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**The legal response to
men's violence against women (ex-)partners:
Narrative representation of women's experiences
and discourse analysis of lawyers' talk**

A thesis presented in partial fulfilment of the requirements for the degree of
Doctor of Philosophy in Psychology
at Massey University, Turitea Campus, Palmerston North, New Zealand

Rachael Lynn Pond

2003



CANDIDATE'S DECLARATION

This is to certify that the research carried out for my Doctoral Thesis entitled "The legal response to men's violence against women (ex-)partners: Narrative representation of women's experiences and discourse analysis of lawyers' talk" in the School of Psychology at Massey University, Turitea Campus, New Zealand is my own work and that the thesis material has not been used in part or in whole for any other qualification.

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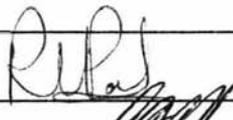
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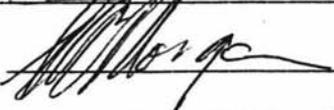
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ABSTRACT

Men's violence towards women within the context of intimate relationships is a complex and serious social problem. Particularly problematic are its prevalence and its extensive deleterious effects on women and children's health and psychological wellbeing. The present research was interested in New Zealand's legal response to domestic violence. More specifically, it explored how well the legal system serves the needs of women who experience abuse from their male partners and ex-partners, and how lawyers make sense of partner violence and the legal response to it. Feminist poststructuralism was a useful theoretical stance for the research. Feminist poststructuralism argues that there are multiple truths and realities, some that are hegemonically authorised as truth, and others that are marginalised and rejected. This stance also theorises that our sense of self, and understandings of phenomena like domestic violence and the legal response to it, are socially constructed by culturally and historically specific discourses. To create space for women to voice their experiences of the legal response to domestic violence, I interviewed ten women, and represented their individual accounts using narrative methodology. Collectively, the women's narratives suggest that the legal system does not consistently serve the needs of women seeking protection from partner violence; many women were dissatisfied. Women did not always feel that judges, lawyers, and other legal personnel treated their experiences of violence and psychological abuse seriously or empathetically. Some women also encountered resistance when they attempted to protect their children through supervised access. In the second phase of the research, I interviewed eighteen lawyers working in the area of domestic violence, and analysed their transcripts using discursive methodology. Lawyers utilised many discourses to make sense of and constitute domestic violence and the legal response to it. Some discourses were consistent with holding perpetrators accountable for their violence, and with protecting women and children. However, many discourses minimised and detracted attention away from men's violence towards women, marginalised women's experiences of abuse and violence, and undermined women and children's protection and safety. In this way, the legal system maintains and perpetuates gender bias and oppression against women.

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PREFACE

On 11 September 2002, there were two very disturbing news updates in the *Manawatu Evening Standard* newspaper about men who had been violent to their (ex-)partners. There were at least three other stories in other papers around New Zealand.

One of the articles in the *Manawatu Evening Standard* reported that a twenty year old man from Palmerston North had been committed for trial for killing his 17 year old woman partner (Teen mum's partner, 2002). She had been found in the hallway of their home, dead, naked from the waist down, and covered from head to toe with over 45 bruises and lacerations. His blows to her head were so forceful that they caused an indentation and bone to be chipped from her skull. He had felt "annoyed, upset, angry, and frustrated" after returning from a family function. When she tried to hug and console him, he "lost it". He assaulted/killed her using his fists, hands, and the stabbing motion of a broom handle. Witnesses called for the trial described other times he had directed horrific psychological and physical abuse towards her. She had suffered broken ribs, strokes, black eyes, and fat lips. Her health had deteriorated, and at the time of her death she weighed only 41 kilograms. One time, in front of her mother, he threw her clothes into the street, pulled the curtains, and locked the doors. He then threw her to the floor, dragged her by her clothes, held numerous knives to her throat, threatened to kill her, yelled at her, and beat her. She was admitted to hospital, unable to walk properly and with paralysis down the left side of her body. The reason for the attack: she had taken too long to walk his dogs, and could not be trusted. During the trial, he claimed that there was no violence in the relationship, "just disagreements", and she was a "very easy girl to bruise". Indeed, he insisted he would never harm her (Dead woman, 2003; Fist, hands, sticks, 2003; Mist found not guilty, 2003; Mother tells, 2003; Teen mum's partner, 2002)!

Also in the *Manawatu Evening Standard* newspaper was an article about a man who had regularly poisoned his ex-girlfriend's food with sleeping tablets so that he could have sex with her. When they had broken up, he had continued to stay at her house because he was almost bankrupt. When he kept wandering into her bedroom at night, she got upset and started barricading herself in her room. Having researched the effects of temazepam on the internet, he administered this drug in her food so that he could sexually molest her without her knowledge or resistance (Woman drugged, 2002).

The *Timaru Herald* reported of a mid-Canterbury man who had been found guilty of attempting to set his woman partner on fire (Found guilty, 2002). After physically and sexually abusing her during the last few months of their relationship, he took her out to a shed on their property, and tried tying her to a chair and setting her alight. His previous abuse included dominating her, not

allowing her to make friends or attend church, punching her in the jaw, forcing her to perform sexual acts, and threatening to cut her up and feed her to the sharks (Burgess, 2002; Found guilty, 2002; Timaru District Court, 2002a, 2002b; Tried to set, 2002).

In Auckland, a Chinese woman and her ten-year-old son were in hospital, fighting for their lives (Mother and son, 2002). Her husband (the boy's stepfather) had severely bashed them with a metal table leg, causing serious head injuries to them both. The next day, after a turn for the worse, the boy's life support machine was turned off. His mother woke from her coma almost one month after the attack (Bashed boy, 2002; Bashed woman's recovery, 2002; Machine switched off, 2002; Man appears, 2002; Mother and son, 2002; Mum wakes, 2002; Woman out, 2002; Woman recovers, 2002).

Lastly, the *Nelson Mail* reported of a man sentenced to community service for throwing a plate at his partner. His violence caused her injuries that required stitches (Plate thrower, 2002).

Violence against women within the context of intimate relationships is a complex and serious social problem in Aotearoa/New Zealand, and internationally (Mullender, 1996; Radford & Stanko, 1996; Samspell, Bernhard, Kerr, Opie, Perley, & Pitzer, 1992; United Nations Children's Fund, 2000). Such violence and abuse by men is particularly problematic because of its prevalence, and because of the extent and magnitude of deleterious effects on the health and psychological functioning of women and children. Women and children deserve to live their lives free of violence and the fear of violence.

Seemingly, the legal system has an important role in responding to domestic violence as a crime, and in providing protection to women and children. In a broad sense, the present research was interested in the intersection between domestic violence and the legal system from a critical social psychology perspective (more specifically, feminist poststructuralism). I was particularly interested in the part of the legal system comprising the Courts, the judiciary, and the legal profession. However, because women experiencing abuse and violence also rely on relevant law, police prosecution, police enforcement, and court counsellors, the present research also considers the 'wider' legal system where relevant.

'Domestic violence' terminology

Domestic violence is known by many names, including family violence, spouse abuse, wife battering, partner abuse, and intimate violence. I have found, as other writers have (e.g., Jones, 1994; McCue, 1995; Mullender, 1996), that the domestic violence vocabulary tends to be somewhat inadequate, never seeming to sufficiently capture the phenomena, or the severity of the problem.

The terminology used often depends on the stance of the researcher or practitioner. Those who do not see it as a gendered problem are more likely to use gender neutral language such as

'spouse abuse' or 'domestic violence' (Hoff, 1992). Whilst such terms usefully contrast violence in personal relationships with violence between strangers, they fail to make clear who is the victim and who is the perpetrator (Mooney, 2000). Feminists and others who recognise that violence and abuse is predominantly directed at women by their male partners and ex-partners will normally choose terminology such as 'wife abuse', and 'male violence against women partners'. The language used also depends on who the violence is perpetrated against. For example, the term 'family violence' is generally considered inclusive of violence against children by parents, and between family members other than intimates, whereas partner violence is not.

In this research, I am primarily concerned with *male violence against female partners*. Whilst recognising the significance of other types of family violence, this research does not specifically address child abuse, elder abuse, and violence in gay relationships¹. 'Female partners' includes cohabiting and non-cohabiting women partners and ex-partners (current and former wives, women de-factos, and girlfriends).

Where possible, I try to use language that reflects the premise that the majority of partner violence and abuse that induces fear and produces bodily and emotional harm is perpetrated by men. Sometimes I use the term 'domestic violence' to refer to male violence against women, because repeatedly using 'male violence against women partners and ex-partners' can be tongue-tiring and make sentence comprehension more difficult for the reader. In addition, I have found that common sense use of the term 'domestic violence' is often used to refer to male violence against women. Indeed, when people are not referring to violence against women by male partners, they tend to qualify this.

I use the terms 'violence' and 'abuse' interchangeably, particularly when I am discussing physical and sexual violence/abuse. The word 'violence' has merit because it conjures up images of physical and sexual assault and injury that some women experience. The word 'abuse' is useful because it encompasses many of the behaviours comprised in the physical and sexual violence/abuse categories, but that are not typically referred to by women and others as 'violent'. In contrast, I use the words 'psychological abuse' more often than 'psychological violence'. This is not intended to detract from the serious nature of psychological abuse and the grievous harm it causes. Rather, for me, the word 'abuse' more adequately portrays the often insidious and covert nature of this type of abuse and terrorisation.

When referring to women who have been abused by their partners, I sometimes use the word 'victim' (generally because of its pervasiveness in areas related to crime) and occasionally the word 'survivor'. Where possible I sidestep both. In my opinion, neither word is really adequate. This is because not all women who have been abused identify with one of these terms or the

¹ These forms of abuse are serious matters deserving of their own research, and warrant much more space and elaboration than I could give in this preface or Chapter 1.

other. Some women do not identify as being a survivor because they equate survivors with persons who have left the relationship, something they have not done yet. Alternatively, they believe the word connotes some sense of victory, which some certainly do not feel considering the immense and sometimes long-term negative effects that violence and abuse has had on their life. And, of course, not all women do survive (Gordon, 1988): a proportion of New Zealand women die each year as a direct consequence of their partner's violence. On the other hand, I am aware that the word 'victim' can invoke images of passivity and not recognise the great lengths to which many women go to resist, avoid, and escape abuse and violence. Hence, it is understandable that the word 'survivor' has been used to acknowledge the proactive attempts women make to resist, cope, and survive in the face of such adversity (Gordon, 1988; Kelly, 1988b). Because of the problems with each term, I try and avoid each, instead using phrases like 'women who have experienced violence and abuse by their partners'. This is in preference to 'abused women', which I feel limits the women's subjectivity/identity almost completely to their experiences of abuse (perceived as a negative and unfortunate part of their lives), and fails to acknowledge the rest of the person they may be. I have since found other writers (e.g., Mullender, 1996) who avoid this term for the same reason.

Finally, my conception of male violence against female partners recognises that abuse and violence does not only affect current or former girlfriends, de-facto female partners, and wives of abusive men, but any children who are or have been exposed to such violence and abuse.

Objectives of the research

The present research project had two main components. First, it explored how well the legal system serves the needs of women who experience abuse and violence from their male partners and ex-partners, and second, it explored how lawyers make sense of partner violence within the context of their work. Initially, I hoped to explore how judges make sense of domestic violence also. As discussed in Chapter 6, this was not possible because the Principal Family Court Judge and the Chief District Court Judge declined access to judges who might participate in the research.

The first phase of the research examined and represented abused women's satisfaction with different aspects of the legal system. This included their experiences of legal personnel (e.g., judges, lawyers, police), the Family and District Courts, protection orders, and child custody and access issues. As discussed in Chapter 5, narrative representation was considered a useful way to present women participants' experiences.

The second phase of the research explored the meaning that lawyers give to domestic violence, psychological abuse, victims and perpetrators of domestic violence, protection orders, and the legal response to domestic violence. The chosen methodology (elaborated in Chapter 6) analysed how this meaning was organised into consistent ways of speaking about these objects and phenomena (discourses). These discourses position women, children, and men in violent

and abusive family relationships, constrain and enable them in relation to living violence-free lives, and inform domestic violence intervention. That is, discourses of domestic violence and the legal system assist in protecting and/or endangering women (and their children) who are abused by their partners and ex-partners.

Researchers who identify as feminist and/or feminist poststructuralist are politically accountable. Consequently, this research has the intention of contributing towards improving women's experiences with the legal system in relation to domestic violence. The first component of the research achieved this by giving women voice, and by raising awareness within academia and the legal fraternity of the problems that some women face when they use the legal system for domestic violence matters. The location and explication of legal discourses of domestic violence within the second stage of this research raised awareness of their use and the possible effects these have on women and children's lives.

Some reflexive comments

As I will explain in Chapter 4, the theoretical assumptions underpinning this research are not conventional to mainstream psychology. Feminist poststructuralism strongly advocates that no research is objective. Rather, the researcher is ever present, her perspective and position integral and influential to the research. Furthermore, researchers construct their writing for rhetorical effect. Hence, the review of the research and literature, and other information that I provide in this and other chapters, will not be neutral, but part of an argument; an attempt to engage the reader and persuade her or him that the research is necessary and its method and findings justified. Of course, I will also be aiming to successfully perform the academic task of doctoral research, and all that this requires. To admit that one's research is subjective, a rhetorical accomplishment, and somewhat goal-oriented is quite routine in this style of work, but rare in traditional psychological research that is based on scientific principles.

Because feminist poststructuralism also argues that our reading of texts (e.g., of a research report) is an interpretative task where multiple readings are possible, I would also like to make it clear that what I present in this chapter and others, is *my version* of the articles and books that I have read. Likewise, your reading of my chapters will be your own and perhaps another version of current literature and research.

Because I am inevitably part of this research, it is important to point out that I am a Pakeha, heterosexual woman in my mid-twenties. My stance in relation to the domestic violence area is informed mainly by my academic involvement in this area and my work with domestic violence agencies. My work with Women's Refuge and Manawatu Women's Learning Group exposed me to feminist explanations of domestic violence, and personal experiences of women's lives. My feminist understanding was then consolidated through my immersion in the academic literature on feminism, and feminist theories of domestic violence. Generally, I found feminist theories useful, particularly for women who had experienced violence and abuse by male partners. I saw

value in holding male perpetrators of violence and abuse accountable for their behaviour, instead of excusing or placing blame elsewhere. I also appreciated the personal and political commitment that feminists working in the area had to ending violence against women and children. Hence, I strongly believe that women and children deserve to have violence-free lives, and have been committed to this goal through my academic work, my involvement with domestic violence agencies, and my personal interactions with people. I am also very aware of other sorts of oppression and inequality (sometimes overt, sometimes covert and subtle) encountered by women and girls – and by Maori, other ethnic minorities, gay and bisexuals, the elderly, members of lower socioeconomic groups, persons with disabilities, persons who do not fit our culture's expectations of attractiveness, and so on. Hence, I have an interest and some personal commitment to these areas too.

My stance in this research is also strongly influenced by poststructuralism, which I learnt about through my academic involvement. Feminist poststructuralism argues a radical critique of traditional assumptions about truth, knowledge, and reality. This critique of knowledge and reality resonated well with me. For some time, I had found claims to truth problematic, even within the area of domestic violence. I discovered that having an awareness of the importance of discourse and rhetoric in maintaining and perpetuating particular versions of events valuable. I noticed it was liberating that I no longer had to determine the truth of different accounts, or of different theories and explanations of domestic violence. It was much more interesting and valuable to examine how different discourses of domestic violence affect women in relationships characterised as abusive or violent. Because I had personally advocated for a Women's Refuge client using the legal system, and because I had heard many women talk about their experiences of using the legal system through Manawatu Women's Learning Group, I was specifically interested in the discourses and rhetoric that those in the legal system used about domestic violence. This interest was heightened because at that time, the Domestic Violence Act 1995 had not been long implemented. I also sensed that pro-feminist explanations of domestic violence were slowly becoming more pervasive in the legal system (this was probably assisted by much of the pro-feminist research that was being undertaken around this time). So, what discourses did people in the legal system utilise? How did they manage the contradictions inherent in these discourses? What subject positions did they offer for women and men whose relationships were characterised by violence and abuse? Embracing a feminist poststructuralist position, my journey in this area began.

Outline of chapters

There are three main parts to this thesis. Chapters in the first part provide background information about domestic violence and the legal system, and about the theoretical stance and methodologies used in the research. More specifically, Chapter 1 reviews relevant background literature on male violence against women (ex-)partners, Chapter 2 explains and critiques certain features of the New Zealand legal system, and Chapter 3 examines how the New Zealand legal system responds to domestic violence. Chapter 4 discusses the feminist

poststructuralist stance informing the research, whilst Chapters 5 and 6 exemplify the methodologies and method used for the research: narrative representation for the first objective of the research, and discourse analysis for the second objective of the research.

The second part of the thesis presents and discusses the findings for the narrative phase of the research. Chapter 7 includes each of the women participants' stories of the legal response to their (ex-)partner's violence. Chapter 8 re-emphasises and discusses some of the problems women participants raised about the legal response, as well as the factors that they appreciated.

Finally, the discourse analysis of the lawyer participants' talk about domestic violence and the legal response is presented in the third part of the thesis. Chapter 9 illustrates and discusses discourses that construct the entity of domestic violence, and Chapter 10 exemplifies those discourses that explain the occurrence of domestic violence. Chapters 11 and 12 present and discuss the discourses used by lawyers to support and undermine women's protection from domestic violence through protection orders, and children's protection of domestic violence through supervised access. The last chapter of the thesis draws some conclusions about the two main objectives of the research, and about feminist poststructuralism and the chosen methodologies. Suggestions for future research are also made in this chapter.

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