were directed to the men's education programme. These were significant achievements.

But there was resistance to the protocols. Firstly, this came from judges who made it abundantly clear that they wished to preserve judicial discretion. Some of their decisions tended to trivialise violence against women and they were clearly reluctant to be seen as associated with HAIP in any way. Secondly, there was resistance from defence lawyers to a standard policy of charging domestic violence offenders with male assaults female, a stance supported by certain judges. Thirdly, certain probation officers demonstrated a tendency to accept offender rationalisations for their behaviour.

More positively, court officials provided a lot of support to the Court Advocate. For example, they ensured she had access to fixture lists and passed on to her information about cases she was unable to monitor in person. Similarly, court officials demonstrated a strong commitment to the speedy disposition of domestic violence cases, even in the face of lengthy waiting lists for hearings in other types of cases.

With certain exceptions, police prosecutors were supportive of the Court Advocate. Her role in supporting women who were required to give evidence and in providing victim impact statements was generally appreciated. To this extent, the Court Advocate was an ally. Indeed, of the key institutional players within the District Court, the police were perhaps the most consistent in their application of the protocols. Whatever problems there are in the immediate police response to domestic violence cases, once a commitment is made to prosecuting the offender, the police can usually be counted on to pursue a conviction vigorously. Within the adversarial criminal justice process, they do not like to lose.

The Probation Service: holding sentenced batterers accountable

As is evident from the previous section, the most common means by which the District Court mandated offenders' attendance at HAIP was a sentence of supervision. Completion of the 26-week men's education programme was made a condition of the supervision order. Supervision orders are administered by the Probation Service. So too are parole orders, under which certain prison inmates

released by either the District Prisons Board or the Parole Board¹ were directed to HAIP under terms similar to supervisees. Thus, probation officers played an important role in ensuring offender compliance.

Whether an offender was subject to a supervision order or a parole order, the process of enforcement was similar. Offenders were allowed to miss sessions for good reason, such as unexpected job commitments, but had to make up missed sessions. (Thus it often took up to 30 weeks for offenders to complete 26 sessions.) Unacceptable absences triggered a three-step process. The first absence resulted in a warning from one of the men's programme co-ordinators². A second absence was expected to lead to a prosecution for breaching the conditions of the order.³ For supervisees, a third absence was expected to lead to a review of the original sentences: that is, the sentence of supervision could be cancelled, and another sentence (which might include imprisonment) substituted. For parolees, a third absence was expected to lead to their recall to serve un-served prison time or to a new sentence in respect of a breach of parole.

Initially, one probation officer supervised all offenders who were required to attend the mens education programme. His caseload was large, often greater than 100, but this was manageable because, generally, no casework was conducted with these offenders. Attending HAIP was normally the only intervention to which they were subjected.⁴ As the "HAIP caseload" increased, two officers were assigned to this work, one to oversee supervisees, one to oversee parolees. While the domestic violence offenders were subject to this specialist oversight, the enforcement of the orders was very good. For example, in the first year, every man who failed to complete the men's education programme (but was still at liberty) was subject to an

¹ The District Prisons Board has jurisdiction over inmates serving sentences of less than 7 years. Those serving longer sentences come under the jurisdiction of the Parole Board.

² For most the project's life, there has been a co-ordinator for each of the Maori and Non-Maori men's programmes.

³ Upon conviction, supervisees were liable for a fine up to \$500. Parolees were liable for a fine up to \$2000, a sentence of up to 3 months imprisonment or recall to serve the balance of their prison time.

⁴ They did, however, have to report to the Probation Office monthly and notify their probation officer of changes of address. A small number of offenders had additional conditions attached to their orders. The most common of these mandated drug and alcohol assessment and counselling.

Table 10.7
Programme completions by Probation referrals (July 1991- June 1992)

Status	Number	Percentage
Completed	58	71%
Did not complete because of subsequent sentence of imprisonment ¹	11	13%
Did not complete – sentence reviewed ²	13	16%
Total	82	100%

1. Of these, 5 were re-offenders in that they were imprisoned for assaults on their partners committed subsequently after they were referred to HAIP. The other 6 were imprisoned for offences committed prior to beginning the programme.
2. The outcome of the reviews were as follows. Three had terms of imprisonment substituted, 1 was fined, and 1 was re-sentenced to supervision and directed to begin the programme again. (He subsequently absconded and a warrant was issued for his arrest.) Two men were given alternative non-custodial sentences because it was thought that HAIP was unsuitable for them. Three had their sentence of supervision varied to allow them to move to other districts where they were expected to complete similar programmes. Three other men absconded and warrants were issued for their arrest.

application for a review of sentence. That is, the probation officer concerned took him back to court for a new sentence to be imposed. (See Table 10.7) On the whole, it would seem that the Probation Service, initially at least, was consistent in enforcing compliance with directions to attend HAIP.

During the second year, the HAIP caseload was redistributed among the entire probation staff. This was associated with some decay in the enforcement of directions to the men's education programme. For example, during 1992 the Probation Service referred 163 clients. Eleven of these failed to complete the programme but were "excused" by their probation officers. In some instances, this may have been appropriate, as in the case of men excused to attend in-patient treatment for addictions which had restricted their ability to participate effectively in the HAIPP programme.¹ But in six cases, it is not clear why men had not been

¹ A substantial period of in-patient treatment could easily out-run the normal 9 months term of supervision, beyond which attendance at HAIP could not be enforced

compelled to complete the programme or what, if any, alternative arrangements had been made.

In much the same way as was evident in probation officers' role in making pre-sentence recommendations, compliance with the protocols was best when the HAIP-related work was the responsibility of specialist officers.

Family Court: protection for victims and holding respondents accountable

The preceding sections have traced the impact of HAIP protocols on the key criminal justice agencies: Police, the District Court and the Probation Service. As explained, earlier, victims of domestic violence also have available to them a range of civil remedies, administered by the Family Court. At the time HAIP was launched, the principal remedies available were the two protection orders available under the now repealed Domestic Protection Act, 1982.

The most important remedies were the non-molestation and non-violence orders. A non-molestation order (s.13) prohibited most forms of contact with the applicant. Breaches were a criminal offence carrying a maximum penalty of 3 months imprisonment. Non-molestation orders automatically lapsed if the respondent and applicant resumed cohabitation. A non-violence order (s.4) restrained the respondent from using violence against the applicant. Threatened or actual use of violence made the respondent liable for arrest and detention for 24 hours, but not prosecution. Unlike the non-molestation order, a non-violence order was available to an applicant who continued to reside with the respondent and did not lapse if a separated applicant reconciled with the respondent. Ancillary orders were available to exclude abusers from previously shared accommodation (occupation and tenancy orders, ss.19, 24) and to prevent the removal of household effects (furniture orders, s.30). All of these orders could be made on an *ex-parte* basis (granted without notice being given to the respondent). The Domestic Protection Act also gave judges the power to *recommend* that either or both parties attend counselling (s.37). Such counselling was neither mandatory nor funded by the Court. However, a subsequent amendment (s.37A) added the power to *order* respondents to "counselling," in effect, a direction to attend a stopping violence programme, the cost of which was covered by the Court.

The Family Court protocols

The establishment of HAIP brought one key change to Family Court practice: respondents who had protection orders made against them would be *routinely* referred to a special 13-week version of the HAIP men's programme.¹ According to my informants in the Family Court, previously, only those men who were "repeat" respondents² and who acknowledged their violence were likely to have been directed to a programme. Routine, mandatory referral was, therefore, a significant development in what could be otherwise characterised as the generally therapeutic orientation of the Family Court.

Two other changes in practice were negotiated. The first of these was that the non-mandatory referrals to counselling available under the Domestic Protection Act would be to HAIP. That is, women applicants would be routinely given the information about the women's groups available through the project. (Under the Domestic Protection Act, no Family Court funding accompanied this referral but during the pilot phase, the project was funded by the Department of Social Welfare to provide women's groups free of charge.)

The second change was a 6 week suspension of counselling in cases of domestic violence. That is, where the parties were referred to counselling for mediation of custody or other issues, counsellors were instructed that no joint sessions were to take place for 6 weeks. (Within that time they could meet with each of the parties separately for an initial meeting.) This moratorium on joint counselling was to allow women the opportunity to participate in HAIP women's groups. Such participation was seen as an opportunity for women to become empowered and able to take part in court-ordered mediation on a more equal footing.

¹ The shorter version of the programme was abandoned after 12 months. Thereafter, Family Court-referred men were integrated into the standard 26-week programme, alongside District Court and self-referred men.

² Repeated applications were typically made because an earlier non-molestation order had effectively lapsed under the provisions of section 17. (See discussion of the resumption of cohabitation rule in Chapter 5.) Repeated applications were commonly seen as indicating an "unsuccessful reconciliation." However, as shown in our earlier research (Busch, Robertson & Lapsley, 1992), many respondents either forced or inveigled their way on to the applicant's property, which was hardly an act of reconciliation. Nevertheless, given the ambiguity of section 17, women were often advised (perhaps wisely) to obtain a new order.

Although it was not part of the protocols, the impact of HAIP on the operation of the Family Court cannot be adequately understood without reference to the Court Advocate.

The Court Advocate did not routinely attend the Family Court. The Court's position was that the Advocate could not be present unless the respondent gave his consent¹ and this rarely happened. However, the Court Advocate did assist women in relation to Family Court matters by providing information about legal options, by helping women obtain a solicitor (a list of solicitors who were particularly effective advocates for battered women was maintained), by helping women compile the sort of information needed to prepare an effective affidavit, and by accompanying them to the solicitor if necessary. An important point here is that this sort of help was routinely given to women whose partners had been arrested, as well as any other women who came to HAIP for assistance. The Court Advocate also facilitated regular groups for applicants in which the meaning and scope of protection orders was explained, the application process outlined and issues in getting effective enforcement discussed. Pamphlets prepared by the Court Advocate provided plain-language guides to protection orders and their enforcement.

What impact did these initiatives have? Answering this question is made particularly difficult by two features of the Family Court. The first is its private nature. Hearings are not open to the public and, as has just been noted, were not routinely monitored by the Court Advocate. The second feature is the unsophisticated nature of the record keeping system, at least during the period being reviewed. Apart from counting the number of applications made each month, no summary statistics were collected by Court staff. The progress of files through the court was tracked manually via diaries and a paper register. I was able to negotiate access to this register but it provided almost no information on the outcome of applications for protection orders. Some of the information presented in the following sections comes from the register but, in the main, I have had to rely Family Court staff for much of my data.

¹ Section 32 of the Domestic Protection Act limits those who can be present during hearings to Officers of the Court, parties to the proceedings and their barristers and solicitors, witnesses, and "Any other person whom the Judge permits to be present."

Accessibility to protection

Anecdotally, one impact of HAIP reported by the Family Court Counselling Co-ordinators was an increase in the number of women applying for protection orders. My analysis of the Family Court Register suggested that this increase was of the order of 30% to 50%. Specifically, comparing the number of applications for the 6 months prior to HAIP to the 6 months following the project's establishment showed an increase of 29%. Given the seasonal fluctuations noted in police domestic violence figures, it may be more appropriate to compare similar times of the year. In this way, comparing the first 6 months of 1991 (pre-HAIP) with the first 6 months of 1992 showed an increase of 50%. This was despite a tailing off during 1992 which was believed to be attributable to changes in the legal aid regime (Figure 10.3).

Where did this growth in the number of applications come from? It is likely that a significant proportion of the "new" applications came from women whose partners had been arrested and who had been given information about protection orders by crisis line advocates and the Court Advocate who contacted them in relation to the criminal proceedings against the abuser. Interviews we conducted with women six months into the project suggested that about two thirds of women who had obtained a protection order had earlier called the police. Because of the lack of co-ordination between the Family Court and the District Court, we have no comparable figures from the period before HAIP was established, but Family Court staff told me that they had noticed an increase in the number of applications made in respect of men who were simultaneously facing criminal charges.

The advent of HAIP, then, led to an increase in the workload of the Family Court. This was partly offset by a reported reduction in the number of repeat applications. That is, according to Family Court staff, there were fewer applications from women who had had orders in the past which they had "allowed" to lapse, although the lack of records makes this impossible to quantify. Presumably, the reduction in the number of repeat applications was attributable to some combination of the publicity about the project, actual or perceived improvements in the enforcement of orders, the support available to women (especially those who called the police and/or attended women's groups), and the messages implicit in the directions respondents received to attend the men's education programme. In relation to this last factor, Counselling Co-ordinators reported getting feedback from applicants that they were

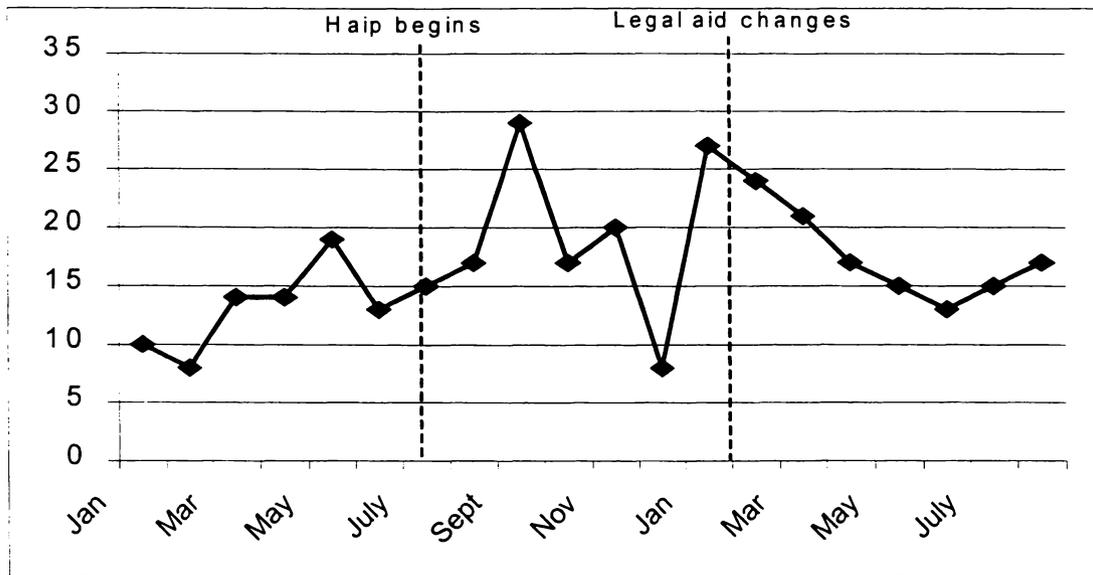


Figure 10.3
Applications for protection orders 1991 - 1992

pleased that their partner or ex-partner was being sent to HAIP, a feeling reported as “thankful that something was being done.”

Opposition to new regime: opposing applications, seeking discharges

Family Court staff told me that a major change was that non-molestation and non-violence orders had come to be seen as having “tangible outcomes;” that is, respondents were being ordered to attend the HAIP men’s programme. This was contrasted with the earlier prevailing view that the orders were “simply a piece of paper.” There was some evidence of a changed attitude towards the orders on the part of at least some respondents; that is, there was a significant increase in the number of respondents who applied for the discharge of orders made ex-parte against them or opposed the granting of a final order. Other men filed applications for variations to their orders, seeking discharge of the section 37A direction to attend HAIP. All three types of applications can be seen as acts of resistance against a new regime of greater accountability.

Some lawyers provided incorrect advice to respondents, effectively colluding with their clients' attempts to avoid accountability. Specifically, there were reports of men being advised that they did not have to attend HAIP if their non-molestation order had lapsed (either under the s.17 cohabitation rule or because a final order had not been made). The Court's view was that the direction to HAIP remained in force even if the non-molestation lapsed or was discharged. Only the discharge of the section 37A direction would remove the respondent's obligation to attend.

Another attempted tactic of resistance was to apply for protection orders to be discharged on the basis that the respondent had been acquitted in the District Court on domestic violence charges. This tactic was not successful. The Family Court took the view that because a higher level of proof was required in the criminal jurisdiction (i.e. "beyond reasonable doubt"), the failure of a prosecution did not preclude granting orders under the Domestic Protection Act (s.34 refers to "the balance of probabilities").

Opposition to the granting of final orders was not usually based on a denial that violence had occurred. Instead, submissions typically relied on an argument that there was no need for on-going protection. Family Court personnel reported that such arguments were most likely to succeed when there was no further contact between the parties and where there were either no children or the children were of an age at which custody and access were no longer issues. Similar factors were evident in successful applications to have the direction to HAIP discharged. Another common scenario in which directions to HAIP were discharged was those cases in which the original applicant did not pursue her application for a final order.

The Family Court kept no statistics on the number of respondents who successfully sought the discharge of either protection orders and/or directions to attend HAIP. However, HAIP records showed that 6% (n = 109) of the respondents referred to it during the first 18 months had their directions to attend cancelled. Court staff provided a definite profile of the type of men who succeeded in such actions; well-educated and holding high status positions. They were reported as presenting themselves as distinct from the sort of men who typically comprised HAIP groups. When one considers this observation alongside the earlier observation that respondents almost never denied using violence (although they often debated its severity and/or argued provocation) the conclusion seems clear; relatively privileged

men are more likely to avoid being held accountable for their use of violence. This repeats an earlier theme evident in my discussion of the District Court where the men who got diversion were exclusively middle class.

There was one further way of resisting the new measures: many men simply did not comply with the order to attend HAIP. Effectively, this was an option open to men regardless of their class.

Enforcing respondents' attendance

Many respondents failed to attend the HAIP men's programme as directed by the Family Court. For example, over the first two years of the project, only 50% of the men directed to attend were inducted. Of those who were inducted, 27% dropped out before completing the required number of sessions. If one includes in the calculation the number of men who had their directions to attend cancelled, then overall, only a third of the men initially directed by the Family Court completed the programme.

Compared to the process of enforcing supervision and parole orders, the process of enforcing section 37A referrals was cumbersome and ineffective. One measure of this is that no respondent has been prosecuted by Family Court officials for failing to comply with a direction to attend the HAIP men's education programme¹ and the engagement rate remains at about 50%.

The reasons for this low rate of induction into the programme and the relatively low rate of completion lie partly in the legislation and partly in administrative practices.

The Domestic Protection Amendment Act, 1986, gave the court power to direct respondents to participate in "counselling" and set out the procedure for implementing such directions. That is, the Registrar of the Court was to "refer the respondent to an appropriate counsellor" (s.37A (3) of the principal act), who, in turn, was to request the respondent to attend at a specified time and place. Where a respondent failed to comply with such a request, a judge could (on the request of the Registrar or the counsellor) issue a summons for the respondent "to attend before the counsellor at a time and place to be specified in the summons" (s.37A(4)). Finally,

¹ This was still true as of July 1999.

section 37A(5) provided that such summons were subject to the provisions of section 20 of the Summary Proceedings Act (1957). That is, the summons was to be effectively treated as a witness summons, and as the Summary Proceedings Act states, a failure to attend in response to a witness summons is an offence which carries a maximum penalty of \$300. There is another proviso: no one is required to comply with a witness summons if travel of more than 15 kilometres is involved, unless their expenses are paid.

Administratively, these provisions were implemented in the following way.

1. Respondents were notified of the referral by letter from the Family Court and told that HAIP would contact them. An important point here is that the direction was not on the protection order itself (although this was later changed). That is, initially at least, being served with the protection order did not amount to having been given notice of the direction to attend HAIP. Moreover, it is likely that many letters were never received. Almost by definition, respondents are a mobile population. Indeed, those who have had occupation or tenancy orders made against them are required by the court to move.
2. HAIP would write to the respondent advising him of the time and date he should initially report to HAIP. Again, it is likely that many of these letters did not reach respondents.
3. If the respondent failed to attend (either the induction or a subsequent session), the matter could be referred back to the Court. (In practice, respondents who had been inducted were allowed two absences before this happened.)
4. Given the provisions in the Summary Proceedings Act, no action would be taken in respect to a respondent living more than 15 kilometres from the HAIP office. Effectively, men who lived outside the city limits could not be compelled to attend.
5. Summonses, once issued, had to be served to take effect. Respondents were not easy to locate. Most summonses were not served. As these were seen as civil matters, the summonses were not entered into the police computer system, so that even if a respondent came to notice on another matter, he would not be served.

6. If a respondent was served with a summons, he generally did attend, but there were effectively no consequences for those who did not. The court was reluctant to initiate prosecutions under the Summary Proceedings Act. Initially, the wording of the directions was thought to be defective, providing a poor basis for prosecution. (This problem was rectified.) Other prosecutions were abandoned because it was considered that too much time had elapsed since the order had been made. In what could be seen as a reversion to the general therapeutic orientation of the Family Court, some prosecutions were abandoned for fear of unnecessarily antagonising the respondent; for example, jeopardising the resolution of custody and access disputes.

These cumbersome enforcement procedures were modified slightly within the first year of HAIP in that the Court began including on the protection order a direction to contact HAIP within 7 days. It is unclear whether this direction could be enforced: s.37A(3) and s.37A(4) refer to a request from a counsellor, not a direction from the Registrar. Nevertheless, this change saw an increase in the number of respondents attending induction (e.g. 72% of the respondents referred in March 1992 were inducted (n = 22)) although this increase was not sustained in the longer term. Even now, approximately only half the Family Court referred men are inducted into the men's education programme.

More substantial changes were introduced with the implementation of the Domestic Violence Act, 1995. Under section 32, the Court must direct the respondent to attend a specified programme unless "there is good reason for not making such a direction." Moreover, the failure to comply with such a direction is, of itself, an offence (s.49(1)(c)) (maximum penalty: 6 months imprisonment or \$5000). The cumbersome enforcement procedures described above do not need to be invoked. Instead, a respondent who fails to attend can be proceeded against summarily (Summary Proceedings Act, 1957).

Other residual problems

In addition to the poor enforcement of section 37A directions, other gaps in the system remained. Some were only addressed with the implementation of the Domestic Violence Act 1995; others remain still.

Firstly, while the number of women who were granted protection orders increased with the advent of HAIP, there was still widespread scepticism about their effectiveness in ensuring safety. The view was often expressed to women's advocates and Family Court staff that the orders were "just pieces of paper" which the police did not necessarily enforce. Indeed, some women were reluctant to apply for protection orders for fear of antagonising their partner and making things worse. This was particularly evident in the aftermath of the Ratima killings. In Masterton in July 1992, Raymond Ratima killed three of his children and four other relatives just hours after a protection order had been made against him. The killings attracted widespread coverage in the news media. Following this, some Hamilton women reported to HAIP advocates and Family Court staff that their partners had cited the killings as an example of what could happen if they were "pushed too far." Far from providing safety, seeking protection orders was, to these women, a high risk strategy.

Indeed, protection orders were sometimes compared unfavourably with non-association orders attached to bail in the criminal jurisdiction. In the early days of the project some women, whose partners had been arrested, reportedly took the view that the non-association order imposed with bail provided more effective protection than a non-molestation order and consequently did not apply to the Family Court. Of course, one limitation of a non-association order is that it lapses once the case is resolved and the defendant is longer on bail but it may well be that at least some men are less inclined to disregard bail conditions than a protection order. Compared to the complexity of enforcing a non-molestation order, enforcement of a non-association order is relatively easy. While the respondent may argue that he is not in breach of a protection order because the applicant has invited him on to her premises or because the order has lapsed through resumption of cohabitation, a breach of a non-association order can be established simply by the defendant's presence. A more cynical view might be that police have a greater stake in enforcing conditions of bail; that is, the success of their prosecution may be jeopardised if the defendant can intimidate their witness. In this light, women's safety may be valued only to the extent to which it serves institutional purposes. Certainly, it was my observation that breaches of bail conditions always received a speedy response whereas problems in enforcing protection orders were often raised in meetings between HAIP staff and police.

Whatever the relative merits of protection orders and non-association orders, it is clear that non-molestation and non-violence orders were not necessarily perceived as being effective. A commonsensical observation is that protection orders are only as effective as the enforcement of them. While one might have hoped that the greater scrutiny to which police were subject under the HAIP protocols would lead to better enforcement of protection orders, there is no strong evidence that the problems described earlier had markedly improved.

A second problem beyond the scope of the HAIP protocols was that applicants had to apply for final orders. As noted earlier, some applicants did not so apply, either because they did not realise that the ex-parte order was an interim one only, or because of the expense. The repeal of the Domestic Protection Act by the Domestic Violence Act has made a difference here. Under the new provisions, an interim order automatically becomes final after 3 months, unless the respondent seeks a hearing and is successful in opposing the making of the final order.

This change in the legislation is a positive development but a third and related problem remains. As mentioned earlier, some respondents apply for the protection order against them to be discharged. Some applicants failed to oppose such applications. In the view of Family Court staff, in some cases, this was because the applicant was too frightened.

A fourth problem outside the scope of the HAIP protocols was the so-called resumption of cohabitation provisions of the Domestic Protection Act (s.17). (See discussion in Chapter 5). This continued to provide a major loop-hole for respondents, one which continued until the implementation of the Domestic Violence Act.

A fifth group of problems which remained had to do with other orders which victims of domestic violence often sought, either at the same time as they applied for protection orders or subsequently. In relation to applications for occupation and tenancy orders, Judges were observed to be reluctant to make an order on an ex-parte basis, considering it unwise to effectively evict men from their homes without giving them the chance to be heard. There is of course a principle of natural justice at

stake here but there is a competing value, specifically victim safety.¹ While judges seemed happy to give the latter precedence in respect of protection orders, they were reluctant to do so in respect of occupation or tenancy orders. Yet the lack of suitable accommodation for themselves and their children is a major factor in women's decisions to remain with an abusive partner (Battered/Formerly Battered Women Task Force, 1992; Hoff, 1990; Kirkwood, 1993). Moreover, if the applicant was resident in a women's refuge, judges commonly declined to grant occupancy or tenancy orders *ex parte*, presumably because they considered that she already had a safe place to live. Instead, the application would be adjourned for notice to be given to the respondent. Thus women and their children faced extended periods of disruption to their lives, including the crowded conditions which often prevailed at the refuges, and some had their homes trashed by vengeful respondents.

Applications for custody orders often accompany applications for protection orders. My Family Court informants reported, and women's advocates confirmed, that women were often successful in gaining custody of their children on an *ex parte* basis. However, access by the respondent was generally not defined. As a result, some women were faced with having to negotiate access with their abuser, or leave town in an attempt to get beyond his reach.²

Finally, there was one persistent problem which was actually exacerbated: changes in the legal aid regime made it even harder for low income women to access the Family Court. As shown in Figure 10.3, these changes seemed to result in a reduction in the number of women applying for protection orders.

The changes, introduced at the beginning of 1992, included a doubling of the applicant's initial contribution from \$25 to \$50 and a more complex application form requiring the disclosure of a greater amount of information. There were also changes

¹ The sometimes cited spectre of men being made homeless as a result of an occupation or tenancy order made against them seems more imaginary than real. Many of the men I have met in batterer groups over the years have had such orders made against them. Without exception, they have quickly found alternative accommodation.

² The Guardianship Amendment Act 1995 (s.2) provided scope for judges to ameliorate this problem. Specifically, in proceedings in relation to protection orders, the Court was given the power to make any interim order relating to the custody and access of a child of the applicant "as the Court considers necessary to protect the welfare of that child." However, judges retain the discretion to not define access (or custody). Moreover, in exercising this power, judges can consider only the welfare of the child; this power does not extend to denying access to protect the safety of the custodial parent.

to the procedure relating to the recovery of the cost of legal aid from the applicant. This had always been possible (e.g. applicants could be asked to refund part of all of their legal aid costs out of their matrimonial property settlement) but was rarely done. The new application form was very explicit about applicants' potential liability and required solicitors to sign a statement that they had advised their client of the prospect of a charge being levied. The letter which was sent to successful applicants repeated this warning.

These changes were described to me by a representative of the legal aid committee as an improvement in that liability for repayment was more clearly spelled out. It was suggested that the changes should have no effect on the women who are most in need of legal aid (i.e. women with little cash or assets can have the initial contribution waived and are unlikely to be asked to repay the costs). However, the experience of HAIP advocates and the Family Court was that women became very worried about their liability for repayment and some did not pursue an application for protection orders as result. The experience of the local legal aid committee confirmed this. They reported an increase in the number of applicants who declined offers of legal aid. Thus, there seems to be good reason for attributing the decline in applications for protection orders during the first half of 1992 (Figure 10.3, page 270) to the changes in the provision of legal aid.

A change in Family Court culture?

In summary, the HAIP protocols did lead to some significant reforms in the operation of the Family Court. The (almost) routine manner in which respondents were *ordered* to attend the men's education programme and the delay in counselling to allow applicants to participate in HAIP women's groups were significant advances. These changes could be seen as departures from the prevailing philosophy of the Family Court (described in Chapter 7); that is, a no-blame orientation with a strong preference for mediated solutions to family disputes. In what could be described as a therapeutic approach, violence tended to be ignored or seen merely as a symptom of some underlying relationship problem. In contrast, the new practices could be seen as reflecting a power and control analysis of violence in which safety and autonomy of victims and accountability of offenders were key values.

There were other indications of a changed way of thinking about domestic violence.

In an interview Ruth Busch and I carried out in mid 1993, a Family Court official stated that judges were much better informed about domestic violence as a result of the establishment of HAIP. Some judges were reported as having said that they knew much more about domestic violence than they did five or six years earlier. According to our interviewee, discourses about anger management had been replaced with more complex and sophisticated analysis of power and control. Our interviewee commented, "Everyone at the court is thirsting for information."

Our informant stated that those who worked within the Family Court (judges, court staff, lawyers and counsellors) had a more optimistic attitude than previously. She thought this partly due to the fact that there were very few repeat applications for non-molestation orders. She stressed that there was no longer the sense that the Family Court was "totally ineffectual" in terms of domestic violence and that HAIP had provided the Family Court with a positive place to refer parties. As our informant stated,

Even when there is a second referral to HAIP, we are beginning to see that this has been a perpetrator's behaviour for a lifetime. No wonder he needs a second course. Maybe this time he will get it!

There was some suggestion that the Family Court had, in a sense, adopted HAIP. During 1992 and 1993, there was considerable interest in the project from other communities both in New Zealand and Australia. The then Counselling Co-ordinator found herself regularly answering queries about the project and conducting training for court staff from other areas visiting Hamilton to learn more about the intervention approach. She and one of the judges co-authored a paper on HAIP and the power and control approach to domestic violence and presented it to a national judges' conference. The paper emphasised the effectiveness of the inter-agency approach to domestic violence and stressed the positive aspects of having community groups involved in inter-agency meetings.

A revision to the protocols negotiated approximately one year after the project's establishment seemed to be indicative of a change in the prevailing philosophy of the Family Court. The initial agreement was that respondents would undertake a shortened (13 week) version of the men's programme. It was felt that requiring men to attend for 26 weeks (two hours per week) was a greater imposition than could be justified by a finding that the applicant was in need of protection, a finding which could be made on the balance of probabilities. However, early in life of the

programme, feedback from the men's programme facilitators suggested that many men were only beginning to come to terms with the programme content by 13 weeks. Interviews we conducted with a small sample of women whose partners were attending the men's programme confirmed the view that 13 weeks was not long enough to be effective. Presented with this information, Family Court representatives readily agreed that their referrals should undertake the full programme and this has been the case since the second year of the project.

There was evidence that other stakeholders had adopted a new way of viewing domestic violence. Whereas affidavits filed in support of applications for protection orders had previously been largely confined to descriptions of specific instances of physical violence, lawyers began to include descriptions of verbal and emotional abuse. Moreover, these specific acts were more likely to be described within the context of the total range of controlling tactics employed by the respondent.

An interesting reflection on the changed philosophy came from a visiting researcher who had met one of the Hamilton judges and was impressed by his sophisticated analysis of domestic violence. The researcher complimented the judge on his good understanding of the power and control tactics characteristic of abusers, the constraints these placed on women, and the need to prioritise safety. In what appeared to be a reference to the Domestic Protection Study (Busch, Robertson, & Lapsley, 1992), the judge responded: "Sometimes you read a report and you learn that the way you have been doing things is totally wrong."

While I was pleased with this apparent acknowledgement that we had had a significant effect on at least one judge, there is another point here. Such changes to the culture of the Family Court as have been described cannot be attributed solely, perhaps not even primarily, to the advent of HAIP or to our research. For the Family Court, the first half of the nineties was a period of considerable ferment, of which the Domestic Protection Study was but a part. Consumer groups, such as the Family Law Consumer Network (Boshier et al., 1993), had been formed, typically by women who were dissatisfied with the way they had been treated in the Family Court. High profile murders such as the Ratima and Bristol killings had drawn attention to the limitations of the Court. The *Hitting Home* report (Leibrich et.al., 1995) describing New Zealand men's abusive behaviour and their attitudes about partner violence had been published and attracted considerable attention. The Boshier Report (1993)

recommended significant changes to the counselling orientation of the Family Court, specifically stating that mediation was inappropriate for domestic violence cases. And of course there was protracted debate leading up to the passing of the Domestic Violence Act, 1995. These and other events formed the context in which the HAIP protocols were negotiated and implemented.

In this section, I have cited various examples of what might be taken as indicators of a cultural change within the Family Court. There was some move away from a therapeutic approach. At some level, certain key decision makers showed themselves to be willing and able to employ a feminist analysis of domestic violence. But tempting as it may be to see these events as evidence of substantial change in the Family Court it would be very easy to overstate the significance of these changes for the safety and autonomy of battered women. The directions to attend HAIP were, at best, half-heartedly enforced. Professional, middle class men in particular were often able to circumvent the directions. As my review in Chapter 4 suggests, there is no great reason to expect stopping violence programmes to enhance women's safety and autonomy. From this point of view, the excitement that "something was being done" could be seen as positively dangerous when viewed alongside the documented tendency for partner participation in a programme to encourage battered women to remain in an abusive relationship (Gondolf, 1988).

But perhaps more importantly, the optimism was mostly restricted to what was happening to *men*. There is little evidence that much changed in the Family Court response to *women*. Changes in the legal aid regime may have reduced battered women's access to justice. A judicial reluctance to make ex-parte occupation and tenancy orders, or to define access when making ex-parte custody orders, continued to disadvantage women. Many orders were never served and thus unenforceable. Long-standing problems in the police response to applicants whose orders had been breached remained.

A more measured assessment might be that there was some limited success in achieving change by the negotiation and implementation of the HAIP protocols, but that these were often undermined by administrative practices reflective of the historical therapeutic orientation of the Family Court. More substantial change required legislative reform, such as the Domestic Violence Act (1995) and the Guardianship Amendment Act (1995). It is also evident that for the remedies

available through the Family Court to be truly effective requires the effective action of other players such as the bailiffs' office (serving orders), police (enforcing orders), and the Legal Services Board (ensuring women's access to justice).

Intervention in Hamilton

I began this chapter by posing two questions. Has the justice system become more responsive to the needs of battered women in Hamilton? And are their batterers held more accountable for their use of violence?

At least on the second question, the answer must be yes. While it is difficult to tell if the protocols resulted in the police arresting a greater proportion of the men whose violence was reported to them, it is clear that the total number of men arrested increased dramatically. So too did the number of men prosecuted for male assaults female. No doubt some of these increases could be attributable to factors other than the intervention protocols. After all, increases in arrests and prosecutions were evident in other New Zealand districts. However, the increase in Hamilton was much more rapid and coincided with the implementation of the protocols. Moreover, in Hamilton, men charged with male assaults female faced a 50% greater chance of being convicted than men facing the same charge in other districts. Once so convicted, most of the Hamilton men were sentenced to attend the HAIP men's education programme or to a term of imprisonment. Even in our busiest year, the Men's Action Network¹ dealt with only 80 men compared to the 200 to 300 men HAIP has on its programme most years. If one accepts arrest, conviction and sentencing (including being ordered to attend a programme) as ways of holding men accountable for their use of violence, then clearly more Hamilton men are being held accountable.

The responsiveness to women question is more difficult to answer. The number of women seeking protection orders has increased.² Similarly, the number of women calling the police has increased dramatically and the feedback from women reported in this chapter points to quite high levels of satisfaction with the service they received

¹ In pre-HAIP days we offered the only programme in Hamilton for men who batter.

² There have been two waves of increases, the first associated with the establishment of HAIP and a second (national) increase following the implementation of the Domestic Violence Act, 1995.

from the police. The Hamilton refuges reported a 400% increase in the number of clients compared to pre-HAIP days, so clearly, more women are receiving such services. Moreover, Hamilton seems to have avoided some of the significant problems associated with reforms in some other jurisdictions. That is, there is little evidence of battered women being arrested for assaults and none have been charged with contempt of court or otherwise punished by the courts for failing to co-operate with the prosecution of their batterer.

These are only rough measures of system responsiveness but they are encouraging. As described in Chapter 2, battered women employ a wide range of tactics to resist battering. It seems likely that an increase in women's readiness to have recourse to the justice system indicates that the system is perceived to be more responsive to their needs. This is consistent with anecdotal evidence from HAIP staff. From time to time they encounter women who have moved to Hamilton specifically because they believe that they will be safer here. Other women have reported their partners as wanting to leave Hamilton because it is too "hot" for them here.

Chapter 11

Conclusions

Battering is a particularly intractable problem. Although there are undoubtedly some promising initiatives, generally, no one intervention is decisive in ending battering. Neither services for women, nor programmes for batterers, nor police policies, nor the remedies of the criminal and civil courts have proved to be “the” solution. There is no “magic bullet” (Buzawa & Buzawa, 1993b). Instead of looking for single solutions, I have argued that multiple interventions are needed, and that comprehensive community intervention projects are one promising strategy which goes some way to providing the multiple, co-ordinated interventions required.

In this final chapter, I attempt to define what I believe to be the core of the response problem and essential elements of efforts to resolve it. I then reflect briefly on the progress made in the reform agenda, describe current challenges and outline some promising new directions. I end by reflecting on my own position as a researcher in the work to end men’s violence.

Understanding the response problem

To understand the response problem requires understanding the nature of battering. In Chapter 2, I drew on the work of Nogi Avni (1991) in likening the battering relationship to the total institution, within which certain batterer-determined rules are enforced (Hart, 1996b). In particular, I adopted Jacobson’s view of battering “as the systematic use of violence and threat of violence in order to control, subjugate, and intimidate women” (1994, p. 99). Moreover, I argued that there are certain resources and services which women will commonly need if they are to escape the control of the batterer.

Battering is more than the actions of individual men against individual women. Broadly speaking, it can be viewed as a culturally-supported practice. Dominant readings of Christian theology, certain aspects of capitalism and an andro-centric British legal system, together with a process of colonisation, have each played a role in maintaining the subordinate position of women and implicitly, sometimes explicitly, condoning violence against them.

11: *Conclusions*

In my view, effective intervention to stop battering is unlikely unless it is based on *both* a good understanding of the nature of battering *and* the way it is supported by certain cultural practices and beliefs. For example, in the absence of such understandings, a common response is to ask, *Why doesn't she leave?* As Hoff (1990) has suggested, a more relevant question is *Why is he allowed to stay?* Or, as I have suggested, *Why doesn't the community provide the resources she needs to leave?*

On a practical level, battering continues because it *works*. In particular, battering flourishes in the enforced privacy of the home. To return to Avni's (1991) metaphor, the inmates of the total institution have limited opportunities to escape their oppression without external intervention. Moreover, when battering does come to the attention of outsiders, too often, no-one requires the batterer to stop. For example, family members may pretend nothing has happened. Clergymen may tell women to be better wives. Police officers may fail to treat battering as criminal behaviour, preferring instead to restore calm and leave. Judges may trivialise women's experiences and collude with batterers, sometimes to the extent of awarding them custody of the children.

In a general sense, such problematic responses can be seen as reflective of the broad cultural values to which I have just alluded. This has particular consequences in terms of the responsiveness of institutions. That is, in the absence of clear guidelines, many decision makers will exercise their considerable discretion in ways which result in victim blaming and/or collusive practices. Thus, an important focus of reform has been efforts to limit the discretion available to certain key institutional decision makers.

But even if decision makers do take effective action, those actions will seldom, of themselves, be sufficient to make a difference. Single interventions will seldom be enough to overthrow the guards of the total institution. Even decision makers of good intent may become victim-blaming if they see women returning to abusive partners despite efforts to help them. Thus a second aspect of reform has been efforts to re-engineer certain key administrative arrangements between institutions, and between institutions and key community organisations. By sharing safety-relevant information and following agreed procedures, multiple interventions can be mounted, the effectiveness of one enhancing the effectiveness of others. The more

responsive the community is to the multiple needs of battered women, the more opportunity women have to leave the total institution.

From this point of view, the purpose of the reforms described in this thesis has been to ensure men's violence against women does *not* work. There have been two strands to these reforms. One strand comprises attempts to hold batterers accountable for their violence (e.g. through arrest, prosecution and sentencing). The other strand comprises attempts to ensure that women have access to the services and resources they need to live their lives in safety and free from the controlling tactics of their batterer (e.g. refuges, advocacy, income support, protection orders). Mostly, these two strands are complementary, but, as I have pointed out, there is a potential for an overly narrow focus on the former to jeopardised the latter.

Reform within the national context

Within the justice arena, our work for the Victims Task Force (Busch, Robertson & Lapsley, 1992) made it clear that statutory amendment was needed. Some parts of the Domestic Protection Act were unnecessarily complex (e.g. the requirement for a formal application for a final order). Some were essentially unenforceable (e.g. the resumption of cohabitation provisions). Other provisions provided considerable scope for judges to exercise discretion. As our analysis showed, judges would often interpolate their own values in ways which significantly disadvantaged battered women and colluded with the violence against them.

The Domestic Violence Act (1995), as has already been described, incorporated all but one of our recommendations for statutory change. As I argued in Chapter 7, it has brought New Zealand into line with progressive jurisdictions overseas (see for example, Harvard Law Review, 1993). In general terms, the Act has refocused judicial decision making. Judges are required to apply a contextualised view of domestic violence. Legal remedies are available in a wider range of circumstances. There are more meaningful consequences attached to orders. Above all, the scope for exercising judicial discretion had been significantly reduced in certain key areas. For example, judges are now required to take spousal violence into account in determining custody or access arrangements.

Other attempts to reduce the discretion of key decision makers have been achieved without law reform. The HAIP protocols (described in Chapter 9 and 10) relied not

on statutory change but on reforming administrative arrangements. Compared to previous practice (described in Chapter 5), the ability of police officers to exercise discretion in arresting and charging batterers and in referring victims to support services has been considerably curtailed. Bail procedures have been standardised. Probation officers' discretion in making recommendations to the court has been significantly fettered. As described in the previous chapter, judges have been quite resistant to attempts to have their discretion reduced by HAIP protocols, but even in their decision making, a fairly standardised approach to sentencing abusers has been achieved.

The HAIP protocols can be seen as an attempt to implement a set of common priorities across the participating agencies: the safety and autonomy of women and holding abusers accountable for their violence. Focusing the work of the various agencies on common goals has been an antidote to the learned helplessness of agency staff (Mahoney, 1994¹). That is, in the absence of the protocols, each agency's inaction tended to reinforce the inaction of others. For example, there seemed to be little point in arresting an abuser if he was unlikely to be convicted and if his partner was going to return to him. There seemed little point in aggressively pursuing conviction if a minimal sentence or discharge was the likely outcome. Under the protocols, however, police feel more positive about arresting men who batter because they have greater faith that something will be done. Judges are more inclined to refer men to programmes because they are confident that their orders will be enforced.

This focus on consistent implementation of protocols may be contrasted with the sort of approach often advocated by people who are concerned about the inadequacy of the justice system's response to battering. *We need to educate the judges. We need more police training.* Underlying this common discourse appears to be a belief that attitudes are crucial. Certainly, some reforms have focused on changing the attitudes of key decision makers (e.g. Cahn, 1992; Kurz, 1992). Yet it can also be argued that it does not much matter what attitudes individual police officers hold (or judges or probation officers) as long as they do their job properly. Changing attitudes may be

¹ In her critique of the concept of learned helplessness as applied to battered women, Mahoney has pointed out the term better fits professionals who may feel helpless to change what is happening.

more difficult than changing behaviour, especially if the sort of downstream problems I have just described are not addressed. An alternative view is that changing behaviour may, in fact, be the best way of changing attitudes (Deaux & Wrightsman, 1988).

The philosophy of the HAIP protocols are now reflected in current government policy on family violence. This sets out six strategic directions, the first of which is “A co-ordinated and coherent government response to family violence” (Department of the Prime Minister and Cabinet, 1996, p. 7).¹ Under this heading, it is stated that the government intends to:

Monitor and evaluate government agencies’ contribution to family violence prevention.² A co-ordinated response to family violence by government agencies is a priority. Co-ordination will be most effective when established through protocols and agreements rather than left to ad hoc arrangements between agencies. (1996, p. 7) (emphasis in original)

Planned in tandem with the policy statement was the *Good practice guidelines for co-ordination of family violence services*, a document released by the Family Violence Unit of the Social Policy Agency³ (1996). The introduction to the guidelines refers to the “Government’s pilot family violence intervention project in Hamilton” (p. 1) and the guidelines reflect much of the philosophy and practice of HAIP. For example, among the guiding principles are the safety of victims, accountability of abusers, and consistent responses across agencies. The guidelines provide quite detailed information about how key government agencies (Police, Department for Courts criminal jurisdiction and Family Court, Department of Corrections and the Children, Young Persons and Their Families Agency) are expected to work with each other and with relevant community agencies (such as women’s refuges and stopping violence services). There are suggestions about how local protocols can be negotiated.

On the face of it, the guidelines appear to be a mandate for HAIP-type arrangements to be established throughout the country. Certainly, there is a lot here which is based

¹ The other five strategic directions are (2) early intervention, (3) victim safety, (4) perpetrator interventions, (5) Māori designed and managed delivery options, and (6) building safer communities.

² “Prevention” here refers to the prevention of further violence (secondary prevention).

³ The Social Policy Agency is part of the Department of Social Welfare and is responsible for the provision of social policy advice to the Minister of Social Welfare.

directly on HAIP experience. However, there is one important exception and that relates to “Monitoring practice” (Family Violence Unit, 1996, p. 27). What is evident under this heading is that monitoring is seen primarily in terms of upwards accountability. For example, in relation to government agencies, internal processes are described in which individual performance is to be monitored against policy guidelines. External processes are described, but only in terms of (1) fulfilling the terms of purchase agreements between departments and the relevant ministers,¹ and (2) the general ability of Parliament to review the operation of departments.

Similarly, two sorts of monitoring of community organisations are described. In the first, community organisations are to be monitored against the performance standards included in their contracts with government agencies. For example, women’s refuges are expected to meet certain government-determined criteria as a condition of receiving government funding. In the second form of monitoring, community organisations are expected to meet the approval standards of the relevant accreditation organisation. For example, under the provisions of the Domestic Violence Act, programmes for both applicants and respondents have to be accredited by approval panels appointed by the Department for Courts.

Each of these monitoring systems can be easily justified. There needs to be accountability for the expenditure of public money. In human service work, properly established accreditation procedures can provide some protection for potentially vulnerable clients. The point is not that these monitoring mechanisms are inappropriate. The point is that a vital ingredient is missing. If there is one thing which stands out from the HAIP experience it is that an effective agency response to the needs of battered women is much more likely if the practice of that agency is being monitored on a day to day basis by battered women’s advocates. Protocols mean relatively little unless they are externally monitored.²

¹ Purchase agreements are an important part of the New Right influenced reforms introduced to the New Zealand Public Service. These reforms have been deliberately designed to remove government bureaucracy from direct political control. Chief executives of government departments are given much the same powers as chief executives of private corporations. They are able to adopt pretty much whatever processes and structures they determine. They are held accountable only to deliver the “outputs” the minister has “purchased” on behalf of the taxpayer.

² Readers familiar with the *Good practice guidelines* will know that they include regular interagency meetings which are seen as “a vital forum for information exchange and feedback” (Family

The example of the HAIP arrest protocols is a clear example. On the face of it, these protocols differed little from the existing national police policy, which, as demonstrated in Chapter 5, had previously been poorly implemented. The all-important difference for Hamilton was that women's advocates would have access to the sort of detailed, case-specific information which would allow them to monitor the policy. That is, they routinely reviewed the telephone logs for instances of failure to arrest. They routinely sought feedback from women about the service they received from the police. Similarly, the Court Advocate routinely monitored police effectiveness in prosecuting offenders. It is my conclusion that it was this type of monitoring which was the crucial factor in improving police performance. Without close monitoring, there is always potential for decision decision-makers to revert to earlier practices.¹

Future directions

While there are, I believe, significant advances to be celebrated, other problems in the justice system's response to battering remain. Indeed, some of the problems are a direct response to reform. That is, men who batter and the lawyers who represent them have found ways of resisting new measures. The resistance to the policy of charging batterers with male assaults female is an example. Another is the increase in the number of men opposing the granting of final orders, now that protection orders have more meaningful consequences attached to them (i.e. mandatory programme attendance; a presumption against the granting of custody or access). And some aspects of the reforms have produced new problems. An example of this is the way some men have used participation in a stopping violence programme to support their applications for custody of or access to their children. In the absence of good models

Violence Unit, 1996, p. 29). This could be seen as providing for the sort of community-based, external monitoring I am arguing for, but, in fact, this is unlikely because there is no provision for community organisations to have access to the detailed, case-specific information required. Indeed, the guidelines include a section on the implications of the Privacy Act and state that "each service provider should be responsible for keeping their own records. Records should not be centralised and care must be taken that any distribution of information is in accordance with the provisions of the Privacy Act" (p. 28).

¹ What happened to the Probation Service protocols when the HAIP caseload was re-distributed throughout the office is a case in point. The task of ensuring probation officers took appropriate action in respect of non-attenders became much more difficult. Until the men's programme co-ordinators developed new systems of monitoring, the enforcement of orders to attend was much less systematic.

for assessing risk, the Court has, in some situations, assumed that men who have attended a stopping violence programme will be suitable custodial or access parents. (See Busch & Robertson, 1997, for a discussion of this issue).

However effective reforms within the justice system may be, it should be obvious that they will not, of themselves, address all the needs of battered women. As I suggested in Chapter 2, there are a number of services and resources which may be needed for women to live their lives in safety and free of the controlling tactics of abusers; the list includes financial independence, job training, suitable housing, social support, appropriate health and social services, and affordable child care. Yet, as the discussion of services for women made clear, there are significant problems in many of these areas. That is, wider reforms are needed.

Enhancing the responsiveness of organisations outside the justice system is the broad aim of the Hamilton Zero Tolerance to Family Violence initiative, a project of the Hamilton Safer Communities Council. This initiative began with the development of a Charter which publicly committed signatories to a set of statements denouncing family violence and supporting victims. It has been signed by some 80 organisations, including schools, social service agencies, counselling services, local government and health services. The Charter has a general public education role. There was an extensive consultation process in drawing it up, representatives of participating agencies signed the charter in a public ceremony and the signatories are expected to display copies of the Charter in public spaces within their premises.

More importantly, the Charter provided a lever for more significant action. Following a strategic plan I prepared for the Council (Hamilton Safer Communities Council, 1996) a worker was hired to assist signatories to implement the Charter. It is important to appreciate that for most of these agencies family violence is not, in current parlance, their “core business” but they nevertheless frequently interact with either victims and/or perpetrators of family violence. They include schools, social service agencies, counselling services, local government organisations and health services. These are often sites at which the enforced privacy of the battering relationship (the total institution) is breached. Their responsiveness can be crucial in aiding women’s attempts to resist battering. Alternatively, their lack of responsiveness can be crucial in confirming battered women’s isolation and powerlessness (as was described in Chapter 3).

Under my supervision, the Zero Tolerance worker has been working with relevant agencies, helping them conduct safety audits, providing training and reviewing their policies and procedures to ensure that they are prioritising the safety of victims and the accountability of perpetrators. He has developed training packages, screening tools and best practice check lists, each tailored for the various types of settings (Barnes, 1999b). The aim is not to turn these agencies into family violence specialists but to ensure that if family violence is disclosed they respond to clients' immediate needs and can make appropriate referrals. One simple example illustrates the point. A local Citizen's Advice Bureau now reserves a car park behind its offices which can be used by women who are afraid that their visit will become known to their partner if he or a friend recognises their car parked outside on the street.

Reflections on family violence research

After nearly ten years as a family violence researcher and longer as an activist and practitioner, what I have learnt? While each role informs the others, here I restrict myself to considerations related to research.

At the top of the list I place the importance of understanding the dynamics of abuse, a priority reflected in my decision to devote a major part of Chapter 2 to a discussion of just this topic. It is vital that researchers (and practitioners and policy makers) understand the constraints under which battered women live, the dynamic of fear produced by systematic violence and threats of violence, and the control batterers can exert, often in ways unrecognised by the uninitiated. Without this understanding, researchers risk (a) endangering their participants, for example, by exposing them to further violence when partners learn of their participation, (b) producing de-contextualised accounts of violence, which, for example, will simultaneously overstate the violence of women and understate the violence of men, and (c) develop woman-blaming analyses of family violence.

A second consideration is that family violence research raises particular ethical issues, not usually faced by social science researchers. Researchers have to take special care that participants will not be endangered by their participation. Particular care needs to be taken in contacting participants or potential participants. For example, this may require preparing a cover story in case an abuser answers the telephone. In certain situations, researchers may have to breach confidentiality to ensure safety, which

might be the case if information about a perpetrator's intention to harm someone comes to light. More often, breaches of confidentiality will endanger safety. Researchers will often be asked for advice and need to be prepared for that. For example, I have often been asked for advice on matters such as the enforcement of protection orders and making custody and access applications. It does not seem tenable to restrict myself to a narrow view of my role as researcher and so I do provide what information and support I can. Obviously I need to make sure that I am not offering advice beyond my expertise and I need to know how to make appropriate referrals. These are important ethical responsibilities.

Sometimes, the ethical issues play out in somewhat unexpected ways. This has been the case in having proposed research reviewed for ethical appropriateness. Generally, and quite justifiably, reviewers place a high value on freely given, informed consent. Participants should not be under any duress to take part. However, sometimes, this value needs to be weighed against competing values. A classic case is the evaluation of perpetrator treatment programmes. Should participants in such programmes be free to withdraw from the evaluation without this affecting their place on the programme? The principle of freely given, informed consent would suggest so. But I would argue a counter view. Is there not a danger that giving perpetrators the right to decline participation in an evaluation would result in an overly optimistic picture of the programme's effectiveness? Would it really be ethical to conduct such an evaluation if it led to the continuation of an ineffective and potentially dangerous programme? Ethical reviewers may have an understandable aversion to any suggestion of coercion but it may, under certain circumstances, be more unethical to extend to perpetrators an absolute right to withdraw from participation in research.

I have come to appreciate the need for family violence researchers to be methodologically flexible. Because of the private nature of battering, this is an area of investigation in which many conventional social science methods have significant limitations. For example, random surveys will systematically exclude or under-represent what might be thought of as the "worst cases." Battered women routinely have their telephone calls monitored. It is unlikely that they will be readily available to participate in telephone or door knock surveys. Women who go underground to escape their abuser do not appear on electoral rolls or in telephone directories. For the family violence researcher, the data are often elusive. For example, in evaluating

the effectiveness of HAIP I have often felt like a detective, piecing together the evidence from whatever is available: incomplete agency records, titbits of information passed on by informants, women's stories as selectively retold in police documents or judicial decisions, fortuitously obtained case studies, and official statistics in which the apparent authority of the numbers is undermined by inconsistency in the way staff categorise events. In short, the information available to any one researcher is sketchy, incomplete, suggestive rather than determinative, but it may be the best we can obtain.¹

I have learnt the importance of not working alone. As I stated earlier, I think it is particularly important for male researchers to work in collaboration with knowledgeable women to avoid being co-opted into the logic with which perpetrator-collusive practice is justified. Working collaboratively can help ensure researcher safety. I am not thinking here of researchers' physical safety, although that too can be at stake in certain situations.² Working collaboratively can help facilitate the emotional support which may be needed to cope with distressing material. It also helps keep me grounded in sometimes difficult and unfamiliar terrain. I well remember receiving an anonymous letter during the political campaign which surrounded the Domestic Protection Study. This was shortly after I had appeared on television. The writer accused me of deriving sexual satisfaction from my work at the expense of battered women. I was devastated. I am not sure what I would have done if left to my own devices. Talking it through with colleagues helped immeasurably.³

Collaboration provides a diversity of perspectives which enriches one's research. One way in which this happens is collaboration across disciplines. To say men's violence against women partners is a psychological problem is quite inadequate. It is also a sociological problem, a legal problem, a health problem, and a policy problem. One

¹ Of course, the same point can be made about most social science research. Our findings are always tentative and our methods vulnerable to critique. I think the point is that in family violence research, we are confronted with the limitations of our methods particularly quickly.

² Lorraine Corbett (1999) recalled an incident in which she was interviewing a woman when her interviewee's ex-husband drove slowly past the house, in breach of his protection order. Fortunately, he did not enter the house but the incident well demonstrates the risks researchers can face.

³ In a strange way, I came to be grateful for that letter. It helped me to recognise that there was a part of me which enjoyed the sometimes confrontational politics in which we were embroiled. I needed to be reminded that in the heat of the "battle" (for that is how it felt) I must not forget the cause.

of the strengths of the Domestic Protection Study was that it brought together legal, feminist and psychological perspectives. But collaboration can enrich research by incorporating diversity on other dimensions. Since the Domestic Protection Study I have continued to work closely with Ruth. This is only partly a collaboration between the lawyer and the community psychologist. It is also a collaboration which spans differences of gender, culture, sexuality, life experience and personal style. I owe much to my colleague and dear friend, to the extent that I have difficulty in thinking of “my” work”. In a very real sense, it is “our” work.

These points, the importance of understanding the dynamics of abuse, the particular ethical issues faced, the requirement for methodological flexibility and the need for collaborative research (especially across disciplines), taken together amount to a strong case for family violence research to be regarded as a specialist field (c.f. Crowell & Burgess, 1996; Family Violence Unit & Social Policy Branch, 1998; Finkelhor, Hotaling & Yllö, 1988). But it is a field to which I believe community psychology is well suited to make a contribution, by virtue of its ecological approach¹, its willingness to work in a multilevel way (micro to macro), its concern with social justice, its activist nature, its methodological heterogeneity and its preference for collaborative and interdisciplinary ways of working (Orford, 1992). Yet as I and my colleagues have argued elsewhere (Robertson, 1996; Robertson, Gridley & Slattery, 1995) community psychologists have been surprisingly slow in becoming involved.² This should not come as a surprise. Almost a decade earlier Anne Mulvey (1988) had pointed out that, despite the significant commonalities between community psychology and feminism, community psychologists had been remarkably resistant to adopting feminist approaches and feminist agendas.

She concluded:

¹ That is, specific acts of violence against women need to be understood within the context of fear and other controlling tactics used by batterers. They also need to be understood within the broader context of dominant cultural values which support the subjugation of women as a class and condone violence against individual women.

² A review of the last 10 year's issues of the *American Journal of Community Psychology* identified just four articles focusing on violence against women, and these are primarily the work of two women, Cris Sullivan and Rebecca Campbell (Sullivan et al, 1992 and 1994; Campbell, 1998; Campbell & Aherns, 1998). This is not a comprehensive measure of community psychologists' work in family violence, but it is indicative.

There are still many barriers to maintaining and developing the activist orientation and shared principles at the heart of community psychology and feminism. At the same time, it is this common ground that is both the richest and the riskiest possibility for the field. Building a feminist agenda offers community psychology support and credibility in the community, and through this process community psychology could do the same for women. (1988, p. 82)

It is my hope that this thesis will contribute to such an agenda, for the benefit of women, for the benefit of children, and for the benefit of men committed to equal and respectful relationships with them.

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