

Australian Domestic & Family Violence CLEARINGHOUSE

ISSUES PAPER 3

Domestic and Family Violence: Criminal Justice Interventions

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Introduction²

DOMESTIC violence is a crime. This has been the key policy statement driving government and community reforms for the past 30 years. Criminalisation responds to the critique of early feminists that the privacy of the family created a screen behind which some men brutalised women and children.³ Criminalisation⁴ seeks to introduce the standards and norms of non-violence in public places, and the means of enforcing and regulating these, into people's more intimate lives. Criminalisation

attempts to insert the power and authority of 'the state' between a person prepared to use physical force and/or the threat of it, and the persons over whom such dominion and control is sought (Stubbs 1994; Yllo & Bograd 1988; Dobash & Dobash 1992).

Demands for criminalisation of domestic violence found fertile ground, over the past three decades, in wider struggles for gender equity, the 'rights' of crime victims, and in political pressure for crime control and 'law and order'. However, the criminal justice system's response to domestic violence has been, and continues to be, the subject of extensive and persisting criticism by researchers and victim advocates (e.g. Hopkins & McGregor 1991; Buzawa & Buzawa 1996a and b; Stubbs 1994; Katzan & Kelly 2000).

Over recent years, agencies and people within the criminal justice system have begun to respond more thoughtfully and meaningfully to the challenges placed before them. A forthcoming Commonwealth report (urbis keys young 2001a), for example, documents a range of Australian good practice initiatives which aim to facilitate access to justice for those affected by domestic and family violence. From the Atunypa Wiru Minyma Uwankaraku (Good Protection for All Women) Project crossing the Northern Territory, Western Australian and South Australian borders, to the Domestic Violence Integrated Information Project in Tasmania, and the Queensland Women's Justice Network, the innovation and energy in the field is remarkable.

Notwithstanding efforts such as these, some advocates and researchers in the domestic and family violence field have begun to raise questions about criminalisation (Shepard & Pence 1999; Snider 1998; Braithwaite & Daly 1994), its unintended consequences (Buzawa, Hotaling & Klein 1996), and its primacy over other forms of intervention and prevention (Bagshaw et al. 2000; Holder 1998). These questions raise many challenges and dilemmas for researchers, survivor advocates and criminal justice organisations.



Partnerships Against
Domestic Violence



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This paper

THIS paper explores some of the contemporary debates and dilemmas in implementing criminal justice reform in the area of domestic violence. This exploration is based on presentation and discussion of key research findings. In doing so it does not claim that criminal justice should be the sole or even primary strategy employed to tackle domestic violence. On the contrary, given that so few victims of domestic violence actually seek criminal justice intervention, it could be argued that criminal justice should be a minor player alongside community-based and primary health reforms (Buzawa & Buzawa 1996a; Ursel 1997).

However, criminal justice performs a function that is not only instrumental in enforcing legal and social norms, but is highly symbolic. Criminal law is a powerful agency of public disapproval and reprobation. The criminal justice system purports to deliver under the banner-waving terms of *justice*, upholding *citizens' rights*, and *protecting the vulnerable*. For victims of domestic violence and their advocates, criminal justice interventions are one means of society delivering concrete meaning on these terms. It also provides one of the few mechanisms available to victims for actually stopping the violence.

If our reform efforts are about making the lives of women and children safer from domestic violence, what is the evidence for just how well the criminal justice system does this? This paper comprehensively reviews the available research which can contribute to answering this question.

In so doing it focuses on police, prosecution, criminal courts, and community corrections – agencies of the *criminal* justice system. It assumes some level of knowledge of those agencies and of some basic legal concepts which underpin criminal jurisprudence⁵. It does not examine legislative reform, and access and procedural issues with regard to the granting of protection orders⁶. The enforcement of protection orders is addressed only as a function of the broader obligation of law enforcement agencies to investigate allegations of criminal conduct.

Responses to perpetrators of domestic violence are addressed in a relatively limited fashion as being the range of options before the court pre and post hearing, and as issues for probation and parole (or community corrections) in managing offenders. Some of the key research into perpetrator programs – whether court-mandated or ‘voluntary’ or some mix in between – has already been extensively covered (Keys Young 1999). It should be noted, however, that research in this area is evolving rapidly and will be the subject of a future issues paper from the Clearinghouse.

The issues paper begins with a discussion of the research sources on which it is based, and highlights

the gaps in Australian research on issues of crucial importance to developing and refining criminal justice responses. The consequent reliance on overseas research, and the limitations and potential traps which arise, are outlined. Although the paper's focus is on formal criminal justice responses to domestic violence, it proceeds with a presentation of recent research which demonstrates the importance of a combination of informal and formal approaches. This research suggests potential new partnerships and initiatives and demonstrates the complexity of shaping effective responses to domestic violence.

The next sections of the paper orient readers to the criminal justice system in Australia, to the role of the victim/witness within it and to some of the criticisms of the criminal justice system's response to domestic violence. In the section, ‘victim decision-making in legal interventions’, the focus moves from exploration of the criminal justice **system** to the help seeking actions taken by victims of domestic violence. Research is presented which suggests that abused women use the criminal justice system as a resource as part of intricate ‘management strategies’ used to deal with the violence they experience. It is argued that this knowledge about women's complex motives in help-seeking is crucial to tailoring more responsive criminal justice policies and procedures.

The next section of the paper examines the police response to domestic violence, including the variables found to be associated with the decision to arrest, and the research on the effects of arrest. Evidence from the influential US ‘arrest experiment’ and ‘replication studies’ is explored and lessons from this body of research are identified, particularly the need for an analysis of police decision making within the broader context of the response of the wider criminal justice system. Examples of some Australian initiatives are presented.

The paper moves next to prosecution, its role, the criticisms which have been raised about it, and a description of some of the innovations which are being developed, both internationally and locally. The debate about the decision to prosecute (‘no drop’ policies) is explored, and the research evidence on the outcomes of prosecuting domestic violence for victim/witness presented.

Attempts to better co-ordinate efforts to tackle domestic violence have been a focus in most jurisdictions over the past decade. The paper concludes with a discussion of coordinated criminal justice interventions and a presentation of the available evidence of their efficacy. In a complex area such as this, defining ‘success’ is challenging, and research on a range of different outcome measures is presented, including improved coordination, ‘outputs’ (such as increases in arrest and prosecution rates), victim satisfaction and victim safety and reduction of repeat offending. The strong message throughout the

paper, and its conclusion, is that our efforts must acknowledge the complexity of the issues and systems being addressed, and that simple, one-off solutions are inadequate.

There are differences in structure, terminology and procedure within and between the criminal justice agencies in different jurisdictions across Australia. The paper nonetheless attempts a broad description of problems and issues in an effort for national relevance.

Research sources

READERS will see immediately that the bulk of the criminal justice research and evaluation discussed here derives from overseas and from the USA in particular. Care should therefore be taken in interpreting the findings for the Australian context. The respondent sample of some North American studies will strongly mirror the demographic profile of urban USA, and some evaluations naturally reflect a judicial culture very different to our own.

Literature searches for this paper were conducted across a range of legal and social sciences bibliographic databases. The bulk of the earlier research in North America, the UK, and Australasia is overwhelmingly on police response. In Australia this research focus has been on police and protection orders. It is noticeable that, as the field matured and developed over the past ten years, more studies were found that examined prosecution and integrated court responses. On these last two issues, however, there is resounding silence in Australia.

The US National Institute of Justice (NIJ) in the Department of Justice is a central if not dominant agency in setting research agendas, coordinating strategic research programs, and disseminating and implementing research findings within the USA. The NIJ's exhortation is to *think research* in identifying ways forward; and to *think evaluation* to focus on impact, outcome, effectiveness and continual improvement in responses to crime, violence and justice issues. The central lack of such a philosophy (or the means to deliver it) within Australia severely compromises criminal justice and community agencies in measures to better target resources and effort.

Australia has made a strong contribution to the academic and practice field in studies about the extent, nature and impact of domestic violence. The current national Partnerships Against Domestic Violence initiative has consolidated and extended this contribution through, for example, reports on good practice in meeting the needs of children exposed to domestic violence and research into key areas such as help-seeking. However, there has been little Australian research into some of the key questions before criminal justice policy makers and domestic violence advocates. These include questions

such as: Are women safer when prosecution proceeds against their wishes? What are the situational variables that impact on police decision-making at the scene of an incident? What is the impact on parties of specialised courts?

Many of the overseas studies also reveal the critical importance of evaluation collaborations between practitioners and academic researchers. Furthermore, studies which are multi-disciplinary, cross-sectoral and longitudinal appear effective in exploring some of the increasingly complex and sophisticated responses being implemented in the criminal justice system. In the USA it is claimed that:

Research on the effects of legal sanctions has been limited by weak research designs, a narrow range of theories, poor conceptualization of potential interaction effects and subgroup differences, weak interventions and sanctions, and implementation problems. (Fagan 1996, p. 30)

If this claim is made, given the extent of research in that country on criminal justice interventions, then we must wonder at how markedly ill-equipped and ill-informed is the knowledge-base for developing policy and practice in Australia.⁷

A word about words

REFORMS in North America to tackle ineffective legal interventions in domestic violence have strongly influenced initiatives in other countries. Programs such as the Domestic Abuse Intervention Project (DAIP) in Duluth (Minnesota), the Quincy District Court (Massachusetts), and the Domestic Violence Unit within the San Diego District Attorney's Office have rightly captured the attention and imagination of policy-makers and advocates in Australia as elsewhere (Morely & Mullender 1992; Holder 1999).

There are some strong similarities in the role and function of law enforcement, prosecution, and judicial and correctional authorities between the USA and Australia. There are certainly similar challenges facing agencies when prosecuting domestic violence. It is nonetheless important, when interpreting US data for Australia, to keep in mind some critical differences.⁸ Namely:

- The USA has a more emphatically moralistic social and political culture, **and** a more retributive and punitive justice and penal framework than does Australia.
- Australia's administrative, criminal justice and political system is split between the states and territories but is not nearly so fragmented as that in the USA. This may have influenced US activists against domestic violence to emphasise strategies that enlist federal or state legislative

interventions more so than in Australia, and definitely more than in Britain.

- The US law enforcement, legal and judicial system is highly politicised.⁹ This brings both advantages and disadvantages. The US prosecution and judicial culture is far more combative than the jurisprudence that Australia inherits from England. Prosecution authorities in the USA have evolved aggressive prosecution policies and practices for a range of offences, in particular those involving drugs, that mirror the often declaratory law and order policies of US politicians.
- An allegation of criminal conduct can be filed with the prosecution in the US by police or by the victim. In Australia and the UK, the complaint can only be made through police. Most District Attorney's offices in large US jurisdictions have their own investigative resources. This, in combination with the last point above, combines to bring prosecution authorities into a much closer operational relationship with police and criminal investigations than is traditionally the case in Australia.
- There are significant legal, procedural and organisational differences in the US between misdemeanour cases and those involving felony charges. To a certain extent, this mirrors the separation in some Australian jurisdictions between summary and indictable matters, and between the role of police prosecutors and that of independent prosecuting authorities.

Given these differences, the importation of terms from the USA such as *mandatory arrest* and *no-drop prosecution* may be at best unhelpful and at worst counter-productive. The terms may also conflict with the legal and constitutional independence of police officers (Bronitt 2001). Huge assumptions about the law and practice are often made by people using these terms. Ellen Pence (1998) co-founder of the DAIP in Duluth has said that 'mandatory arrest doesn't mean that we arrest everything. Discretion is built in up until a certain level of evidence'. The term 'mandatory arrest' primarily relates to constraints, usually legislative, placed upon the exercise of a police officer's discretion, **beyond** establishing 'probable cause'¹⁰ that an offence may have been committed. Pence argues that 'policies should not turn practitioners into robots, mechanically applying a few predetermined actions to a case.' She goes on to claim that Duluth's arrest policy 'has increased officers' use of professional judgement and skills in these [domestic violence] cases' (1999, pp. 54-55)

Davis and Smith (1995, p. 546) pose the slightly provocative question: 'do mandatory arrest statutes simply move discretion from the point of arrest to

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the point of prosecutorial screening?' Nicole Munstermann (2000), Family Violence Prosecutor with the ACT DPP says that, 'there is no such thing as a mandatory [or "no drop"] prosecution'. Indeed, the San Diego District Attorney has moved away from the term 'victimless prosecution' to describing an 'evidence-based prosecution' (Gwinn 2000). This aligns with the basic standard employed by all Australian public prosecution authorities (that is, 'sufficiency of evidence'). Questions about whether and how to account for extra-legal factors, such as the victim's preferences for or against prosecution, fall within the secondary (although no less important) consideration of 'public policy' (ACT Director of Public Prosecutions 1991).

The shift in terminology and my appeal to readers to look behind the terms demonstrate the complex reality of cases that police, prosecutors, magistrates and probation officers face, the legal and practical issues that constrain the system, and the vital importance of the need for a criminal justice system that really is fair and balanced.

Although this paper explores the effectiveness of formal criminal justice interventions in domestic violence, it is increasingly recognised that a more complex analysis, which addresses both formal and informal responses and the interplay between them, is now required. Therefore, the next section of the paper considers the connections between formal and informal approaches.

Connections between formal sanctions and informal responses

BOWMAN, for example, (1992, p. 207) contends that the framework of 'arrest or not arrest' or 'prosecute or not' is far too simplistic an analysis; that it presents an 'all or nothing' choice that is just not realistic. These simple formulas, it is argued, do not do justice to the extremely complex interplay between women's decision-making, and the context and nature of the violence they confront. Neither does the 'either/or approach' acknowledge the variety of options, opportunities and pathways actually contained within the criminal justice system, the legal context of police/prosecution decision-making, or the potential contained within partnerships between formal and informal responses.

Surveys in five countries (McGibbon, Cooper & Kelly 1989; Mooney 1994; Dominy & Radford 1996; Australian Bureau of Statistics 1996, Rodgers 1994; Victimization Survey Committee 1997) conclude that family and friends – as ‘informal supporters’¹¹ – are the source of support most frequently accessed by women who experience abuse. Disclosures of abuse are also made earlier to family and friends than they are to external community or government agencies. As yet, little is known about the content of these transactions (Goff 2001; Wilcox, 2000; Keys Young 1998).

Some recent studies are showing, however, how the interaction between, and strategic engagement of informal social support with, formal interventions such as from the justice system, are producing strong results for abused women’s safety. For example, a recent study in Michigan (USA) compared two groups of women leaving a domestic violence shelter (Sullivan & Bybee 1999). One group was assigned a volunteer ‘advocate’ while the other was a control group. In the ‘advocacy group’, each volunteer worked with a woman over a two year period to help her assess her needs and goals and then assisted her to access resources such as housing, employment, legal assistance, transportation, childcare, counselling for children and social support. Both groups were interviewed every six months over two years. Twice as many women in the ‘advocacy’ group experienced **no** violence whatsoever over the two years. This group also experienced less depression and a higher quality of life. Of those who wished to end the relationship, the ‘advocacy’ group were more effective. Women with advocates perceived themselves as significantly more effective in obtaining community resources and assistance, as well as interpersonal social support.

In another study, Goodman, Bennett and Dutton (1999) examined the role of informal support within the criminal justice system in Washington DC. They found it to be positively influential on victim ‘follow-through’ in domestic violence prosecutions. The 92 women interviewed identified lack of social support from family and friends as a significant obstacle to follow-through. Women with more material aid such as child care, transportation or emergency money from family and friends were **twice as likely** to follow through. Epstein (1999, p. 20) concludes that these studies ‘indicate that in many cases, an increase in victim support from family, friends, and trained personnel can be enough to empower victims to exit the cycle of violence’. Similar conclusions are drawn by Liz Kelly (1999) in her evaluation of a civilian advocacy project located within an English police station. Studies such as these strongly suggest that the development of more proactive and strategic partnerships between formal providers and informal supporters is full of potential in assisting victims of domestic violence.

Other research identifies possible social ‘levers’ to controlling the behaviours of violent men. Sherman and Berk’s Minneapolis Police Arrest Experiment and the replication studies (discussed in detail later in this paper) for example, found that the effect of arrest on employed men was more significant in reducing repeat offending than for unemployed men (Schmidt & Sherman 1996). In her review of the arrest experiments, Zorza (1994, p. 936) suggests that ‘combining social sanctions with formal criminal sanctions is believed to enhance the deterrent effect [of arrest].’ The so-called ‘stake in conformity’ measures of employment, marital and social status positively correlate, it is believed, with both arrest and prosecution (Fagan 1996, p.10 ; p. 19)¹².

Snider (1998) and Stewart (2001a) on the other hand, strongly question the effectiveness and desirability of the criminal justice system as a lever in generating change. They argue that it fails to change either social structures and social relationships, or to transform individual lives, behaviours and identities. The literature, they suggest, does not point to the justice system as being in the interests of ‘building less violent social orders’ (Snider 1998, p. 11).

Cross-Cultural Settings

The potential contained within the interaction between social control and formal sanctions is explored further in studies of cross-cultural approaches to addressing domestic violence. For example, Agnew (1998) discusses a range of culturally sensitive services for abused women in the Canadian context. Ruttenberg (1994, pp. 196-197) applauds Jacquelyn Campbell’s suggestion that ‘it is now time to start applying sanctions at the neighbourhood level’. Localised responses are proposed by Campbell for the US as an alternative to the racially oppressive sanctions provided by police and courts.¹³ Snider (1998) briefly examines cultures, in the contemporary and historical literature, which provide examples that are egalitarian and less violence-prone. Kelly (1996) similarly describes the work of Southall Black Sisters in challenging both sexist and racist violence in the UK.

Alternative or complementary strategies to formal interventions are also proposed by Indigenous communities in Australia and elsewhere (Blagg 1999; Blagg et al 2000). High rates of Indigenous interpersonal violence, the research suggests, stem from multiple causes including: marginalisation and dispossession; loss of land and traditional culture; the breakdown of community kinship systems and Indigenous law; entrenched poverty; and the ‘redundancy’ of the Indigenous male role and status, compensated for by an aggressive assertion of male rights over women and children (Aboriginal and Torres Strait Islander Women’s Task Force 2000; Blagg, 1999). One consequence of these factors is

‘the interconnectedness of family violence, suicide, crime, drug and alcohol abuse as manifestations of what Judy Atkinson calls “intergenerational trauma”’ (Blagg 1999, p. 11).

Driven by a desire for self determining solutions and a reclamation of Indigenous skills and experiences, communities in Australia, Canada and the USA are actively pursuing a range of responses to family violence. These include family reconciliation cultural camps, healing circles, and peacemaking as well as continued efforts to make the non-indigenous justice system more responsive (Greer 1994; Kelly, L. 1999; Coker 1999; Blagg et al 2000; Braithwaite & Strang 2001). However, these initiatives are not without Indigenous voices urging caution (McGillivray & Comaskey 1999).

Criminal justice in Australia

THIS section of the paper turns from the exploration of informal supports, to the world of formal criminal justice interventions. It is claimed (Bugg 1999) that the foundations of a fair system of justice in Australia are openness and accountability at all stages, fairness and balance, expedition, efficiency and cost effectiveness. Richard Refshauge, the ACT Director of Public Prosecutions (1999), identified further specific goals so far as the system addresses family violence: the elimination of violence, the satisfaction of the victims, and the protection of the public interest.

Australia’s criminal justice agencies are expected to deliver on these lofty aims as they confront fiscal realities familiar to other public services. Key material and political pressures facing decision-makers and administrators include efficiency, timeliness, managing the volume of cases, cost of justice, legal aid cuts, effectiveness, accountability, meeting community expectations, alternative dispute resolution, and technological advances. Reforms in the domestic violence area must acknowledge and take place in this wider context.

Those advocating reform in the criminal justice response to domestic violence also need to acknowledge sometimes competing expectations and pressures on, and perceptions and experiences of, criminal justice itself. Many social justice commentators, for example, have expressed concern about responses that effectively criminalise social and behavioural problems such as substance misuse or juvenile delinquency. (e.g. O’Malley & Sutton 1997; Simpson & Hil 1995). Others have pointed out the disproportionate impact of criminal justice interventions on sections of the population such as homeless people (e.g. Strategic Partners 1999), and the experience by Indigenous communities of law enforcement as agents of colonisation and discrimination (e.g. Greer 1994). In this context, feminists have

sometimes been drawn into unlikely and uncomfortable alliances with ‘law and order’ advocates for more police, tougher judges and harsher sentences.¹⁴

Criminal justice is a blunt-edged instrument in complex social and inter-personal issues. Its cumbersome machinery is reactive rather than proactive. It is incident-based, patriarchal, hierarchical, defendant-focussed, and generally not research driven in its interventions. Reformers have sometimes placed a lot of energy and expectation on one-off solutions (eg legislation) or quick fixes (e.g. Drug or Family Violence courts). Debates about whether the criminal justice system is there for deterrence, rehabilitation, retribution, or restoration (or all of these), also lap the edges of domestic violence reforms.

The role of the victim within the criminal justice system

TODAY’S criminal justice system utilises ‘the State’ as surrogate victim and the real crime victim is relegated to a role of (at best) lead witness (Zeigenhagen 1977). For most victims of crime, domestic violence included, even their role as lead witness never comes as so few incidents enter the criminal justice system by way of reports to police. (See discussion page 11) For the most part, until recently, crime victims had no rights at all, ‘only courtesies to be extended or withheld at the whim of the police or prosecutor.’ (Erez & Kelly 1997, p. 232)

In part to address this situation, legislative, service and procedural reforms aimed at addressing crime victims’ concerns about the criminal justice system have been introduced in most Western jurisdictions (Cook, David & Grant 1999; Israel 1999). To a large extent, these reforms have resulted from campaigning by crime victim groups and their supporters. However, because the histories and activities of the movement against violence against women and that advancing the interests of victims of other crime have been relatively separate (Lucas & Holder 2000), knowledge, understanding and use of these codes has been limited to date in domestic violence reforms.

In essence these codes (Cook, David & Grant 1999) provide a framework for the crime victim to be incorporated in the procedures and key decision-making points of criminal processing and confer obligations on criminal justice agencies that are both concrete and measurable, thereby enhancing transparency and accountability. In some jurisdictions, this includes a means of independently monitoring and reporting on performance and effectiveness.

These reforms have been met with caution and even resistance by practitioners and administrators within the system (Victorian Community Council

Against Violence 1995). Studies show that within the judicial branch, prosecutors, defence lawyers, and judges operate as a 'work group', sharing the mutual goal of disposing of cases as fast as time and justice will allow (Eisenstein & Jacobs 1977). This work group feared victim reforms would slow down or derail functional efficiency.

Even amongst victim advocates and researchers (from both feminist and 'humanist' perspectives), there is fierce debate about the role of the crime victim in the criminal justice system; about the capacity, willingness and effectiveness of the system to deliver key victim needs; and the impact of participating in the system on victims themselves and on justice agencies (Davis, Lurigio & Skogan 1997). Current areas of debate and evaluation acknowledge that, even in jurisdictions which have legislated for crime victims' rights, it is still by luck and good fortune rather than good government and effective client service that crime victims as a 'class' in society receive these rights in a consistent and comprehensive fashion (Hillenbrand & Smith 1989; SA Attorney-General's Department 2000; ACT Department of Justice & Community Safety 2000).

Critiques of criminal justice responses to domestic violence

WOMEN'S participation in the criminal justice system as victims of domestic violence comes about with or without choice. Like most people, crime victims do not necessarily know anything about the various functions of its agencies, its procedures and standards of proof, and the victim/witness role within it. Some may say that it is ironic that feminists elicit state intervention in women's interests from agencies that represent the pinnacle of patriarchal power (Snider 1998). Yet the fear that stalks many women living with domestic violence means that, more often than not, the protection ostensibly offered by police is critically necessary, if often faulty in execution.

When a woman being beaten by her partner calls the emergency police number she dials into a complex system, which usually resolves cases based on institutional imperatives rather than on making victim safety central. Yet for nearly 20 years the justice system has consumed much of the energy of the various movements against domestic violence:

The judicial system was criticized for failure to act independently of the victim against the use of violence and for its inability to protect the victim during the court process. Insistence by the police and prosecutors that women initiate and pursue legal action against abusers ignored the realities of battering and rendered the courts useless to most victims of battering. (Pence 1989, p. 9)

When promoting legal reform, it is essential to understand the different roles and functions of the various criminal justice agencies¹⁵ (Bronnitt & McSherry 2001; Chappell & Wilson, 1994). For those already engaged in improving coordinated responses, it becomes critically important to learn about the powers and levers that each agency has or potentially has in processing a domestic violence case. Also critical is how these agencies work operationally together. How do the links work? How do they transfer information and of what kind? What are the different standards for decision-making? What are the environmental, technological and cultural interactions? The Duluth *Safety and Accountability Audit* (Pence & Lizdas 1998) is one means whereby practitioners within the system can review this micro-processing of cases with a view to reform.

The criticisms of the criminal justice system's response to domestic violence have been extensively documented (e.g. Edwards 1989; Hopkins & McGregor 1991; Hanmer, Radford & Stanko 1989; Buzawa & Buzawa 1996a; Stubbs 1994; Seddon 1993). It is, however, worthwhile re-capping some of them. The range of dilemmas and concerns have included:

- criminal justice agencies traditionally did not treat family and especially domestic violence matters seriously,
- despite a policy position that *domestic violence is a crime*, low charge and conviction rates suggested it was being otherwise considered,
- there is a lack of systemic and case coordination within and across criminal justice agencies,
- neither victim safety nor perpetrator accountability are practically and consistently addressed by criminal justice agencies,
- insufficient attention was being paid to 'belief on reasonable grounds', evidence gathering, victim safety and arrest options at the time of the incident,
- there appear to be irreconcilable dilemmas in balancing victim ambivalence over whether to proceed with responsibilities to uphold the criminal law and protect vulnerable persons.
- domestic violence matters 'dropped' too easily from the prosecution process,
- difficulties in proceeding with ambivalent or hostile witnesses,
- difficulties in matching victim services to victim needs at the 'right' time,
- a lack of procedural fairness for victims including timely notifications,
- options for victim participation in the process were non-existent,

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- length of time for criminal domestic violence matters to be heard in court and court delays that create further ‘attrition’ on the victim,
- sentencing options are ineffective in reducing repeat offending, do not provide for victim input, and pay insufficient attention to compliance with court orders,
- ineffective or non-existent mechanisms for gaining victim information as to the history and context of the abuse for police, prosecutors, courts and corrections.

In response to these critiques, justice agencies have responded in a variety of ways. Some initiatives include specialisms in police action at domestic violence incidents such as the NDV pilot project in South Australia, assertive prosecution practices and the availability of witness assistance within prosecution (ACT), specialised courts (e.g. South Australia and Western Australia), probation responses and offender management issues, and closer working relationships between criminal justice agencies and domestic violence support/advocacy staff (urbis keys young 2001a). These are discussed at further length later in the paper.

Victim decision-making in legal interventions

MOST earlier studies on the responses of justice agencies to victims of domestic violence focussed on under-enforcement and under-utilisation of laws, chronic victim-blaming, inconsistency (between personnel, within agencies, between agencies and across the system), and inadequate or inappropriate responses. Together, these studies noted the general failure of the legal system to provide options or respond in ways that were meaningful, effective or positive for the victim.

More recently, attention has focussed on the actions taken by victims themselves, commonly called help-seeking (e.g. Kelly 1989; Keys Young 1998). Hutchison and Hirschel (1998, p. 436) state that ‘virtually everyone has some experience in help-seeking, from medical care to lawn services to caterers or therapists’.

As a social behaviour, there is nothing unusual about help-seeking efforts. Indeed, research into the help-seeking behaviour and patterns of abused

women has shaken previous notions of ‘learned helplessness’ (Walker 1979) or victim ‘passivity’ in the face of violence.¹⁶ For example, in the UK, McGibbon, Cooper and Kelly (1989) identified women as making between five and twelve separate contacts in finding a sympathetic and helpful response.

In contrast, ‘survivor theory’ suggests that abused women are very active in measures that seek to ‘manage’, cope with and/or extricate themselves from the violence (e.g. Jaffe et al 1993; Gondolf & Fisher 1988; Gondolf, Fisher & McFerron 1991; Kelly 1989). Furthermore, they will make greater efforts to protect themselves and their children by increasing their help-seeking as abuse increases. This theory has been extended by Hoyle and Sanders (2000), Dutton (1996), Ford (1991) and McGillivray (1987) to explain and contextualise how women may use the criminal justice system as a resource in complex ‘management strategies’ vis a vis the violence and other aspects of their lives. Feminist criminologists such as Dr Elizabeth Stanko and Professor Jane Ursel¹⁷ consequently now argue for a re-thinking of the criminal justice system as a ‘resource not a solution’ (Holder 1999) in women’s struggles to end violence in their lives.

In essence, help-seeking and the responses it brings is part of a continual daily weighing up process for women facing abusive behaviours in their lives. Decisions made and paths taken one day may be derailed by an unsupportive and victim-blaming response, or overturned by an incident of severe violence the next day. Liz Kelly’s research in the UK (1989 and 1999) reveals that it is the quality, consistency and reliability of responses abused women receive that is strongly influential in their achieving effective outcomes for themselves and their children. To consistently hear ‘you deserve better’ is a simple message that is more powerful on women’s decision-making, Kelly asserts, than any other intervention.

A range of factors have been shown to impact on a victim’s decision to seek help from the police – the gatekeepers to the criminal justice system. For example, Dobash, Dobash & Cavanagh (1985) found that the length of the abusive relationship impacted on general help-seeking, and that continued help-seeking was affected by the response received and the impact of that response on the abusive behaviour. Factors identified as inclining a victim towards calling the police include assault severity, husband’s unemployment (for severe violence), wife’s unemployment (for minor violence but not severe violence), and alcohol use (for severe but not minor violence) (Kaufman, Kantor, & Straus 1990); situational variables such as prior history of calling police (Berk et al. 1984); severity and frequency of abuse, dependent children, length of time in the abusive relationship, and alcohol use by the abuser (Johnson 1990). People who were married were

found to be consistently more oriented to obtaining help about domestic violence from a range of social and legal sources than were cohabitants (Hutchison & Hirschel 1998). However, victims who cohabit do use police more readily than do victims who are married (Hutchison & Hirschel 1994).

Two US studies found that women from different racial groups seek the same amount of assistance but that white Americans are more likely to use social services and African-Americans to call the police or a minister (Gondolf, Fisher & McFerron 1991; Hutchison & Hirschel 1998). These findings are consistent with figures¹⁸ produced by the Metropolitan Police (UK) for the Hammersmith and Fulham Domestic Violence Forum in the early 1990s showing that African-Caribbean women called for police assistance in numbers slightly higher than their proportion of the population. However, Neville and Pugh's exploration of African American women reporting sexual assault did find that a general distrust of police was a significant inhibitor (1997, p. 375).

Victim decision-making within the criminal justice system

HAVING once initiated¹⁹ legal intervention through a call for police assistance, the situation then becomes ever more complex for the victim and justice personnel. Judge Murray Sinclair (1998), Justice to the Supreme Court of Manitoba and one of Canada's 40 or so indigenous judges, commented in relation to concerns about inappropriate or oppressive police action in addressing family violence on Native American reservations in Canada, that he had 'no problem with police arresting at the scene in order to stop the violence; the problem is what happens afterwards.'

A consistent frustration heard from police and prosecutors concerns their perception of women's readiness to seek to have a matter dropped or withdrawn following police intervention (Stanko 1997). They often interpret women's help-seeking from them as ambivalent at best or capricious at worst. Hoyle (1998) found out that, in the majority of domestic incidents to which police responded, it was not the intention of the victim to have the perpetrator arrested. Furthermore, when an arrest did occur, the majority of victims did not wish to proceed with prosecution (Hoyle cited in Stewart 2001a).

On this critical issue, US studies have documented the frequency with which some victims of domestic violence seek to drop criminal charges (Lederman 1993; Cannavale & Falcon 1986) and have noted that this frequency is significantly greater than in other kinds of criminal cases (Ford & Regoli 1993). Rebovich's 1996 survey of prosecutors' offices in large US jurisdictions found that 33 per cent of respon-

dents reported that victims were 'uncooperative' in more than 55 per cent of cases and 16 per cent said that victims were 'uncooperative' in between 41 and 55 per cent of their cases. Unfortunately this survey did not examine whether the use of prosecution witness assistants or external advocates impacted on the level of victim 'cooperation'. In response, women's advocates have drawn attention to the need for practitioners to understand the dynamics of violence (Asmus, Ritmeester & Pence 1991; Shobham 2000; Vilhauer 2000), the 'cycle of violence' (Walker 1979), and the impact of violence.²⁰

Australia's only research into this issue comes from the ACT's Family Violence Intervention Program (urbis keys young 2001b). Of those victims whose matter had been finalised, 51 per cent were "determined to see the case through no matter what" whilst 26 per cent had indicated at some point that they had wanted the charges dropped.²¹ This evaluation goes on to illuminate the link between a victim's views about the prosecution proceeding and victim satisfaction with prosecution authorities.

Some studies describe women's fear and sense of powerlessness and helplessness (Erez & Belknap 1998; Edwards 1989, p. 104) in picking a tortuous way through the paths of criminal, civil and family law, social and community assistance, and informal support. Others emphasise women's 'strategic management' of the violence and the help-giving resources available to her (Dutton 1996). Women consistently describe fear of retaliation as impacting on decisions to seek withdrawal from the criminal justice process (Robinson & Chandek 2000). This is born out by their actual experience of repeat assaults following police and court intervention (Klein 1996). Goodman, Bennett and Dutton (1999) showed that 20 per cent of women were re-assaulted or threatened within three months of their initial contact with the court. The London (Ontario) study found that 50 per cent of women were worried about their safety during the period to trial; one quarter were actually threatened; and nine per cent were assaulted (Jaffe et al. 1993, p. 83). Ford & Regoli (1993, p. 153) found that one in five men arrested for domestic violence committed a new act of violence before his case was settled. Buzawa, Hotaling, & Klein (1999) identified repeat victimisation in about one in every five victims and a re-victimisation rate of 49 per cent in victim surveys compared with 22 per cent in official data.

Goodman, Bennett, and Dutton (1999) found that women with a substance abuse problem were only half as likely as other women to follow through with prosecution. Other factors such as depression or attachment to the abuser were not found to be predictive of follow-through. Perhaps most importantly, their study found that women with tangible material and social support from family and friends were twice as likely to follow through as those without.

David Ford's studies of a model prosecution jurisdiction in Indiana (Ford & Regoli 1993; Ford 1991) suggest that victims who come into the system are not helpless or passive but, rather, actively use a strategy to get what they need. They often seek to leave the system when they achieve – in the short or longer term – what they have sought to do. Hence, Ford suggests that women utilise the criminal justice system as a 'power resource'. In their English study, Hoyle and Sanders (2000, p. 21) concur and further suggest that women's 'decisions are rationally chosen in the context of their current lives [and that] women are, therefore, situationally coerced by their circumstances' given that 'their choices are formed within relationships where controlling behaviours are prevalent'.

Rather than be frustrated by the choices women make, Bennett, Goodman and Dutton (1999) urge police and prosecutors to see their participation in her strategy as helping a woman to achieve her own goals rather than the organisational imperatives of conviction (Buzawa & Buzawa 1996a). Indeed, McGuire (1998) and Hanna (1996) suggest that a potentially practical strategy for prosecutors working with witnesses who are victims of domestic violence may be to work *with* her in a partnership rather than simply be 'in control' of the prosecution. Mills (1999, p. 576) suggests that such a strategy aligns with Herman's (1992) recommendations for a 'therapeutic alliance' between help-seeker and help-giver. Given Ford and Regoli's finding (1993), discussed in this paper at page 18, that women engaged in the prosecution process are safer if they have the option to withdraw and do not, partnership practices would seem to be a most effective way forward.

Hoyle and Sanders (2000, p. 21) go on to assert that the pattern of victim preferences are 'socially constructed by the structural and interpersonal features of [their] lives'. Bennett, Goodman and Dutton (1999) explore these structural and procedural impediments further in a series of articles drawing on their work in Washington DC. Interviewing women who *did* wish to proceed with prosecution, the authors identified four key themes to victims' experiences within the criminal justice system. In the first instance, victims described how confusing the system and the process was to them. Secondly, they described a depth of frustration with the system's slowness and the range of what they experienced as bureaucratic barriers. Thirdly, women described the time between the batterer's arrest and the resolution of the court case as being one of 'paralysing fear'.²² Finally, many women felt considerable internal conflict over the prospect of punitive sanctions such as incarceration. The large African-American sample in these studies point to this community's experience of a discriminatory and oppressive criminal justice system. Many women also expressed a wish that the perpetrator 'gets help' and felt conflict over his relationship with shared children, a finding common

to other research (e.g. Mooney 1994). In understanding these sometimes practical impediments, the researchers argue that 'the task we can approach is that of reshaping or fine tuning the system [women] encounter' (1999, p. 765).

Some of the feminist, therapeutic and jurisprudential implications of these issues are explored in excellent articles by Cheryl Hanna (1996) and Linda Mills (1999). Whereas the previous studies describe women's decision-making and women's experience in the system, these articles consider the implications for professional decision-making on whether or not to proceed with prosecution. Hanna explores the dilemmas faced as a prosecutor in whether or not to compel a reluctant or hostile domestic violence victim/witness. She employs the term *mandated participation* in preference to that of *victim cooperation* in balancing her desire for a public response to the violence and preserving women's autonomy from excessive state intervention (1996, p. 1855). Hanna concludes that there can never be an adequate resolution to the 'victim/agent dichotomy in the criminal context' (p. 1856) or indeed the 'particularity/generalizability' tension in feminism itself (Mills 1999, p. 565). Ursel (1997) reaches a similar conclusion in her discussion of the operation of Family Violence Prosecutors in the specialised court in Manitoba, Canada. Balancing these interests, Ursel says, is an inevitable and on-going tension for criminal justice practitioners.

Many feminist advocates, on the other hand, 'remain ambivalent about the use of state power, such as subpoenas, in prosecution strategy' (Hanna 1996, p. 1865). This ambivalence is passionately drawn by Linda Mills' article. She argues (1999, p. 554) that:

Policies such as mandatory arrest, prosecution, and reporting, which have become standard legal fare in the fight against domestic violence and which categorically ignore the battered woman's perspective, can themselves be forms of abuse.

Mills and others (Morely & Mullender 1992; Stewart 1999; Obenauf 1999) further condemn taking the choice away from the victim as it is therapeutically damaging, socially disempowering and leaves her in danger²³. Ruttenberg (1994) and Fedders (1997) go further to strongly criticise the current US emphasis for a compelling and criminalising response as critically detrimental to women of colour and poor women. Some of their arguments are echoed in Australia by Stewart (2001b), Kelly, L. (1999), Katzen & Kelly (2000), and Blagg (1999; 2000).

Having better knowledge of the complex motives for help-seeking of abused women (and the differences between them based on various demographic factors), who they seek help from, and in what circumstances, is critical to understanding their interaction with legal institutions and the context in

which it occurs. Furthermore, operationalising this knowledge in the various policies and procedures of justice agencies will go some way to addressing what Eve and Carl Buzawa (1996a, p. 94) have called the profound misunderstanding between the motives and needs of individual victims and those of justice organisations.

Police response to domestic violence

IN AN emergency, police are the most likely agency to be called for assistance (Dobash & Dobash 1979; McGibbon, Cooper & Kelly 1989; Mitchell 1992). Their actions are critically important. In brief, criticisms of police practice have included that police do not respond to domestic violence as a serious crime problem (indeed, that domestic violence has not been regarded as a police issue); that the assistance they do or do not provide both victim and perpetrator is ineffective and unsuitable; that they have ignored the needs of child witnesses to violence; that the attention paid to investigation and evidence collection has been negligible; that domestic violence cases were routinely and ruthlessly screened out; and that police management has consistently ignored these failures and not provided sufficient training, monitoring, supervision or policy and practice guidance (Buzawa & Buzawa 1996a).

Prior to the US arrest studies (see p13), there was a common presumption that there was little police could do about domestic violence. One of the earliest known US studies, however, found that domestic violence was repetitive and highly visible to police (Wilson 1977). In a two year survey of domestic assaults and homicides, this research found that in 85 per cent of spousal homicides, the police had been called to the scene at least once before; and in 50 per cent of incidents, police had been called five times or more.²⁴

As previously stated, the predominant policy claim in Australia, New Zealand, the USA, Canada and the UK is that *domestic violence is a crime*. Whilst all behaviours common in domestic violence relationships may not constitute criminal offences, nonetheless law enforcement agencies in these countries have instituted policies that promote arrest and charge as a primary intervention where there is a 'belief on reasonable grounds' that an offence may have been committed. The range of reasons for this include:

- Arrest is the only response that can guarantee the immediate cessation of violence and the short term protection of the victim (Robinson & Chandek 2000)
- It upholds law enforcement as a primary police role, a role that only police have (Stark 1996)

- It limits discretionary action based on the influence of attitudinal variables that bear no relation to forming a 'belief on reasonable grounds' (Robinson & Chandek 2000)
- Arrest acts to provide a gateway for both victims and perpetrators to a range of services (Robinson & Chandek 2000)
- It acts as an individual and public deterrent to further offending (Dobash & Dobash 1997)²⁵
- It sends a message to the community that the use of violence within relationships and families is unacceptable (Edwards 1989; Stark 1996)
- In the USA, civil actions against police departments on negligent failure to act have cost millions of dollars in damages (Hilton 1993)
- Finally, some evidence exists that, for some offenders in some circumstances, arrest alone can prevent re-offending (Sherman & Berk 1984)

Family violence reports to Police

Studies differ on the level of reporting of domestic violence to police as a proportion of the total number of incidents. The range is from two per cent (Dobash & Dobash 1979) to 50 per cent (Langan & Innes 1986). In Australia, the National Women's Safety Survey (ABS 1996) identified that, of women who had experienced violence, 20 per cent called for police assistance. This latter figure is consistent with other national surveys in Canada (Rodgers 1994) and New Zealand (Victimisation Survey Committee 1997).

Police action at family violence incidents

The primary coercive sanction available to police is an arrest. However, they also have a range of other legally sanctioned options such as removal of an intoxicated person into protective custody, and removing a vulnerable person (e.g. a juvenile or mentally disturbed person) into authorised or secure premises.

Whilst arrest is a crude measure of police performance in any offence category, the disinclination to arrest in family violence incidents has been noted in Australia and other countries (Hatty 1989; Buzawa & Buzawa 1996 a and b; Stanko 1989). These studies reveal an arrest rate varying from 3 per cent to 13.9 per cent.²⁶ However, Feder (1998) found that the likelihood of arrest in domestic violence incidents was double that for non-domestic assault incidents.

In the ACT, Mugford, Eastaer and Edwards (1993) identified that, over a three month period in 1991, six per cent of domestic violence incidents resulted in an arrest and charge. The current ACT Family

Violence Intervention Program (FVIP) identified that 'positive action' was taken in 47 per cent of all incidents (of 297 incidents) attended by Woden Patrol over nine months in 2000-2001 (as opposed to 27 per cent in the pre-test period). Arrest (as a subset of 'positive action') constitutes 27 per cent of all domestic incidents (as opposed to 16 per cent in the pre-test period).²⁷ These findings suggest that policy makers and researchers need to look more closely at the content of incidents in order to determine the appropriateness or otherwise of police action.

Variables in arrest decision

The decision to arrest in any given circumstance has been shown to be made with regard to a wide range of variables. The variables include demographic characteristics of victims and offenders (e.g. race, marital status), demographic characteristics of police officers (e.g. gender, length of experience), attitudinal variables (e.g. victim preference for arrest and officers' attitudes), and situational variables, such as whether a weapon is involved.

Table 1 (page 24) provides a comprehensive overview of research findings about the variables impacting on the arrest decision. It should be noted that the vast majority of research listed is from the USA, drawing primarily on a research review by Robinson and Chandek (2000).

There is continuing debate in the literature about the victim's preference for or against arrest following police intervention (Lewis et al. 2000). In part this results from research design. Mostly, however, studies do not adequately draw out how this preference is influenced by different factors at different times of the victim's life vis a vis the violent relationship. Often the issue about 'preference' is conflated with victim 'cooperativeness'.

The data on attitudinal variables illustrate the complexity of the construct of victim 'cooperativeness' (Robinson & Chandek 2000). A common finding is that the victim's preference for arrest significantly increases the likelihood of arrest at the scene (Black 1971; Buzawa & Austin 1993; Eigenberg et al. 1996; Feder 1996; Smith 1987). However, the victim's preferences are more likely to be followed if officers considered the victims to be rational and respectful rather than verbally abusive or intoxicated (Buzawa & Buzawa 1993), or they believed she had not invited the perpetrator into the home (Rigakos 1997). When officers believed that the victim was 'uncooperative' or would seek to have charges dropped, they were less likely to make arrests (Belknap 1995; Berk & Loseke 1981; Buzawa & Austin 1993; Davis 1983; Ferraro 1989; Smith 1987). Officers' belief in the likelihood of prosecution and victim participation in that process significantly increased the officers' perception of the victim as 'cooperative' (Robinson & Chandek 2000)²⁸. Officers'

rating of victim 'cooperativeness' significantly decreased when the officer believed the victim had a probable drug or alcohol problem, when alcohol or drugs were present at the scene, and the longer the tenure of the officer (Robinson & Chandek 2000). Interestingly, when an arrest was not made at the scene, victims were significantly less likely to participate in the prosecution of their cases (Robinson & Chandek 1998).

It is pleasing to note that situational or legal variables are found to be **more important predictors** of the arrest decision than are extra-legal variables such as attitude or demographics (Feder 1996; Klinger 1996; Stalans & Finn 1995; Worden 1989; Robinson & Chandek 2000). Some of these are when a weapon is involved (Eigenberg et al. 1996; Ferraro 1989; Smith 1987), that weapon being a gun or sharp object rather than a blunt object or bodily weapon (Buzawa & Austin 1993); seriousness of the offence (Black 1971; Ferraro 1989; Smith 1987); additional witnesses and children present (Buzawa & Austin 1993; Holmes 1993; Robinson & Chandek 2000); evidence of forced entry (Rigakos 1997); incidents of repeat violence (Smith 1987) and signs of struggle (Rigakos 1997). The presence of the suspect at the scene is the most powerful of the situational variables (Robinson & Chandek 2000). It is also possible that the factors listed as variables in the decision to arrest may not be predictors but may in fact be occurring simultaneously (Robinson & Chandek 2000).

There is a real gap in linking research into the organisational features known to shape how officers work, and their activities in relation to domestic violence. Some of the former variables that could be examined as influential include levels of supervision, the ways in which activities are structured, reward systems, the disparity between formal rules and informal practice, local patterns in non-domestic crime, local political and community priorities, and the climate of policing in particular locations.

Interestingly, some studies point to the importance **to police** of coordinated criminal justice interventions. Dutton (1987), Ferraro and Boychuk (1992) and Tolman and Weisz (1995) note the frustration of police in their perception of the lack of 'back-up' from prosecutors and courts in domestic violence cases. It is posited that if police feel that their arrest decisions are backed at least by prosecution, they are subsequently more likely to arrest and charge where there is a belief on reasonable grounds, irrespective of the victim's preferences. This point is also made by Walsh (1995) in his study of the reactions of police to a 'mandatory arrest' policy in New York City, and by Robinson and Chandek (2000) in Michigan. In the Woden Police Reference Group for Phase II of the ACT's FVIP evaluation, officers mentioned prosecution 'back-up' as one of the most important factors to date influencing their changing practice (urbis keys young 2001b).

Effect of arrest

The Minneapolis Arrest Experiment (Sherman & Berk 1984) has had a powerful effect on law enforcement and policy makers around the world. This experiment was initiated under the National Institute of Justice Crime Control Theory Program to test the theory of specific deterrence and in response to calls for more rigorous research methodology (Fagan 1996). The study found that arrest was more predicative of a reduction in repeat violence than giving advice or removing the alleged perpetrator from the scene. In six replications of this study (the 'replication studies') in locations around the USA²⁹, the results were more inconclusive.³⁰ The US National Institute of Justice concluded that these experiments suggest arrest is an effective option in reducing repeat violence in the short term and with perpetrators who are not on low incomes and who are employed (NIJ 1998).

Zorza (1994) and Bowman (1992) are among those who have criticised the methodology of the arrest experiments and the absence of victim voices. Saccuzzo (1999) argues from a therapeutic jurisprudence perspective³¹ that arrest is the more 'conscionable choice' for attending officers. Stark (1996) and others have argued that there are other values – such as immediate protection – to the arrest decision than a deterrence argument; and that the arrest action cannot be separated from subsequent actions of prosecution and courts. Rebovitch (1996) calls the tendency to focus just on the police an 'unrealistic system vacuum'. For example, in the Milwaukee Replication Study, only five per cent of the 802 alleged offenders were ever charged (from the arrest) and only one per cent of that total pool were convicted (Zorza 1994, p. 947).

The publicity surrounding these experiments has overshadowed other studies which had more positive results. The ten year reform program in London, Ontario and the experimental program in San Francisco in 1980 both showed a much more positive correlation between arrest and the prevention of repeat offending (Jaffe et al. 1993).

The US arrest studies deserve to be read closely as there is much in the fine detail that offers direction to criminal justice reformers. The Omaha studies in particular (Dunford, Huizinga & Elliot 1990; Dunford 1990) identified that in those cases where probable cause to arrest existed, the offender was absent from the scene on 40 per cent of occasions. Zorza's (1994) review of this research commented that those offenders who left the scene were those with the most number of prior police calls and the most likely to have criminal records for other offences. Buzawa, Hotaling, & Klein (1999) also found this in their detailed study of the 'full enforcement jurisdiction' of Quincy. The researchers conclude by emphasising the importance of issuing

In both NSW and Queensland, police are experimenting with the use of Polaroid cameras as evidence-gathering tools.

and pursuing warrants for these alleged offenders, not only because they are most likely to re-offend, but because being the subject of a warrant is 'consistently associated with less re-offending' (Dunford 1990).³²

The two Omaha studies also found in their victim surveys that 60 per cent of complainants did not want arrest and that 65 per cent said that perpetrators 'blamed them' for the arrest. However, 93 per cent of victims stated that 'the presence of police stopped the violence' (Zorza 1994, p. 940). This latter finding may be self-evident but actually critically reinforces the primary reason why a victim calls for police assistance. It is also a finding that police should feel positive about. The question addressed by most researchers has been about a later resumption or cessation of violence following police intervention.

A recent multi-site analysis of all the arrest experiments using published and unpublished data (Garner & Maxwell 2000) appears to conclude the debates by finding that arrest had a consistent though modest effect on re-offending. They further identified that a suspect's age (youth) and prior criminal history provided the strongest predictors of reoffending, but that most suspects did not re-offend. Garner & Maxwell (2000, p. 108) conclude that:

The policy debate on alternative police responses to domestic violence is no longer about alternatives to arrest but alternatives to what the police and other agencies should do after an arrest.

This analysis suggests that a lesson from the Minneapolis and Omaha studies 'is that arrest could decrease the proportion of suspects with new offences but increase the total number of new offences against a smaller number of victims' (Garner & Maxwell 2000, p. 97). This finding confirms the potential in focussing on the issue of repeat victimisation which the UK Home Office Crime Reduction Program and Police Research Program now emphasise. Projects in West Yorkshire (Hanmer, Griffiths & Jerwood 1999) and Merseyside (Lloyd, Farrell & Pease 1994) are utilising techniques borrowed from situational crime prevention to refocus policing and victim support on repeat victimisation in domestic violence. In South Australia, the 'NDV' pilot project by police and the Crime Prevention Unit (Attorney-General's Department) seeks to enhance the way police respond to domestic violence call outs and follow through with the incident. Drawing on a similar model in the United Kingdom, a three-tiered

program of operational interventions with both victims and offenders is implemented by police (Australian Domestic and Family Violence Clearinghouse 2000).

One aspect of the Dade County (Miami) Replication Study made rather disturbing findings. One of the 'tracks' to which complainant 'couples' were assigned was a 'Safe Streets Unit' of trained police. The function of this unit was to assist couples to access support services. The repeat assault rate for couples in this track was only marginally less than for those where an arrest took place (Zorza 1994, p. 960; Garner & Maxwell 2000, p. 101). Nonetheless, it is clear that any intervention has better outcomes for the victim than no intervention (Gardiner 2001).

Most researchers now argue for a wider and contextual analysis of police decision-making and the use of arrest in domestic violence situations (e.g. Buzawa & Buzawa 1996a; Sherman, Schmidt & Rogan 1992; Worden & Pollitz 1984). These researchers argue that by itself, arrest is an ambiguous indicator of responsible policing, and that the individual and combined charging, prosecuting and adjudicating activities of other criminal justice practitioners significantly contribute to the individual and public interest obligations regarding domestic violence (e.g. Tolman & Weisz 1995; Murphy, Musser & Maton 1998).

Some Australian Initiatives

Some initiatives in Australia have moved beyond the 'arrest or not arrest' debate to examine ways of improving investigative practice and brief preparation in domestic violence cases. These initiatives emphasise evidence-gathering as a critical police function that has maximum impact on agencies further up the line in the criminal justice system, that is, prosecution, courts and corrections. In areas in both NSW and Queensland, for example, police are experimenting with the use of Polaroid cameras as evidence-gathering tools (McGann & Murray 1999).

The ACT's coordinated criminal justice initiative, the Family Violence Intervention Program (FVIP), also emphasises improved investigative practice imbedded within a project comprising detailed training, close management and monitoring, new technology, and closer working relationships between the Office of the DPP and the non-government Domestic Violence Crisis Service (DVCS). In the evaluation of Phase II of the FVIP, 64-69 per cent of officers in the pilot patrol of Woden believe that the quality of their investigative practice and evidence-gathering, briefs of evidence have improved since the introduction of new training and new technology.

The impact of this emphasis on skilling and equipping officers as professionals in evidence-gathering has had significant results. The arrest rate of all incidents in the pilot patrol area has

increased from 16 per cent to 27 per cent. In Phase I of the FVIP about 70 per cent of criminal family violence matters proceeded to full hearing. In Phase II, this has almost reversed with 60-70 per cent of defendants entering a guilty plea at the mention stage (the first or second court appearance). This saves the victim from the stress of waiting time and appearance at court. It also entails direct cost saving to the police and court. Prosecutors attribute these results in part to the better quality of evidence prepared by police. Certainly, the closer liaison between the Office of the DPP and police in the ACT on evidence and brief preparation has been an important innovation (Keys Young 1999; urbis keys young 2001a).

The policing aspect of the ACT FVIP has paid considerable attention to addressing what Fagan (1996) and Eve and Carl Buzawa (1996a) have called the failure of implementation strategies. That is, policies are launched without sufficient planning for issues such as training, officer turnover, resistance to change, shifting priorities, equipment breakdown, and management oversight. In the ACT's pilot patrol area, for example, there has been a 30 per cent change in general duties police within a 12 month period. The proposed region-wide implementation of this pilot policing project will, therefore, need a strategic management plan which factors in these predictable shifts.

Prosecution intervention

THE responses to domestic violence of prosecution authorities in Australia has been minimally examined by policy-makers and advocates, and is severely under-researched. Perhaps this can be attributed to the fact that the role and activities of prosecution have been less in the public spotlight and far less accessible to activists and researchers than have law enforcement agencies.

The preponderance of criminal cases involving domestic violence, and certainly the majority of those involving lesser injuries, are prosecuted in Australia by police prosecutors. The existence of independent Directors of Public Prosecutions is a relatively recent innovation³³. Research into both types of prosecution authorities is negligible in Australia³⁴.

The role of prosecution is classically misunderstood by victims of crime and those working with them. The prosecutor represents the state or the community, and is not a lawyer or advocate for the crime victim.³⁵ In a Background Paper for the Violence Against Women Office in the US Department of Justice, Linda McGuire (1998) states that prosecutors are 'generalists' in the criminal law and are duty bound to protect both crime victims and the constitutional rights of the accused. 'Prosecutors cannot go forward' asserts McGuire

(1998, p. 10), 'with a case which lacks sufficient evidence to prove that the defendant is guilty; belief in the case or cause, or a desire to help, is not enough.'

The prosecutor's role in the criminal justice system is central and dominant. In the US, women's and legal activists and the Violence Against Women Act 1994 have consolidated this role in domestic violence justice reform. US prosecutors have moved from a being criticised as 'the weak link' in the criminal justice system (Klein cited in Buzawa & Buzawa 1996a, p. 173), to being lauded as being 'in a unique position to influence' it (US Department of Justice 1999).³⁶ As mentioned previously, the perception and reality of the prosecutor's actions and decisions are key influences over police decision-making. They can also be strongly influential in court decision-making.

Ford and Regoli (1993, p. 135) list the prosecutorial functions as:

1. Organising and managing both people and information as a case moves towards adjudication. The prosecutor interacts directly with police, victims and their supporters, witnesses, defendants and their lawyers, and magistrates and judges.
2. Screening cases to validate police arrests (or summons), to verify that charges are consistent with criminal law and the evidence compiled, and to determine which cases merit further attention in court. They have the authority to accept or reject complaints against a defendant in charging decisions; and may seek a dismissal of the charge at court.
3. If the case goes forward, prosecutors filter and shape information for presentation in court at the same time that they interpret laws relevant to victim, police, and even judicial actions.

Criticism of the prosecution process and of prosecutorial actions has been a strong feature of the 'crime victims' movement' in the US, Britain and Australia. In Australia, the crime victim (or some other person) initiates the police investigative and prosecution process by reporting an incident to police. From the moment of reporting, the crime victim becomes merely a witness, albeit a critically important one, in the Crown's case against an alleged offender. The concept of 'a fair trial' in English jurisprudence is attaining the right balance between the State and the defendant (Bronitt 2001), not between the victim and the defendant. Practice and precedent have therefore conspired to effectively marginalise, if not exclude, the crime victim from the key decisions of criminal prosecution.

Critique of Prosecution

For prosecutors, domestic violence cases are messy, troublesome and require more than the usual effort

around evidence and the participation of the victim/witness. Prosecutors have been criticised as ill-informed, inaccessible and unsympathetic (Hart 1993). Prosecution performance in domestic violence interventions has been criticised on grounds similar to that for police, primarily on the output measures of low prosecution and conviction rates. As noted previously, even in those jurisdictions undertaking innovation in police response, the charge and conviction rate for domestic violence offenders was in the single figures.

Nonetheless, prosecutors can claim with some justification that the issue with low prosecution and conviction rates is precisely that related to victim cooperation (Munstermann & Archer 2001; Rebovitch 1996; McLeod 1983). In many domestic violence cases, victim testimony is the main, if not only, source of evidence. For this to be retracted or denied can be fatal to the prosecution case. Prosecutors therefore have tended to err on the side of caution and to screen such cases out before they are tested at court.

However, the dismissal or screening of cases for prosecution is strongly criticised in the literature. Again, however, the vicious circle of presumption about victim preferences appears to operate. For example, Buzawa and Buzawa (1996a, p. 91) state: 'Prosecutors have consciously assumed that the motivation and commitment of victims is a legitimate case discriminator in deciding whether to prosecute an offender.' Cretney and Davis (1997) found evidence for this in England and attributed the high rates of victim non-cooperation and withdrawal, at least in part, to the lack of encouragement from police and prosecutors. In their valuable study on criminal justice responses to domestic violence, Buzawa and Buzawa (1996a p. 173) show variations in case dismissal rates and sentencing patterns across different counties in Massachusetts. They conclude that the variations 'appear to reflect the operations and attitudes of prosecutors and courts'.

Table 2 (Page 26) comprehensively outlines the range of variables identified in research as impacting on prosecution decision-making. These include evidentiary and procedural variables, such as over-reliance on victim testimony as the primary or even sole evidence for prosecution and assessments of the low likelihood of conviction based on prior experience, rather than the particulars of a case (Forst et al. 1977; Vera Institute of Justice 1977 cited in Lerman 1981). Attitudinal variables found to influence prosecution decision-making include, for example, the belief that the dynamics of violence in intimate relationships place them more appropriately within the sphere of the social welfare professionals (Field & Field 1973; Moody & Toombs 1982), victim blaming views (Miller 1969) and racial bias

There is a great deal of complexity in victim decision-making within the criminal justice system and with the notion of ‘cooperativeness’ itself.

(e.g. Hirschel and Hutchison (2001) found that in the US, African-American defendants are more likely to have their cases prosecuted than are White Americans). Organisational/contextual variables identified include practices that use the likelihood of the victim seeking to have the charges dropped as a legitimate case screening factor (e.g. early US studies cited by Lerman 1981; Schmidt & Steury 1989; Wangberg 1991; Edwards 1989); high caseload and low resources of public prosecutors (Buzawa & Buzawa 1996); and consigning more domestic assaults than non-domestic assaults to lower courts for adjudication based on perceptions of their lack of severity (Moody & Toombs 1982; Wasoff 1982).

The studies cited demonstrate how extra-legal considerations such as victim-blaming attitudes or opinions about the privacy of family life can intrude on the approaches adopted by law enforcement and prosecution authorities. Police officers and prosecutors voice strongest opinions, however, about victim reluctance to proceed (Lerman 1986, p. 263; Edwards 1989; Rebovitch 1996, p. 182). These comments vary from assertions that ‘she’ll only be in again in the morning asking for the charges to be dropped’ to ‘if she refuses to give testimony or recants on her original statement to police then we cannot proceed with the case’. As previously noted, however, there is a great deal of complexity in victim decision-making within the criminal justice system and with the notion of ‘cooperativeness’ itself (Robinson & Chandek 2000; Hanna 1996).

Innovation in Prosecution

A range of innovations in the prosecution of domestic violence are being tested in North America and Australia both in response to the criticisms noted above, and in part because of pressures on the system as a whole to become more efficient and more outcome focussed. Some of these innovations include: the implementation of assertive prosecution policies and practices; establishing specialist prosecution positions or units; the use of victim support/witness assistance; closer liaison with police on evidence gathering, brief preparation and training; and creating links with corrections for improved monitoring of offender compliance with court orders.

Witness Assistance

Traditionally, contact between the victim/witness and the prosecutor (for less severe cases) is minimal.

This often gives rise to frustration and alienation on the part of the victim. Prosecution witness assistance has, in large part, evolved to meet this problem. Although the involvement of victim support/witness assistance within prosecution has a longer history in the US than in Australia, every DPP in Australia except WA and Tasmania now has witness assistants.³⁷ In jurisdictions such as NSW where most criminal domestic violence cases are prosecuted by police in the lower courts, DPP witness assistance concentrates on indictable matters in the higher courts such as sexual assault and severe assault. Court assistance schemes in NSW have traditionally focused on assisting applicants for protection orders in the civil system. Bennett, Goodman and Dutton (1999), McGuire (1998), Liz Kelly (1999) and Humphreys & Kelly (2000) all describe the importance of victim/witness support through prosecution. Such units or individuals provide an empathetic link to the prosecutor and act as a critical information source.

Current debate in the US revolves around the ‘independence’ of that support (Moore 1998). The fault-line for victim/witness support in prosecution lies along the issue of victim ‘co-operativeness’ which may give rise to a conflict of interest. Most non-government feminist victim support services uphold the principle of confidentiality with clients. Typically, a witness assistant may be told certain things by the victim about the incident and the circumstances surrounding it, her own behaviour and that of the defendant, relationship history including prior incidents of violence, and considerations about future safety. For a person employed by a prosecuting authority, this information is potentially evidence that may be used in court by the prosecutor. That person may therefore be obliged to disclose such matters to the prosecutor. As Buzawa, Hotaling & Klein (1999, p. 14) note in their study in Quincy, ‘victims report confusion about whether the victim advocates primarily supported organisational goals, e.g. prosecution of offenders, or tried to increase the victim’s authority within the system, e.g. was she acting as a true “victim advocate” as opposed to “an assistant prosecutor”’.

In their discussion of the conceptual and actual meaning of the term ‘advocacy’, Humphreys & Kelly (2000) lean towards the need for ‘independent’ advocates who owe allegiance only to the client. The ACT FVIP recognised the dilemma very early when individual cases arose where the victim/witness wished to withdraw from prosecution. The Domestic Violence Crisis Service (DVCS), as the ACT’s independent advocacy organisation, supports policy initiatives that criminalise domestic violence. Yet at the same time, its internal policy and practice is to support individual clients in the difficult choices necessary. The newly established Witness Assistant within the ACT Office of the DPP created a victim

support position that is nonetheless part of the prosecution. In effect, the debate about 'either/or' has been resolved in the ACT by adopting 'both'.

This evolution, supported by some of the research discussed later in this paper, suggests that a clearer and more directed focus on women's contacts with prosecution and adjunct victim/witness support may be fruitful. A 'needs match' between both the prosecution and the victim/witness could see exchanges such as (not in order of priority):

- information giving on available support services,
- an explanation of the purpose of prosecution and the reasons behind policy,
- a discussion about some of the tactical options vis a vis procedure, the presentation of the evidence and offender management available to the prosecution, court and corrections,
- a discussion of possible realistic sentencing outcomes post hearing and of diversionary options pre hearing,
- exploration of current and future security in a safety planning exercise,³⁸
- preparing Danger Assessments (Goodman et al 2000) with the victim for use in court in opposition to bail proceedings, for example,
- offering opportunities for victim participation in the sentencing process with Victim Impact Statements,
- description of refuge services and other safe accommodation,
- assistance in securing a protection order,
- organisation of pre-trial court familiarisation, support at court and post-hearing de-briefing,
- referral to services and supports for children and other family law issues, and
- an exploration of what evidence may be admissible and useful in which concerns about possible repercussions are balanced against the prosecutor's obligations to the State.³⁹

Assessing Danger

Assistant US Attorney Robert Spagnoletti (cited in Mills 1999, p. 571), Chief of the Domestic Violence Unit for the District of Columbia, recently reported that he had interviewed 'tens of thousands of victims' and 'the one thing that became apparent to [him] after a year of this is that [he could not] tell a thing [about what the victim really wants].' Because he could not tell which victims were intimidated and which victims made 'an informed, voluntary and knowing' decision not to pursue prosecution, he concluded that a no-drop policy that did not 'make

any differentiation between domestic violence as a crime and any other crime' made the most sense. Mills (1999) offers this reflection as an indictment on the lack of clinical training of prosecutors to make assessments of danger to a victim/witness. However, if policy makers are to argue that risk assessment should not be made by police in the heat of a domestic incident but later on in the system, then the question arises – when and by whom should it be made?

Whilst there is an extensive literature on risk assessment of perpetrators in probation and rehabilitation settings (e.g. Campbell 1995; Kropp, et al 1995; Gondolf & Fisher 1988), there is virtually nothing that examines assessments in a prosecution or court setting. Goodman et al (2000) describe a successful pilot investigation of the utility of the 'Danger Assessment Scale' for contributing to the short-term prediction of repeat abuse among arrested batterers. This scale is 'short, simple and elicits information solely from the victim.' As such it may be pertinent for use in opposition to bail proceedings. In particular it may assist prosecutors, when deciding whether to proceed to prosecute, in assessing risk to the victim from an objective standpoint. The frustration expressed by Spagnoletti is real but may be alleviated by tools such as this.

Case Screening

The third area of prosecution innovation rests with policy and practice changes around case screening. Firstly, some prosecuting offices have found ways to identify domestic violence cases from other criminal cases. In the ACT, an interim procedure (pending an electronic solution) is the use of manual identifiers. The result is that the ACT can now identify all charged family violence matters from criminal damage or trespass, to breach of an order, and to assault or murder. This system also allows for system-wide data analysis and 'streaming' family violence matters into the special Family Violence Case Management List at court – the foundation for a specialist court (Keys Young 1999).

This process also allows the ACT Family Violence Prosecutor to view and monitor all briefs of evidence. She then performs the initial liaison with police over suggestions for further evidence or consideration about further or 'higher' charges. The FVIP Phase II evaluation showed that the briefs of evidence submitted by the pilot Woden Patrol area for Phase II of the FVIP were definitely vastly improved, and that there was a knock-on effect to the quality of briefs from other patrols (urbis keys young 2001b). Case screening in this sense is not the usual mechanism to 'drop' a case for lack of evidence, but is rather something that deepens the capacity of the DPP to prosecute effectively.

Decision to Prosecute

The other critical area of innovation is around the decision to prosecute. Policy innovation in the US describes these as ‘no-drop’ policies. Commentators make a further distinction between ‘hard’ and ‘soft’ no-drop policies. Some of the specific strategies employed by prosecutors under these policies include:

- issuing a subpoena to the victim to testify (which raises the possibility that a warrant would be issued for her arrest should she fail to attend court, or the possibility that she may lie under oath and thereby be liable for contempt of court);
- seeking to declare the victim/witness as ‘hostile’ and thereby enabling the admission of prior inconsistent statements;
- building a prosecution case that does not rely on victim testimony by including photographs, third party and children’s evidence, medical records, and tapes from the original call to police;
- seeking relationship evidence from victim services’ records either by consent or by subpoena.

The arguments for and against these policies revolve around whether the interests of ‘the State’ should over-ride those of the individual victim. Corsilles (1994), Hanna (1996), Buzawa & Buzawa (1996a) and Mills (1999) explore the various conceptual, procedural, legal, ethical and therapeutic arguments in this debate.

Outcomes for Victim/Witnesses

On the question of whether prosecution in and of itself actually makes the victim safer and deters further offending, the evidence to date is uncertain. On one hand, Fagan et al. 1984 and Fagan 1989 (cited in Ford & Regoli 1993) conclude from two studies in the US that prosecution has no preventive effect. The Indianapolis Domestic Violence Prosecution Experiment (Ford & Regoli 1993) sheds more light on the issue. This study involved 678 defendants whose cases arrived at the prosecution office by way of two tracks. The first was by way of police arrest – the bulk of cases – and the second by way of victim-initiated complaint direct to the prosecutor. Twenty per cent of the ‘arrested’ cases and ten per cent of ‘victim-initiated’ complaints were dismissed for lack of victim cooperation. Ford & Regoli (1993, p. 151) surmise that ‘a no drop policy apparently keeps cases in the system but forces victims otherwise coerced or determined not to participate to avoid the prosecutor altogether (by not showing up).’

In this study, victims who initiated prosecution were allowed to seek to have the charges dropped after discussions with the prosecutor and witness assistant. In cases initiated by way of police arrest

(the only entry route available into prosecution in Australia), victims were not allowed that option. Six months after case finalisation, 38 per cent of ‘arrested’ defendants assaulted again as opposed to 29 per cent of the ‘victim-initiated’ defendants. In the victim surveys, few respondents attributed this to retaliation for arrest, but rather saw that it was continuation of an established pattern of abuse.

It is important to note from this study that the researchers assert that to allow victims of cases entering prosecution by way of arrest to seek to have the charges dropped could ‘be counter-productive’ and that ‘what matters is that [the defendant] faces prosecution.’ (Ford & Regoli 1993, p. 157) The former assertion could relate to other research that suggests that suspects arrested for domestic violence offences are in fact more dangerous (because of prior contacts with police and criminal histories), than are those not arrested (Stewart 2000; Buzawa, Hotaling & Klein 1999). Ford and Regoli (1993) further suggest that pursuing a victim empowerment strategy along with creating a reliable (from the victim perspective) alliance between prosecutor and victim could provide future direction. This approach is also urged by Hoyle and Sanders (2000) from their UK study.

Coordinated Criminal Justice Interventions⁴⁰

The coordination of criminal justice and social service interventions is the guiding principle shaping policy for the year 2000 and beyond. (Buzawa & Buzawa 1996 a, p. 243)

Traditionally, the criminal justice system has not operated as a coordinated whole. Rather, its individual agencies heavily emphasise their own operational imperatives, core legislative functions and independence. Whilst there are very good reasons for this, nonetheless the resultant fragmentation presents significant obstacles to victims seeking justice and to coordination efforts. In their discussion about successful coordination strategies in the USA, Denise Gamache and Mary Asmus (1999, pp. 65-66) give an example of the murder of a woman in Minneapolis in 1997 as illustrating how the criminal justice system operates on very partial case or incident information with sometimes tragic results. A judge released the defendant, Mondane, on bail. Within a few days this man had killed his ex-wife. The judge commented that: ‘if I had known anything about a prior domestic threat, I wouldn’t have even thought about reducing bail. To me [it] looked like an isolated kind of event...’ The head prosecutor was quoted as stating that it was not unusual for prosecutors to lack information on a case at the bail hearing. ‘The system we are provided with doesn’t get the right information to police, prosecutors, the courts and probation officers in a timely fashion.’

There are a wide range of factors that generate this fragmentation. Each criminal justice agency has differing roles, purpose, functions and goals. No single agency or person follows a case all the way through the system (Pence 1999; Falk & Helgeson cited in Shepard & Pence 1999). The system is incident and case-based and defendant focussed. A range of legal and procedural constraints keep prior history out of consideration in court. Information held by one criminal justice agency about a person (defendant or victim) or an incident is progressively filtered out as it moves through the system. Case relevant information held by non-government victim agencies is usually neither sought nor offered in the prosecution process (Holder 2000). The power dynamic in the hierarchy of criminal justice agencies, and their widely different professional cultures, compound this fragmentation.

Over the past ten or so years, jurisdictions in a range of countries have pursued a number of methods and processes to better co-ordinate efforts to tackle domestic violence (Family Violence Professional Education Taskforce 1991; Harwin, Hague & Malos 1999; Shepard & Pence 1999). Inter-agency and multi-disciplinary reform strategies are now commonplace and occur in other areas of social policy such as crime prevention, economic regeneration, environmental planning and child protection, for example.

Initiatives focussed on improving the response of the criminal justice system in the USA received a huge boost with the passage in 1994 of the Violence Against Women Act. For the first time, there was a national legislative imperative for a criminalising approach that was backed by a significant amount of federal funding.⁴¹ Policy initiatives in Australia, the UK, New Zealand and North America have tended to be influenced by this approach. The concept of ‘a coordinated community response’ to domestic violence is often therefore taken as being synonymous with one that incorporates the key criminal justice agencies and which pursues a criminalising agenda.⁴² To some extent the debates about the role and location of domestic violence perpetrator programs have followed this assumption (Keys Young 1999).

Coordinating responses by and from criminal justice agencies has become one method for addressing the problems of a fragmented system. There is considerable variation in what coordinated responses look like in different jurisdictions and localities. Some areas have adopted the structures developed in Duluth (USA) by creating a stand-alone project (e.g. in Hamilton, NZ). Others have tried to graft coordinating processes, linkages and procedures onto the normal functioning of the justice system (e.g. in the ACT), and others have attempted to influence the content of case handling and prosecution (e.g. in San Diego, USA). What transpires in any given area is usually the result of a combination of local factors, local history and available resources. A key challenge

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for Australia is whether, how and on what basis to encourage coordinated and integrated responses to family and domestic violence that are realisable and effective within the criminal justice system given the country’s geography, demographics and federated structure (Holder 1999).

In many respects the debates about whether inter-agency work is better than intervention programs, or whether we are seeking coordination or integration presents us with a closed circle. These aspects are really stages in a process of development and can also take place at the same time (Holder 1996). There are a number of different ways of examining coordinated responses in criminal justice. Often this is influenced by where, in the system, a person is located (or not). It could be argued that the examples given here are perspectives through the same prism. Some describe models where the primary coordinating and strategic drive lie outside the system, and others describe initiatives that have generated heavy system-based investment.

Duluth – A model coordinating project

Duluth (Minnesota) continues to be the standard-bearer of coordinated community responses to domestic violence. It has grown from a very localised initiative in a small city of 90,000 people to one of international influence⁴³. A large number of communities have grappled with issues about transplanting and adapting the project. This has given rise to a number of variations to the theme. It is useful, however, to revisit the eight key activities to an intervention project as described by the Domestic Abuse Intervention Project (1998). These are to:

1. develop a common philosophical framework which guides the intervention process,
2. create consistent policies and procedures which coordinate and standardise the intervention actions of practitioners involved in a coordinated community response,
3. monitor/track cases from initial contact through case disposition to ensure practitioner and offender accountability,
4. coordinate the exchange of information, intera-

gency communication on a need-to-know basis, and interagency decisions on individual cases,

5. provide resources and services to victims and at risk family members to protect them from further abuse
6. utilise a combination of sanctions, restrictions and rehabilitation services to hold the offender accountable and to protect victims from further abuse,
7. work to undo harm to children, and
8. evaluate the coordinated community response from the standpoint of victim safety and the goals of the intervening agencies.

What is noticeable about this description is that criminal justice is not mentioned at all and none of the activities are ascribed to any given agency. These activities can, therefore, be described as a series of *functions* and adaptation is, in large part, about finding the means of implementing them *and* the place for locating them that are appropriate and meaningful for a locality. Either way, the coordinated *criminal justice* response is one which seeks to address the system as a whole. Equally the activities could be used as a framework for developing responses in different service sectors.

The first key feature to the Duluth model may not be unique. Most communities around the world have the long developmental histories to reform efforts to tackle domestic violence. However, when talking about adapting the Duluth model it is, nonetheless, important to acknowledge that the same people have been working in the same small city for nearly 20 years to get where they are today and they are still refining and developing their work.

The second key feature derives from the first. More than many in this field, the DAIP acknowledges that the process of change needs to be inclusive and based on dialogue, not debate. It must also be attentive to practitioners' knowledge, research findings, and experiences of victims. (Pence & McDonnell 1999). This method and style of working is critical to achieving well-grounded and workable outcomes.

Third, there is a remarkable level of exchange of case information in Duluth. The agencies and people involved in processing domestic assault cases have devised ways, between women's shelters and probation, of generating case histories; of getting this information to the right place within 24 hours; of transferring it from agency to agency; and of reducing the possibility of it being subject to disclosure to the defence – all this within a similar context to Australia of legislative restrictions on privacy and professional and ethical concerns regarding safety and consent. This information exchange is the unglamorous nitty gritty of the Duluth model.

Similarly, generating case information and history, creating the linkages to enable it to be passed to each relevant justice professional intervening in a case, and exploring the constraints to effective information exchange, is a critical area of development in the ACT's Family Violence Intervention Program, the Family Violence Court in Joondalup (WA), and of the Magellan Project in the Family Court of Australia (Melbourne) (urbis keys young 2001a).

Fourth, the DAIP asserts that coordination is not the key objective to a coordinated community response. Victim safety, offender accountability and a reduction in the tolerance of domestic violence are the objectives. While the DAIP has managed to achieve significant consistency in policies and procedures that incorporate these goals across criminal justice agencies, they also assume that not all violence is the same. For example, The DAIP has become a leader in developing responses to women arrested for assaults on their partners (Gamache & Asmus 1999). Standardised responses are a means to an end and need still to allow the system to respond flexibly to the specifics of a case.

Finally, the DAIP has been extremely pragmatic and clever in focusing attention on the minutiae of agencies' operational practices and procedures. They have shifted from an early years' focus on macro level reform to address the micro processing of cases. Reform activity at the case processing level focuses on the construct and content of everyday forms, procedures, regulations, and database fields in order that all information relevant to the requirement of ensuring victim safety and offender accountability is noted and transferred as necessary. Rather than continually seeking to address the attitudes of practitioners within the system, the DAIP now asks how this practitioner was institutionally organised to take a particular course of action.

Integrated Criminal Justice Models

Other criminal justice initiatives seek internal integration across the system and externally coordinate with other sectors including non-government agencies. Initiatives falling within this description commonly revolve around court settings. The most well known include (in the USA) the Quincy District Court (Massachusetts), the Dade County Court (Florida), and the New York City Domestic Violence Court (Epstein 1999; Tsai 2000). In Canada there is the Family Violence Court in Manitoba and Toronto (Ursel 1997). Australian examples include the ACT's Family Violence Intervention Program (FVIP) and the South Australian court initiatives in Elizabeth and Adelaide (Duigan & Felus 2000).

Some court based initiatives seek to create a 'one-stop shop' intake centre (for example, Minneapolis and Washington D.C.) which co-locates justice and victim support personnel (Epstein 1999). Others

create a specialisation in prosecutors and judges, and remodel the physical location and layout of courts. These initiatives inherit learning from other court specialisations such as family law and children's courts, and also mirror other currently fashionable – if costly – specialisations such as Drug Courts. Specialised courts and associated offender rehabilitation programs incorporate 'the principles of therapeutic jurisprudence, a theoretical model rooted in "the tradition of sociological jurisprudence and legal realism"' (Tsai 2000, p. 1287).

Epstein (1999), Tsai (2000) and Buzawa, Hotaling & Klein (1999) describe some of the obvious benefits of integrated and specialised courts as improving access to justice, information and support for crime victims, reducing attrition on victims, enhancing case coordination and improving information gathering for cases. Tsai (2000, pp. 1316-1317) asserts that an integrated court 'unifies various adjudicative and therapeutic resources' and provides legal decision-makers with benefits 'from the insights of the mental health and related disciplines' (although Tsai appears to consider these insights primarily from a defendant perspective). They also raise some issues for further consideration such as:

- Deciding which jurisdiction any particular case would fall under. For example, does a criminal family violence case involving people of Indigenous background belong in an Family Violence Court or an Indigenous Court? Does a case involving a drug affected defendant belong in a Drug Court?
- The possibility of triggering other mandatory interventions such as child protection without the knowledge of the complainant. In the USA this has generated action against the victim/parent for 'failure to protect' and counter action for 'abuse of process' (Pulalani 1996; Davidson 1998).
- Blurring of necessary functional boundaries and accountabilities between key criminal justice players.
- Intensifying the conflicting goals and priorities between the key criminal justice players.
- Bringing the magistracy and judiciary into a role traditionally done by probation and parole in monitoring compliance with court orders (which, for example, restrict contact with the victim, constrain the social movements of the defendant and order participation in certain treatment and educational programs).
- Extending the criminal justice catchment of victim information that would not ordinarily be necessary for protection nor available to prosecution.
- Potentially compromising judicial independence.

- Reliance on educational/treatment programs for perpetrators for which there are indeterminate results.
- Marginalising and stigmatising criminal domestic violence cases from mainstream court activity.
- Potentially diverting resources from other parts of the criminal justice system.

These 'model court' initiatives have thrown a spotlight on areas of court administration and procedure with sometimes intriguing results. For example, there is much debate in the field about the factors that go to improving effectiveness and retention in education programs for perpetrators (Keys Young January 1999). This includes whether programs should be long or short, and whether they should 'mandate' participation or not. In exploring the role of the court in improving perpetrator compliance at intake and completion Gondolf (2000) identified the impact of a new court facility, a new process for expedited warrants, and the making of appointments for intake immediately at court rather than later at another location as being influential. He concludes (pp. 434-436) that: 'it may be possible that shorter programs with pre-trial referrals under court review may be just as effective as longer programs relying on post-conviction for referrals.'

Are Coordinated Criminal Justice Interventions Successful?

After nearly 30 years of activism and reform activity, there is near uniformity of direction in Australia as elsewhere on criminalising domestic violence.⁴⁴ 'These interventions to control violence against adult intimate partners reflect several different policy goals [pursued in an interdependent fashion by legal institutions] and separate but parallel tracks: criminal punishment and deterrence of batterers, batterer treatment, and protective interventions designed to insure victims' safety and empowerment.' (Fagan 1996, p. 8)

Yet policy makers, justice administrators and those working with victims of domestic violence are today confronted by a lack of conclusive evidence on the efficacy of any of these criminal justice interventions. Even posing this issue raises still further questions. By what measure is an intervention judged to be 'successful'? Is 'efficacy' to be weighed from a victim perspective or that of a busy court list clerk? Is success simply measured by number of protection orders issued and number of convictions achieved? At what point in case processing do we measure impact? Is there a different policy value to be placed, for example, on measures of victim satisfaction and victim safety, and measures for recidivism? What are the outcome components from a victim perspective?

Many reform evaluations describe improvements in coordination and communication amongst practitioners as a success indicator (e.g. Keys Young 1999), while Harwin, Hague & Malos (1999) comment to the contrary. Others describe the 'output activities' of the criminal justice system and quantifiable changes in processing as indicators of success. For example, the San Francisco Family Violence Project (US) increased the arrest rate by 60 per cent in one year and improved the conviction rate by 44 per cent over three years. Further, there was a 171 per cent increase in case dispositions involving probation, goal, parole or supervised diversion – that is, an increased use of 'real' penalties (Jaffe et al. 1993).

The London, Ontario (Canada) reform program lists its achievements as a 2,500 per cent increase in arrest rate over 5 years (Jaffe et al. 1986), and an increased prosecution rate from 23 per cent to 72 per cent – that is, a 208 per cent increase over 5 years (Edwards 1989, p. 194). The London, Ontario initiative shows how important it is to analyse research findings carefully. All law enforcement agencies distinguish between domestic violence **incidents** and domestic violence **offences**. London, Ontario increased its charge rate on the latter from 23 per cent to 72 per cent. This still constituted only 13 per cent of all domestic violence **incidents** (Jaffe et al. 1986; Morely & Mullender 1992). Further, there was a reduction in the dismissal of charges at court from 38 per cent in 1979 to 11 per cent in 1989 (Jaffe et al. 1993, p. 84).

Other research that focuses on quantitative measures includes a retrospective study of community intervention projects in three US communities. This showed that the reform activities significantly increased arrests, convictions and court mandates to treatment (Gamache, Edleson & Schock 1988). Another pilot project in Westchester County, New York (US) observed that 82 per cent of charges in a domestic violence prosecution unit were followed through by victims, and of those charges, more than 94 per cent of the defendants were convicted (Pirro 1982 cited in Buzawa & Buzawa 1996a, p. 185). An arrest directive in Winnipeg (Manitoba), population 600,000, increased arrests from 629 in 1983 to 3,387 in 1993. The creation of the Family Violence Court in that jurisdiction witnessed an increase in cases from 1,800 to 4,000 per annum in 5 years (Urself 1997). In the 'full enforcement jurisdiction' of Quincy (Massachusetts), the arrest rate is 75 per cent and 70 per cent of perpetrators are convicted (Buzawa, Hotaling, & Klein 1999). After three years of operation, the ACT FVIP has seen an 8 per cent increase in the number of defendants charged with family violence offences, and a 68 per cent increase in the number convicted in the Magistrates Court (although part of the conviction increase is accounted for in a reduction from 20 per cent to 4 per cent of matters referred to the Supreme Court for trial or sentence – urbis keys young 2001b).

But what of qualitative impact and outcome from these coordinated and integrated efforts? Most commentators now assert that it is the combined effect of the activities of criminal justice agencies that maximises impact rather than the isolated action (e.g. arrest) by one agency (e.g. police). On one outcome measure, that of homicide prevention, both San Diego and Quincy argue this is the most critical success factor in their integrated efforts (Tsai 2000, p. 1318; Dobash & Dobash 1992, p. 202).

Victim Satisfaction

In their evaluation of the Quincy District Court, Buzawa, Hotaling, & Klein (1999) suggest that measures of victim satisfaction may ultimately prove to be a more useful and steady guide to criminal justice reformers than measures of recidivism or arrest and conviction rates. On the satisfaction measure, some research results include the following:

- In London, Ontario in 1979, 48 per cent of victims expressed satisfaction with police response. After 10 years of reform activity, 65 per cent expressed satisfaction and 87 per cent said they would call for police assistance again (Jaffe et al. 1993, p. 81). The most commonly requested improvements from victims were for more information on the court process and on community support services. In 1979, 31 per cent of victims felt supported in the contact with the District Attorney. Ten years later, this had risen to 65 per cent.
- In the model prosecution jurisdiction of Indianapolis, 69 per cent of victims said they were 'satisfied' with the criminal justice system and 75 per cent reported feeling in greater control of their situation as a result of prosecution (Ford & Regoli 1993, p. 153).
- In Quincy, where 70 per cent of domestic violence incidents result in arrest, 82 per cent of victims stated they were satisfied with police response. While most victims were satisfied, those victims not wanting arrest were more likely to be dissatisfied. Victim satisfaction appeared related to whether the victim was informed of her rights and advised about obtaining a restraining order. The inability of the justice system **as a whole** to prevent future abuse rather than the actual police performance significantly impacted victim satisfaction with the police, even if they had little real ability to prevent re-abuse. Not surprisingly, dissatisfied victims were primarily assaulted by more chronic offenders – those with an average of 18.9 prior charges. Interestingly, while under half of victims wanted to talk with the prosecutor and 37 per cent wanted charges dropped, 65 per cent nonetheless still expressed satisfaction with the prosecutor's actions (Buzawa, Hotaling & Klein 1999).

- In the ACT, 74 per cent of victims expressed satisfaction with the way the police handled their complaint at the time of the incident. Of the 44 per cent of victims who had contact with the Office of the DPP, over half said they were satisfied with the prosecution. However, as noted above, satisfaction with this agency was in large part influenced by whether the victim wanted the prosecution to proceed (urbis keys young 2001b).

Some of the findings on victim satisfaction appear, on the surface, to be contradictory. Why is it that a victim may **not** want arrest yet be satisfied with police response? Why would a victim vehemently demand that the prosecution be discontinued and yet, at the finalisation of the case, express a feeling that ‘justice has been done’? The evaluation of Phase II of the ACT FVIP confronted viewpoints such as these (Urbis Keys Young 2001b). The issues urgently need more research. At least part of the answer lies in understanding how a victim may access the justice system as a resource in her on-going strategic ‘management’ of the abuse, **plus** the nature and severity of the violence she experiences, **plus** the reliability, sensitivity and effectiveness of the response she receives from justice personnel.

Further answers may lie in research that explores the interaction between the ‘generic’ victim and the criminal justice system⁴⁵. For example, a Netherlands study identified that victims were most satisfied with police and prosecution responses when certain notifications and certain actions on restitution were delivered *even when* the outcome that the victim desired from the case was not achieved. The study concludes that crime victims may value the process of acknowledgment and inclusion perhaps even above the actual outcome, for example conviction of a defendant (Wemmers 1994). These and other studies suggest the value of systematic implementation of ‘victims’ rights’ legislation. It also suggests the need to explore the impact this emphasis on procedural fairness has on both the victim and the defendant in the Australian context.⁴⁶ Epstein (1999, p. 47-49) discusses studies by Tyler (1990), Lind (1990) and Paternoster et al. (1997) that show that the frequency of subsequent abuse was far lower when arrestees believed they had been treated fairly. The research concludes that ‘the manner in which sanctions are imposed has an independent and more powerful effect on spouse assault than the sanction outcome itself.’

Victim Safety and Repeat Offending

Victim safety can be measured in a reduction or elimination of violence, and the absence of threat. With regard to the perpetrator, Fagan (1996) and Schmidt and Sherman (1996) found, out of the various arrest and prosecution studies that ‘the continuing threat of legal sanctions evidently has a stronger deterrent effect than the actual imposition

Part of the answer lies in understanding how a victim may access the justice system as a resource in her on-going strategic ‘management’ of the abuse.

of a sanction through the arrest process’ (Fagan 1996, p. 11). Jaffe (1993, p. 87) concludes from the Ontario study that ‘the prospect of probable serious consequences enhances the deterrent effect of arrest in jurisdictions where a stronger criminal justice system response is the norm.’

Recidivism rates in official figures (that is, of new arrests and/or breach action) consistently under-report those in victim surveys (Buzawa et al 1999). Self report surveys of offenders on perpetrator programs and of victims similarly reveal official under-reporting and, sometimes, continued denial and minimisation (Dobash et. al. 1996, Buzawa et. al., 1999; urbis keys young 2001c). Nonetheless such measures do throw further light on safety outcomes. For example, in the ACT, 71 per cent of victims felt reasonably safe after police attended the incident. At the finalisation of their case at court, 57 per cent of victims felt either very safe or fairly safe (urbis keys young 2001b). Of 15 women interviewed while their (ex) partners were on the court mandated perpetrator program, 66 per cent said that they had not been physically assaulted although just under half said they “felt safe” (urbis keys young 2001c).

More recent studies have taken this proposition still further in exploring whether the **combined** effect of the various criminal justice interventions have more effect **together** than singly. Steinman (1990), Syers and Edleson (1992), Jaffe et al. (1993) and Dobash & Dobash (1997) all found that the combination of arrest, prosecution and court sanctions such as perpetrator programs were more likely than other combinations of criminal justice actions to end repeat violence. Indeed, Steinman’s (1990) Nebraska study found that police actions that were not coordinated with other sanctions led to increased violence.

Tolman and Weisz (1995) explored the effects of arrest and subsequent prosecution on subsequent police calls and arrests over an 18 month period. Overall 30 per cent of offenders had repeat incidents of abuse during the 18 month period following arrest. Of those found guilty of the initial charge, 28 per cent re-offended as opposed to 37 per cent of men found not guilty.

Murphy, Musser and Maton (1998) evaluated the impact of a coordinated criminal justice response in Baltimore, Maryland. The study posited that ‘each specific component of community intervention would be associated with small reductions in recidivism, while no specific component would have an

The results provide evidence that coordinated (or integrated) interventions may have a cumulative effect on recidivism risk.

overwhelming effect on recidivism;...[and that] significant, cumulative reductions in recidivism would be apparent in the combined effects of coordinated intervention.’ (p. 265) Their study comprised a sample of 235 cases followed up over 12 months. Recidivism was measured in two ways using official data. (Note that victim surveys generally show a higher recidivism rate than do official records such as police call-outs, arrests and prosecutions.)

Measuring recidivism narrowly as a repeat ‘battery’ offence or violation of a protection order, 15.7 per cent of the total sample repeated their offending behaviour. Using a broader measure including other domestic violence related offence categories resulted in a recidivist result of 25.5 per cent. The Maryland study further made the statistically significant finding that individuals who received a court order to ‘domestic violence counselling’ were 56 per cent less likely than other offenders to generate a new charge for battery or ex parte violation.

It is the results on the original proposition, however, that are particularly interesting. Of the sample of 235, 120 were not successfully prosecuted. Of these, 19 per cent recidivated on the narrow measure and 29 per cent on the broad measure. But of those successfully prosecuted, **with each successive intervention on the initial set of charges**, the recidivism rate on either measure progressively reduced. The highest combined intervention of guilty verdict with probation, *plus* an order to attend domestic violence counselling, *plus* attendance at intake and *plus* completion of the counselling program resulted in a 5.3 per cent recidivism rate across both the narrow and broad measure. The authors conclude that the results provide evidence that coordinated (or integrated) interventions may have a cumulative effect on recidivism risk.

Conclusions

ELLEN Pence, perhaps one of the most influential feminists involved in criminal justice reform efforts in the US, suggests that:

We have to grapple with the difference between our rhetoric and the realities of people’s lives; for example, consider the following:

- *Not every case of domestic violence is best resolved in a courtroom.*
- *Every act of domestic violence does not necessarily lead to a serious attack on a victim.*

- *When victims call for help, they are not calling to activate a long, hostile criminal proceeding. They are usually calling to make something happen immediately.*
- *Many individual victims will not be helped by a prosecution.*
- *Some cases in which an assault did occur are almost unprovable in a courtroom using the standard of proof required in a criminal trial.*
- *Most offenders who are arrested for assault will not be with the woman they abused after 5 years.*
- *With no intervention (sanction or rehabilitation), most offenders will continue to be violent for many years. (Pence & McDonnell 1999, p. 54)*

In his challenging exploration of the promise and limits of the criminalisation of domestic violence, Fagan (1996, p. 25) further suggests that ‘the critical evaluation question is whether legal institutions organised around the goal of detecting and punishing crimes can effectively shift toward a more flexible and preventive set of activities.’

Perhaps one of the strongest signals a jurisdiction such as Australia can draw from all the North American and other research is that simple solutions are not sufficient. We must design and evaluate our interventions for multiple, and seemingly contradictory, possible outcomes for victims, their children, defendants and justice personnel if the criminal justice system is to make a lasting contribution to the prevention of domestic violence in society.

Table 1: Variables impacting on the arrest decision

Demographic characteristics of victims and offenders:

- Lower arrest rates for victims from ‘minority’ populations (Black 1971; Ferraro 1989; Smith 1987).
- Lower arrest rate for male perpetrators if in a mixed race relationship (Lyon 1999; Hotaling et al. 1988)
- Lower arrest rates when victim is female (Smith 1987)
- Inconsistent findings of arrest rates for offenders given variables of gender and racial origin (Berk & Loseke 1981; Feder 1996; Holmes 1993; Smith 1987; Worden & Pollitz 1984).
- Higher arrest rate when victim and offender live in the same residence but no statistical difference for arrest where parties are married or unmarried (Buzawa & Austin 1993)

Demographic characteristics of police officers:

- Racial origin of officers does not affect decision to arrest (for any offence) (Walker, Spohn & Delone 1996).
- Female officers less likely to make arrests than male (for any offence) (Martin 1993; Robinson & Chandek 2000).
- Older and more experienced officers make less arrests than do younger officers (for any offence) (Bittner 1990; Muir 1977; Stalans & Finn 1995; Robinson & Chandek 2000).

Attitudinal Variables:

- Victim's preference for arrest significantly increases likelihood of arrest at the scene (Black 1971; Buzawa & Austin 1993; Eigenberg et al. 1996; Feder 1996; Smith 1987). But preferences are more likely to be followed if officers considered the victims to be rational and respectful rather than verbally abusive or intoxicated (Buzawa & Buzawa 1993), or they believed she had not invited the perpetrator into the home (Rigakos 1997).
- When officers believed that the victim was uncooperative or that they would seek to have charges dropped, they were less likely to make arrests (Belknap 1995; Berk & Loseke 1981; Buzawa & Austin 1993; Davis 1983; Ferraro 1989; Smith 1987). Officers with longer tenure were more likely to perceive that victims are uncooperative although this did not translate into differential response (Robinson & Chandek 2000).
- Officers belief in likelihood of prosecution and victim participation in that process significantly increased officers perception of the victim as "cooperative" (Robinson & Chandek 2000).
- Officers rating of victim "cooperativeness" significantly decreased when the officer believed the victim had a probable drug or alcohol problem, when alcohol or drugs were present at the scene, and the longer the tenure of the officer (Robinson & Chandek 2000).
- When an arrest was not made at the scene, victims were significantly less likely to participate in the prosecution of their cases (Robinson & Chandek 1998).

Situational Variables:

Situational or legal variables are found to be *more important predictors* of the arrest decision than are extra-legal variables such as attitude or demographics (Feder 1996; Klinger 1996; Stalans

& Finn 1995; Worden 1989; Robinson & Chandek 2000).

Variables found to significantly *increase* the likelihood of officers making an arrest at the scene:

- Weapon involved (Eigenberg et al. 1996; Ferraro 1989; Smith 1987). That weapon being a gun or sharp object rather than a blunt object or bodily weapon (Buzawa & Austin 1993)
- Seriousness of the offence – in US terms felony or misdemeanour (Black 1971; Ferraro 1989; Smith 1987).
- Additional witnesses and children present (Buzawa & Austin 1993; Holmes 1993; Robinson & Chandek 2000), and evidence of forced entry (Rigakos 1997).
- Intoxicated disputants (Berk & Loseke 1981; Worden 1989; Worden & Pollitz 1984).
- Female called the police (Berk & Loseke 1981)
- Incidents of repeat violence (Smith 1987) and signs of struggle (Rigakos 1997)
- Presence of suspect at the scene is the most powerful of the situational variables (Robinson & Chandek 2000).

Variables found to significantly *decrease* the likelihood of officers making an arrest at the scene:

- Formal relationship between the disputants (i.e. married or co-habiting) (Black 1971; Worden & Pollitz 1984; although Smith 1987 and Buzawa & Austin 1993 found no effect, and Robinson & Chandek 2000 found that it increased the likelihood of arrest).
- Suspect not present at the scene (Eigenberg et al. 1996; Feder 1996; Worden & Pollitz 1984).
- If offence occurred in the last hour of the officer's shift (Robinson & Chandek 2000)

The research on the presence of *victim injury* is inconclusive.

- A positive correlation of arrest to victim injury was identified by Buzawa & Austin (1993) and Ferraro (1989)
- No relationship was found by Berk & Loseke (1981); Feder and Holmes (1996)
- Robinson & Chandek (2000) found that there was a negative relationship between victim injury and decision to arrest. Specifically, when the victim was injured and was fearful of retaliation, an arrest was significantly less likely. Whilst this may seem contra-indicative, the study identifies that officers may be responding to a victim preference not to arrest in such circumstances.

Table 2: Variables impacting on prosecution decision-making.

Evidentiary & Procedural Variables

- Over-reliance on victim testimony as primary or even sole evidence for prosecution (Gwinn 1993)
- High proportion of cases where the victim/witness refuses to participate, eg, by withholding testimony, changing her story, or simply refusing to either speak with the prosecutor or to attend court (Rebovitch 1996)
- The failure of the defendant to appear and his use of drugs or alcohol disincline prosecutors to proceed (Schmidt & Steury 1989)
- Seriousness of the offence, prior history of abuse or risk, and alcohol or drug use by offender or victim at the time of the incident inclined the prosecutor to proceed (Martin 1994). However, Hirschel & Hutchison (2001) did not find a strong correlation on drug and alcohol use.
- Serious injury to the victim resulted in a lower probability of prosecution (Martin 1994), although the contrary was found by Hirschel & Hutchison (2001) and Schmidt & Steury (1989).
- Lack of availability of forensic, tangible or third party evidence (Asmus et. al 1991)
- Procedural barriers placed between complainant and prosecution
- Assessments of the low likelihood of conviction based on prior experience rather than the particulars of a case (Forst et al. 1977; Vera Institute of Justice 1977 cited in Lerman 1981).

Attitudinal Variables

- Prosecution of domestic violence characterised as ‘disruptive to family life’ (Dobash & Dobash 1979, Lerman 1981, Wasoff 1982)
- Belief that the dynamics of violence in intimate relationships place them more appropriately within the bailiwick of the helping professionals’ (Field & Field 1973; Moody & Toombs 1982)
- Victim blaming views (Miller 1969; Cahn & Lerman 1991)

- Downplaying and trivialising the severity of domestic violence incidents (Eisenberg & Micklow 1977; Buzawa & Buzawa 1996)
- Some racial bias evident in the US: African-American defendants are more likely to have their cases prosecuted than are White Americans (Hirschel & Hutchison 2001).
- Previously married or co-habiting victims are more likely to have their cases prosecuted than are currently married or co-habiting victims (Hirschel & Hutchison 2001).

Organisational/Contextual Variables

- Practices that use the likelihood of the victim seeking to have the charges dropped as a legitimate case screening factor (e.g. early US studies cited by Lerman 1981; Schmidt & Steury 1989; Wangberg 1991; in the UK, Edwards 1989)
- Higher case attrition rate (sometimes called ‘drop-out’ or dismissal rate) for domestic assaults than for non-domestic assaults (Lerman, 1980 although Wasoff found otherwise in a 1982 Scottish study)
- Organisational expectation of light and/or ineffective sentences for domestic violence cases (Vera Institute of Justice 1977)
- High caseload and low resources of public prosecutors (Buzawa & Buzawa 1996)
- Prosecutors ill-equipped to intervene in domestic violence dynamics (Parnas 1973; Waits 1985)
- Professional culture that views prosecution of domestic violence cases as unhelpful in career terms (Ursel 1998; Lerman 1981)
- Consigning more domestic assaults than non-domestic assaults to lower courts for adjudication based on perceptions of their lack of severity (Wasoff 1982; Moody & Toombs 1982; Wasoff 1987 in Scottish studies).

Appendix 1: Summary of roles of criminal justice agencies

Police

- intervene where criminal conduct alleged and/or peace disturbed
- protect life, limb and property
- ensure peace and public order maintained
- prevent crime
- determine whether there is a belief on reasonable grounds that an offence has taken place
- take action on that determination

Prosecution

- act as the representative of the State
- evaluate action on criminal charge
- decide whether or not to proceed with prosecution
- prosecute on behalf of the State

Defence

- advocate on behalf of accused to ensure fairness and observance of principles of natural justice
- advise accused about the relevant law and act as their advocate in court
- test the prosecution case and make submissions concerning appropriate penalty

Courts

- adjudicate on whether a criminal offence has in fact taken place
- adjudicate on whether in fact the defendant committed the offence as charged
- determine an appropriate penalty

Corrections/Probation & Parole

- manage the rehabilitation/punishment of offender
- uphold safety of the community

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Endnotes

- 1 Victims of Crime Co-ordinator, ACT, an independent statutory appointment. Robyn is also a member of the ACT Domestic Violence Prevention Council, chair of Victim Support Australasia and Co-ordinator of the ACT Family Violence Intervention Project. She previously worked in the UK on issues of crime prevention, violence and policing.
- 2 Terminology: This paper primarily uses the term 'domestic violence' as common currency for the violent, abusive and/or threatening behaviours used by one person against another in an intimate relationship setting. The term 'family violence' is more usually used by people from Indigenous backgrounds. The term 'victim' is used interchangeably with that of 'survivor' or 'complainant' meaning the person against whom the abuse is alleged. The victim is referred to primarily as female and the perpetrator as male. I also use the terms perpetrator, suspect, defendant or offender to describe the person allegedly using the abusive behaviour. The term 'advocate' is not commonly used in Australia. In the USA, it refers primarily to a support person who advocates with and for the person in need.
- 3 For a contemporary overview of debates see Thornton (1995). In a sense this paper reinforces the separation of public and private in its focus on the criminal.
- 4 By 'criminalisation' I mean the policy and practice approach which emphasises a criminal law (including breach of protection orders) response. Protection orders are civil remedies with potentially criminal effects if they are breached. They are prospective in their intention to restrain future conduct rather than retrospective as in a criminal law response.
- 5 The key criminal justice agencies and their functions are outlined briefly in Appendix 1
- 6 See Putt & Higgins (1997); Trimboli & Bonney (1997); Eggar & Stubbs (1993); Domestic Violence Legislation Working Group (1999); NSW Ombudsman (1999); Katzen & Kelly (2000)
- 7 It should be emphasised that the call for more research and evaluation contained within this paper does not obviate the absolute necessity of criminal justice agencies themselves making monitoring, data analysis and evaluation routine within their programs and services.
- 8 For a discussion on issues of replication between jurisdictions see Holder (1999) and Foster & Holder (1999).
- 9 In each US jurisdiction, top personnel such as District Attorneys, Chiefs of Police and Judges may be either elected, appointed or selected via a mixed system (Daly 2001).
- 10 In Australia the term used is 'belief on reasonable grounds' and in the UK it is 'reasonable cause to believe'.

- 11 The *Partners for Prevention* Project in the ACT discusses appropriate and accurate terminology for the support and help provided by family, friends and neighbours (Goff, S. 2001 forthcoming). The term 'informal support' is disliked because it implies responses that may be naive and bumbling. The terms 'significant others' or 'personal supporters' are preferred.
- 12 Associate Professor Julie Stubbs, University of Sydney, warns, however, of the dangerous potential of this research in implying the creation of a two-tiered response to 'conforming' perpetrators and 'non-conforming' perpetrators. Communication 11.3.2001
- 13 Note that community justice centres are being experimented with in areas of the United States in part because of the disenchantment of crime victims and crime victim services with the traditional criminal justice system (Herman 1999).
- 14 The debates over mandatory sentencing with its restrictions on the capacity of judges to taken into account the particulars of a case in its social context have thrown a spotlight on some areas of contradiction for victim support services and advocates. See also Snider (1998).
- 15 See Appendix 1 for a brief description of the key criminal justice agencies and their functions.
- 16 See also Blagg et al. (2000, p. 8-10) for discussion of more controversial studies on the activities of Indigenous women in Australia and Canada, and African-American women in 'fighting back' as resistance to violence; and Das Dasgupta (1999) also discussing women's use of violence.
- 17 Respectively Director of the UK's ESRC Violence Research Program and Director of the University of Manitoba (Canada) Violence Against Women Research Unit.
- 18 On file with the author
- 19 In Edward's (1989) London (UK) study, approximately two thirds of calls for police attendance came from the victim. The remainder came from neighbours, bystanders or other witnesses such as children.
- 20 In the USA the sequelae to domestic violence has been described as Battered Women's Syndrome (see also Walker in Hilton 1993). This concept and the tendency to pathologise victims of trauma has been critiqued by Stubbs & Tolmie (1999) and Herman (1992). The use of impact evidence in criminal proceedings is discussed in NIJ (1998).
- 21 Thirty nine (39) victims were surveyed representing 20% of those whose cases had been prosecuted and completed over a specified period.
- 22 It is important to note that, in some cases, this fear may relate directly to the victim's experience and knowledge of the offender's capacity and predilection for violence. In others, where the violence may be 'less severe', the fear may relate more strongly to the unknown pathway and consequences of both the prosecution process and reactions of the offender and others.
- 23 Bronitt argues that the 'aid and abet' clauses in some of Australia's domestic violence legislation is an example of an abuse of state power that is damaging to the victim. Communication 20.3.2001.
- 24 In Australia, however, Easteal (1993) found that, in spousal homicide cases, police had prior contact with the victim in less than half of cases.
- 25 Bronitt (2001) asserts that the only function of arrest is to initiate legal proceedings. It may have a range of consequences including deterrence. But to promote arrest in and of itself as punishment is not permissible and may amount to an extra-judicial abuse of power. Personal Communication 20.3.2001.
- 26 Ursel (1997, p. 266) describes the arrest rate for police attendance at a domestic violence incident per capita in four North American jurisdictions. The rate per 100,000 is 580 in Dade County (Florida); 690 in Winnipeg (Manitoba); 846 in San Diego; and 896 in Duluth (Minnesota).
- 27 The evaluation of Phase II of the ACT FVIP has revealed this range of potential in "other positive action". This suggests that policy makers and advocates need to re-assess the ways in which we measure police performance and success and how we describe the parameters of this "other positive action". (urbis keys young 2001b). Note also the legal difference between "incident" and "offence".
- 28 With the increased emphasis on an evidence-based prosecution in the ACT FVIP, 74% of officers in the pilot patrol of Woden as opposed to 28% of officers in other patrol areas now agree that there is a point in pressing charges whether or not the victim is willing to give testimony (urbis keys young 2001b).
- 29 Omaha (Nebraska), Milwaukee (Wisconsin), Charlotte (North Carolina), Colorado Springs (Colorado), Miami (Florida) and Atlanta (Georgia).
- 30 For a discussion of these experiments and a critique of the methodology and findings see Buzawa & Buzawa 1996a, and Zorza 1994
- 31 Tsai (2000, p.1287) quotes Winick (1997) in defining the model as rooted in "the tradition of sociological jurisprudence and legal realism". The multi-disciplinary approach of therapeutic jurisprudence examines the positive and negative effects of the legal system on the social and psychological functioning of individuals, and is reflected in the model domestic violence programs' commitment to providing comprehensive services.
- 32 In Edwards' (1989) study of two police divisions in the UK it was common practice to simply not investigate further where the suspect was no longer at the scene and not record the incident. It simply disappeared from all records.
- 33 Bugg QC (1999) suggests that there is likely to be a shift towards independent DPPs across Australia by 2010.

- 34 Given that the research reviewed for this paper derives primarily from the USA, it is important to bear this different institutional framework in mind (Munstermann & Archer 2001).
- 35 It is beyond the scope of this paper to explore the differences and similarities of prosecuting approaches in either the inquisitorial system of some European countries, or that of indigenous and non-Western societies. This would be an interesting line of enquiry.
- 36 see also Gwinn (1993)
- 37 Although in WA the Child Witness Service is located with Victim Services in Courts Administration.
- 38 See Davies, Lyon and Monti-Catania (1998) and a model safety plan at www.mincava.umn.edu/hart/persona.htm
- 39 Professor Ursel in Manitoba and the Ontario District Attorney, Robert Morris, have described this as "testimony bargaining".
- 40 Much of the discussion in this section was first published in an article by the author for the *No To Violence Journal* (1999). Their permission to reproduce it here is gratefully acknowledged.
- 41 The Violence Against Women website at the US Department of Justice contains the legislation, publications and linked sites. See www.usdoj.ojp/vawgo
- 42 For alternative views and approaches to inter-agency collaboration see Gardiner (1999).

- 43 It could be argued that some of the 'model' jurisdictions in domestic violence reform activity become so because they are written up and publicised.
- 44 An alternative view is put forward by Gardiner (1999)
- 45 Though Smith (2000) asserts that the preferences and satisfaction of domestic violence victims do differ in significant ways to the views of victims of stranger violence.
- 46 Note, however, the importance of the findings of the Reintegrative Shaming Experiment being conducted by the Australian National University and ACT policing. See www.aic.gov.au for information about RISE.



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