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**Judicial Experiences: A discourse analysis of Family
Court Judges' talk about domestic violence**

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ABSTRACT

Domestic violence toward women and children is a serious and prevalent issue in New Zealand society. It has both serious physical and psychological effects on all victims, including children who only witness the violence. This research focuses on Family Court Judges' responses to domestic violence and asks how these Judges make sense of domestic violence and work within the Domestic Violence Act 1995 to provide effective protection for victims. The framework of this research is feminist post-structuralism. This framework argues that there is no one singular objective truth but that all objects are dynamic and are constructed by talk. The meaning of objects and the position of subjects depend on discourses that are culturally and historically specific rather than individual attitudes or independent facts. To examine the response of the Family Court Judges two Judges were interviewed and two published papers taken from speeches made by Judges were chosen for analysis. The results of the discursive analysis indicate that within the legal discourse there is a move away from valuing the role of women's groups and feminist theory in regard to the construction of domestic violence. The current construction of domestic violence within the Judges' talk tended to value the role of father's rights groups and the patriarchal familial construction of the father/child relationship. Domestic violence is being constructed more in terms of provocation rather than in terms of power and control, which is the feminist construction of domestic violence that current legislation is based upon. These differences between the legal discourse and feminist discourse constructions of domestic violence raise important questions as to how the aims of the Domestic Violence Act are being constructed by the Judges and whether these constructions are impacting on the effective protection of domestic violence victims.

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INTRODUCTION

I have had glasses thrown at me. I have been kicked in the abdomen when I was visibly pregnant. I have been kicked off the bed and hit while lying on the floor – again while I was pregnant. I have been whipped, kicked and thrown, picked up again and thrown down again. I have been punched and kicked in the head, chest, face, and abdomen more times than I can count (Dobash & Dobash, 1992, p.2).

We were watching TV and talking companionably. I asked him to pass on a message to someone at work. He refused. Then he pounced on me and started strangling me, bashing my head against the sofa. Yelling, ranting and raving that he wasn't bloody going to pass on my messages (Church, 1984, p.29)

Almost weekly the newspapers report stories of domestic violence that rival the quotes above. There are many thousands of similar stories that never see print. Compared to men, women are many more times likely to be emotionally and physically abused or murdered by someone that they know well. This statistic is believed to not be affected by ethnicity, age, or socio-economic status (Margolin & Burman, 1993; Stewart & McDermott, 2004). Domestic violence is a reality for many women and a possibility for all women.

Community and public education campaigns have promoted the view that domestic violence does exist and causes great harm to victims and their families – why then is domestic violence allowed to continue?; where are the barriers that stop current legislation and its interventions from being effective? This study will investigate possible barriers created by the understandings that Family Court Judges bring to their work on domestic violence. Written and spoken texts of Judges around the topic of domestic violence and the Domestic Violence Act 1995 will be analysed using a discursive approach.

The motivation behind this study is my interest in contributing to growing research related to domestic violence in New Zealand. It is well established that domestic violence can and does take a huge psychological and physical toll on victims and their families (Margolin & Burman, 1993). How is this aided or abetted by the treatment they receive within the legal system? How do the Family Court Judges, through their own beliefs, experiences, and use of stereotypes, help or hinder victims in their attempts to make themselves and their families safe?

Although the legal system is far wider than just Family Court Judges, they have been chosen as the focus for this study. There are two reasons for this. Firstly they appear as a powerful figure to the victim as the decider of fate in terms of granting or denying a temporary or standing protection order, which is often the first step taken in seeking safety from the perpetrator (Rothenberg, 2002). Secondly this research is being undertaken as part of a wider programme and this study adds to a broadly developing picture of service providers that already includes police, lawyers, doctors, men against violence group attendees, and female victims themselves (Morgan, 2004).

MY POSITION

My position in society as a young, well educated, pakeha female without personal experience of violence (outside witnessing a pub brawl or two) may lead some people to think me ill suited to talking or writing about domestic violence. However, like Stewart & McDermott, (2004) I believe domestic violence affects women from all cultural and economic backgrounds. Not one of my friends, family, neighbours, class mates, or work mates is immune from domestic violence. As a researcher I have privileged access to a group of potential participants who can identify with my position in society and this may lead to increased disclosure and the eliciting of valuable talk around domestic violence (Wetherell, Gavey, Potts, 2002).

My position as the researcher is affected by my understanding of the legal system and the fact that I grew up in a family that was heavily involved in the law and the legal system. I understand the role of the law in society to be both privileged and important, and I understand the difficulty that Judges and Lawyers, and all the people involved in the legal system, have in applying the law to personal relationships. In no way do I want to take a position that is oppositional to the work of Judges in dealing with domestic violence. I understand that they are required to work within the confines of the legal system and within all the criteria and restrictions that the law requires of them – Judges are servants of the law.

I also understand that Judges, as figureheads of the Court and legal system, are targets for the criticism and opinions of lobby groups, including both men and women's groups. I understand that Judges, who are expected to be politically unbiased, will attempt to take much of the information given to them from both sides onboard and this may be reflected in their talk.

In saying that, my position is also one of interest in helping women in creating a safe environment for themselves and their families. The world is a scary enough place outside of the home without women facing the threat of psychological and physical abuse in what should be the security of their own home. A person's home is supposed to be synonymous with safety and refuge – not terror and brutality.

As this research is founded on the idea of promoting women's safety and liberation from the emotional and physical effects of domestic violence it is only fitting that the theoretical framework of the study takes up a feminist standpoint in relation to analysis. The more I read of feminist theories the more I begin to understand that as a woman – a demographic that encompasses fifty percent of the population – there are avenues that are more or less open to me because of my gender. In terms of this research I understand that like all women I am more open to experiencing serious violence in a relationship than if I were a man. Although there is research that suggests that 49% of domestic violence incidents involve both partners being violent, current evidence shows that men are more likely to cause serious damage to their partners with their physical strength and their increased willingness to use weapons (Rothenberg, 2002).

At this point I am aware that I have made an assumption that the relationships where domestic violence is an issue are heterosexual rather than same-sex. This is not an oversight but due to my understanding of heterosexism as the dominant social discourse (Potocziak, Mouro, Crosbie-Burnett, Potocziak, 2003). I understand the dominant discourse to mean what is accepted by most people and what is reflected in societal norms – in terms of relationships this is a relationship between a man and a woman.¹ In saying that, being in a same-sex relationship does not protect individuals from domestic violence. There is increasing literature and exposure around violence in same-sex relationships. This will be explored in more depth in the following section.

¹ I realise that this perception is changing with the introduction of civil unions at the end of 2004 but the dominant relationship remains heterosexual.

Alongside the realisation that as a woman I experience the world differently than fifty percent of my fellow humans, I have come to understand through post-structuralist theories that my experience of the world, or anyone else's experience for that matter, can not be recorded or reproduced in any kind of objective way. Objectivity is something we have been told was not only possible but 'common sense' since the age of enlightenment some five hundred years ago (Weedon, 1987; M. Gergen, 1988). Following on from this, if experience is subjective, then no one including myself can leave behind their personal experience when conducting research. As discussed further in the next chapter, research can not be value free and objective (K. Gergen, 1985; M. Gergen, 1988; Parker, 1992; Weedon, 1987; Wetherell, Gavey, Potts, 2002). Wetherell, Gavey, Potts (2002) advocate for acceptance on the part of the researcher of their own experience. Reflexivity, which is bringing an awareness of ones own experiences into the research, is a key concept in challenging the dominant discourse within psychological research and society in general.

I hope and intend to use my own experiences to inform my research practice and to make myself and the reader aware that my personal history and experience serves as a place of analysis, a place of contradiction, and as an process that will no doubt change and grow alongside this thesis.

DEFINING DOMESTIC VIOLENCE

Violence against women in the home is supported by structures within society that tend to blame the victim or attribute victims with a certain set of 'helpless' behaviours (Margolin & Burman, 1993). This creates a Catch-22 where women are victims if they are helpless, so if they seek legal intervention or attempt to leave they can not be victims (Erez & Belknap, 1998).

This definition of domestic violence has come under much criticism (Erez & Belknap, 1998) and there have been many feminist critiques of the way in which domestic violence is defined. One of the most widely accepted explanations of domestic violence is provided by Women's Refuge.

Women's Refuge advocates a definition of domestic violence in which the central factor is fear. The violence forms a pattern of power and control that makes women fearful and afraid for their lives. Domestic violence is not so much about anger; it is more about attitudes and behaviours over a period of time. Abusers make the choice to use violence in order to get what they want, usually through dominance and control. The tactics used by abusers may not

always be physical, or indeed visible – more often than not verbal abuse and psychological abuse are used to gain control over women. These events in isolation may seem trivial or random but put together over a period of time they have a compounded effect of manipulating women, making them fearful of their abuser and what he might do (Women's Refuge, 2004).

As mentioned above violence is not just about physical damage, it has effects on mental health, financial resources, relationships with family and friends, employment, and cultural connections. Women's Refuge (2004) defines domestic violence as physical, which encompasses inflicting injuries to the body; psychological, which includes mind games, verbal, spiritual and emotional abuse; sexual, which includes rape, forced sex, and physically attacking sexual parts of the body, and lastly economic abuse, where the woman's access to money and their ability to earn money is controlled.

Power and Control

These definitions of domestic violence are the basis of the Duluth Model of power and control which is used to explain women's victimization by their partners. The patterns of violence that make up this model are made up of many different incidents that by themselves may feel trivial but actually belong to a structure or 'cycle' used by the abuser to control the victim (Women's Refuge, 2004).

Physical and sexual violence are the major forms of abuse that encompass the power and control model, which is displayed visually as a wheel (see Figure 1). One incident or threat of physical or sexual violence can create a climate of fear. This fear is enough to allow the psychological abuse to be effective and thus power is maintained by the abuser (Women's Refuge, 2004).

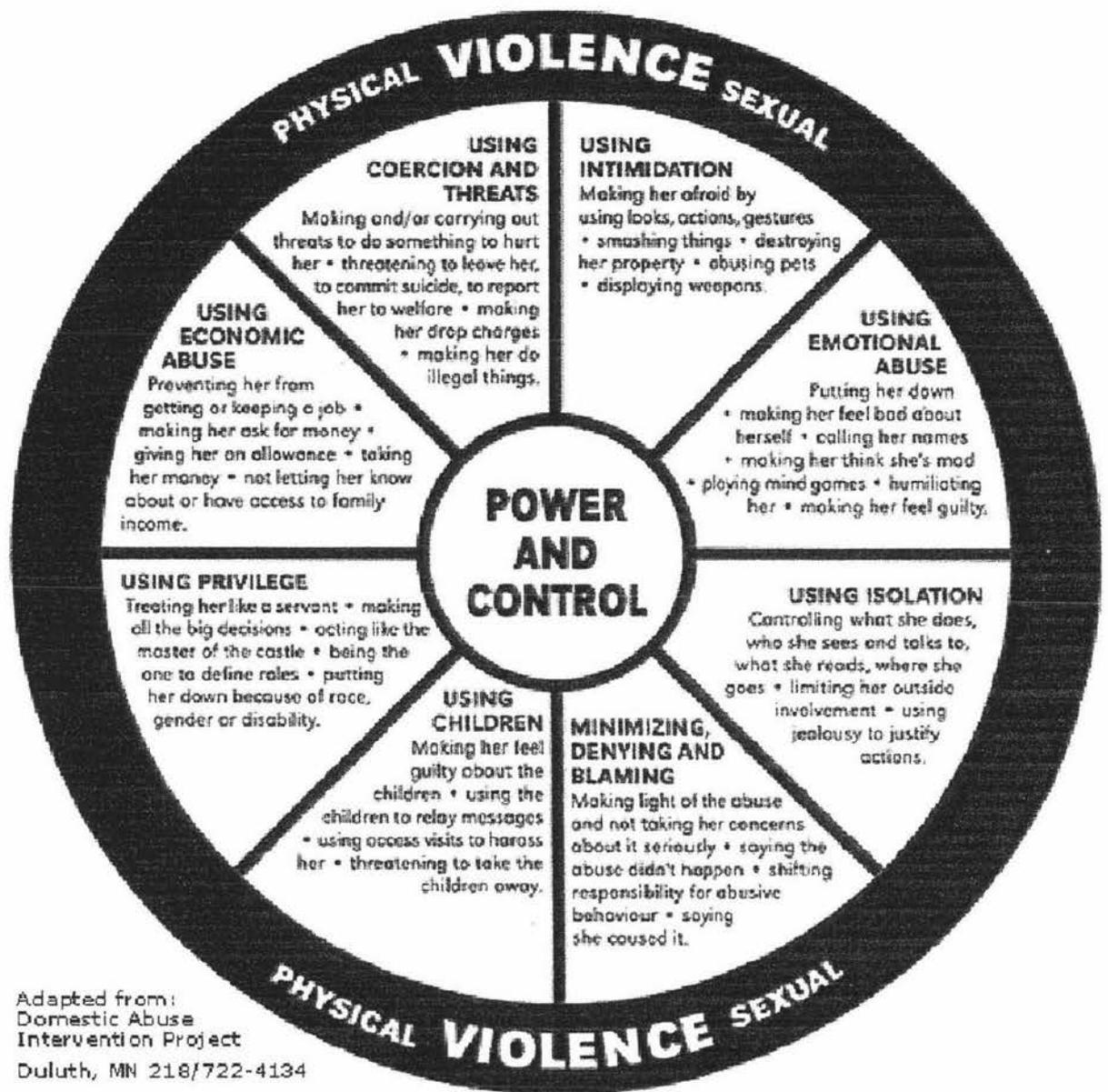


Figure 1 Power and Control Wheel (Women's Refuge, 2004)

UNDERSTANDING DOMESTIC VIOLENCE

Why don't they leave?

It can take a woman who has been a victim of domestic violence an average of 4 – 7 attempts to leave an abuser partner permanently. Many women do not leave at all. There are many reasons for this (Women's Refuge, 2004).

Leaving can be the most dangerous time

When a victim of domestic violence attempts to leave their abuser it can be the most serious and dangerous time for them, they are at a much greater risk of physical abuse than at nearly any other time. Violence is so common at this point that it has its own term – *separation abuse* (Erez & Belknap, 2002; Margolin & Burman, 1993). Abusers often threaten to kill the woman, the children or themselves if she leaves. Other factors include that in previous attempts to leave the woman may have been stalked by her ex-partner, or 'messengers' (usually friends or associates of the abuser) have been used to relay threatening messages. One of the most important factors in leaving is the removal of predictability. The woman is breaking the cycle, she doesn't know where or when he may turn up or attempt to find her (Erez & Belknap, 1998; Women's Refuge, 2004).

Lack of money

In many cases women have little or no money and therefore it is impossible for them to pack up and stay in a motel for the night or even buy enough petrol to drive to a safe place. This is usually the result of their partner restricting their access to money. What can compound this problem is the lack of education regarding access to emergency benefits and, in the longer run, the Domestic Purposes Benefit². This lack of information is especially damaging for migrant women, who may not be familiar with social welfare and may have limited English language skills (Margolin & Burman, 1993; Women's Refuge, 2004).

Another issue here is fear about the long term future, the woman's ability to get employment and the drop in the standard of living that might result from going on the Domestic Purposes Benefit or taking a low paid job.

Nowhere to go

As mentioned earlier many women find themselves isolated from their family and friends during the course of a violent relationship. This loss of contact can leave them feeling that they have

² The Domestic Purposes Benefit (DPB) is a Government social welfare benefit provided to families who require financial assistance.

nowhere to go when they do want to leave. Family and friends can be vital in helping women to leave, giving them an intermediary place to stay and help to set up a new house when the woman may have very few economic resources. The women themselves may not want to contact old friends or family that she has lost contact with because she believes that she would be a burden to them (Margolin & Burman, 1993).

Another issue is possible problems with tenancy, especially if there has been property damage in previous flats or involvement by the Police (Women's Refuge, 2004).

Fear of losing the children

Psychological abuse often includes threats from the abuser that they will call child Youth and Family Services if the woman attempts to leave and they will claim that she is a bad mother and the children will either be given to the father or placed in care. There also seems to be a widespread mistrust of legal and social services and many women do not want to be involved with them. This includes the Family Court and unsupervised access of the children. There is a fear of what the father might do when she isn't there (Erez & Belknap, 1998; Margolin & Burman, 1993; Women's Refuge, 2004).

Belief in Family Values

The predominant social belief holds that children need a mother and a father to be 'healthy.' This belief, along with the belief that marriage and commitment are forever, can bind a woman to her family at the expense of her own personal safety. The rhetoric of 'family values' will be covered in much more depth in the following sections. Religion and culture are other factors in some women feeling pressure, from themselves and others to stay in relationships and in some situations if women have been raised in violent families they might have an expectation that this is normal behaviour (Margolin & Burman, 1993; Women's Refuge, 2004).

Not being believed

There is still a widespread misunderstanding about domestic violence and many people still blame the women, either for provoking the violence or being somehow predisposed toward being a victim. Current evidence suggests that there are no psychological or behavioural patterns which predict for being a victim of domestic violence (Margolin & Burman, 1993). This evidence indicating that there is no 'predisposition' for being a victim of domestic violence means that the potential pool of women who might find themselves in a violent relationship is widened. This should raise the stakes for dealing with domestic violence as it is a potential issue for everyone.

Not being believed can be a serious issue for women who have spent many months or years hiding evidence of abuse out of shame and fear. It also makes it hard when many abusers can be charming, friendly, respected people in the community (Women's Refuge, 2004; Stewart & McDermott, 2004).

Still feeling some love

No woman begins a serious relationship with a partner unless they have strong feelings toward that person and it is often the case that women are torn between wanting the violence to stop and still having feelings for the abuser. He may still be a charming, friendly person in public and there maybe times of real love between the couple. The woman may believe that she can change to what her partner may want her to be or that she might be able to change him. There are also issues around the woman choosing to live in a violent relationship rather than being by herself. This is often the result of low self-esteem; no one else would want her so she had better stay (Margolin & Burman, 1993; Women's Refuge, 2004).

Social Isolation

Abusers often isolate women and make it difficult to keep in touch with family and friends and also impossible to make new friends. This is particularly difficult for migrant women and lesbian women, who may feel ashamed or unsafe about speaking out in their small communities (Stewart & McDermott, 2004; Women's Refuge, 2004). Woman can also stand to lose a lot if they choose to leave their partners; a house, friends, money, status and so on.

Not wanting to be judged by others

Many women do not tell anyone about their situation because they feel so ashamed and do not want other people to judge them as a failure or a bad person. These feelings are fuelled by low self-esteem and social expectations that children need a mother and a father. There may also be feelings of guilt or hypocrisy that they may have struck back at their partners or hit the children (Kaye & Tolmie, 1998a; Erez & Belknap, 1998; Women's Refuge, 2004).

Domestic Violence in Same-Sex Relationships

Whilst the focus of this study is on the understandings of heterosexual domestic violence within society, violence is still a reality for lesbian women and gay men and occurs in same-sex relationships at a similar rate to heterosexual relationships. A similar pattern of violence emerges around physical, sexual, psychological, and economic abuse. What differentiates same-sex domestic violence is the effect of external stereotypes and homophobia, which can

be internalised by either or both partners (as shown in Figure 2). This causes lesbian women and gay men to rarely seek help out for fear of discrimination and beliefs that domestic violence is specific to heterosexual relationships (Potocziak, Mourof, Crosbie-Burnett, Potocziak, 2003; Women's Refuge, 2004).



Figure 2 Same-Sex Power and Control Wheel (Women's Refuge, 2004)

Domestic Violence and Children

Witnessing domestic violence can take a massive psychological toll on children and under the Domestic Violence Act 1995 it is considered a form of abuse in itself. Children are not exempt

from the fear and violence inflicted by the abuser on his partner or on them. The power and control model as been adapted for children and the effects domestic violence has on them.

The effect of domestic violence on children in terms of the power and control model (see Figure 3) is enormous. They can not only suffer the physical injuries but the effects of witnessing the violence can lead to impaired social functioning later and life and may create a cycle of violence that carries on into their own adult relationships (Margolin & Burman, 1993, Women's Refuge, 2004).



Figure 3 Children's Power and Control Wheel (Women's Refuge, 2004)

Prevalence

In 2000 12,000 family violence assaults were recorded by the New Zealand Police but this is believed to be only the tip of the iceberg. Accurate statistics regarding prevalence are hard to find as there is believed to be a very high rate of underreporting. A United States study over a period of four years puts the figure of underreporting at 45% (Dobash & Dobash, 1992; Sarney, 2004; Family Court, 2004). In the year 2000-2001 7,966 women used the Women's Refuge services (Family Court, 2004).

PATRIARCHY DISCOURSE

Some of the strongest voices in the past ten years in regards to domestic violence legislation and the Family Court have been those of the father's rights groups³. These groups have been the focus of media and public attention and have attempted to put forward arguments against the Family Court and the Domestic Violence Act 1995 on the basis that they are biased against men.

In terms of this research the rise of father's rights groups plays an important role in challenging the feminist discourses on domestic violence, which form the theoretical basis of the 1995 Domestic Violence Act. My own project seeks to analyse the way in which discourses such as the 'patriarchal familial discourse' work to create barriers to eliminating domestic violence.

These father's rights groups have gained a certain level of credibility by using arguments that are associated with established norms that reinforce dominant patriarchal discourses (Kaye & Tolmie, 1998). Established norms become invisible and are seen instead as 'commonsense' – this makes them extremely hard to challenge (Kaye & Tolmie, 1998, Parker, 1992). The 'commonsense' norms that father's rights groups use effectively are those that sit well within society; family, caring fathers, and child welfare (Kaye & Tolmie, 1998).

Much of the fathers' rights rhetoric centers around the idea of 'family.' The Family Law Reform Party from Australia states that "the family is the cornerstone of society - without the family, society has no meaning, families provide the shelter, support, nurture and company that people strive for" (Kaye & Tolmie, 1998a p.181). This idea of family is based around the concept of the nuclear family, headed by the father in the traditional patriarchal role as protector and provider.

³ Father's rights groups and Men's groups often overlap, I have chosen to use the term father's rights groups throughout for consistency – and because it more clearly specifies the interests and political agendas of particular kinds of men's groups.

This role of provider and protector is important as it places the mother and children under the father's care and financial control; the father is the one who is expected to earn the money while the mother stays at home with the children. Many father's rights groups believe that the family unit is being eroded by the feminist movement, which has created a society full of solo-mothers, and career women who believe motherhood and housewife are 'dirty words' (Kaye & Tolmie, 1998b)

These arguments gain momentum within patriarchal discourses in the face of the large numbers of women in the workforce, while the continuing rhetoric locates men as the breadwinners (Riley, 2003). This is contrasted by other father's rights groups' arguments that the increased role men are now playing in childrearing is not being reflected in Family Court decisions. The rhetoric of the 'caring dad' can be very powerful when used in the media (Kaye & Tolmie, 1998a)

The Media

The media plays an important part in strengthening and legitimising the patriarchal 'commonsense' discourses presented by the father's rights groups. The media tend to present themselves as 'unbiased' so the audience accepts what they are shown as objective and representative (Kaye & Tolmie, 1998b). The media tends to use anecdotal stories that present powerful images and arouse emotional responses in the audience. These anecdotes, usually extreme case scenarios or over-sensationalised stories gain authenticity through repetition and exposure and this repetition creates the status of a norm within society (Kaye & Tolmie, 1998a).

Anecdotes as discourses

Access Bitches and Alimony Drones

One of the most damaging discourses created by father's rights groups is that women are "in the business of ripping men off" (Kaye & Tolmie, 1998a p.185). They are seeking to gain money and power through child support, spousal maintenance, and property settlements. Women attempt to avoid work, spend their time buying cars and traveling overseas – children are being used as cash cows (Kaye & Tolmie, 1998a). Father's rights groups portray women as vindictive, irresponsible, unruly, and exploitative of the system. They blame this behaviour on women casting off their gender role obligations (Kaye & Tolmie, 1998a; Melville & Hunter, 2001).

The rhetoric that women are vindictive is reaffirmed in the stories from father's rights groups about women who make false allegations about child abuse and domestic violence. Father's rights groups claim that false allegations are made by women to gain the upper hand in family dealings and as bargaining positions in custody and property settlements (Kaye & Tolmie, 1998b). In the worst case, women are just being vindictive and "derive satisfaction from denying men contact with their children" (Melville & Hunter, 2001, p.127.) Another claim by father's groups is that the fabrication of violence is in fact 'Munchausen's by proxy' and women intentionally set themselves up as the protector of the children (Kaye & Tolmie, 1998b).

Women Abusing Men

Most fathers' rights groups do not present domestic violence as the responsibility of the perpetrator. Instead the violence, including murder, is presented as something caused in men by circumstance and victimization by women (Kaye & Tolmie, 1998a). Violence is explained as being caused in the same way as stress or illness and as evidence of men's victimisation by women (Kaye & Tolmie, 1998b). Some groups claim that domestic violence is an interpersonal issue and the fault of both partners. Research based on the Conflict Tactics Scale is used as evidence that women are just as violent as men. The issue here is that the Conflict Tactics Scale measures discrete acts of violence and does not take into account motivations i.e. self-defense, induced fear and so on. It also ignores the extent of the injuries sustained (Kaye & Tolmie, 1998b, Melville & Hunter, 2001). Fathers' rights groups claim that women are also perpetrators of psychological abuse when they withhold sex from their partners. They claim that men have a physiological need for constant sperm release and the refusal of sexual relations by women causes them psychological abuse (Kaye & Tolmie, 1998b p.58).

The Whole System Is Stacked Against Men

The use of 'victim status' as a rhetorical device is very powerful and often used cleverly by father's rights groups. They achieve this status by minimising or removing any sense that men as non-custodial parents have agency in their own lives and by representing the opponents of the father's rights movement as having enormous power. They are able to claim that they are the victims of "feminism that has gone too far" (Kaye & Tolmie, 1998a, p.172).

The basic argument of father's rights groups is that the law has swung too far in favour of mothers as custodial parents and the law now discriminates against fathers as non-custodial parents. Men are being treated inequitably by the Family Court, counselors, mediators, and child support agencies (Kaye & Tolmie, 1998a). A very dichotomous view appears – men are

suffering, therefore women must be gaining at their expense. Women's rights must have been won at the expense of men's (Kaye and Tolmie, 1998a).

Child Support

Another area where father's rights groups claim they are disadvantaged is child support. A 'Robin Hood' theory is presented; child support takes from the hardest working, most capable parent and gives to the parent least able to earn money to support the children (Kaye & Tolmie, 1998b). There is a belief that child support and welfare is too easy to acquire and this encourages women to walk out on their marriage and depend on the state. This is backed by calls for the removal of the Domestic Purposes Benefit in favour of the Unemployment Benefit. This is designed to show that solo-mothers are "no longer revered and protected in society" and they are expected to pull their own weight (Kaye & Tolmie, 1998b, p.32). There are several contradictions in this argument, the main one being that there are also complaints from father's rights groups that women are taking away men's jobs. If welfare is to be cut and women are to be more financially self-reliant they will in fact take away more jobs. The answer to this of course is for women to return to their traditional family role as stay-at home wives and mothers (Kaye & Tolmie, 1998a, 1998b).

Child Support is also used by father's rights groups as leverage in custody arrangements. There are claims that the parent not on welfare and contributing financially to the child should be favoured in custody arrangements as they can be a positive role model – never mind that the mother is probably unable to work because she is raising their children. Another argument is that child support should be payment for access and therefore should be withdrawn if the non-custodial parent does not get to see their children (Kaye & Tolmie, 1998a). Similar to this is the idea that a poor record of child support is used as justification to gain increased access, the more fathers get to see their children the more likely they are to pay child support (Kaye & Tolmie, 1998a).

Conflation of Children and Father's Interests

The arguments put forth by father's rights groups center around the 'basic human right' that children have to be in contact with their fathers. The only problem is that father's rights groups fail to consistently and responsibly explain or explore children's interests beyond this 'basic human right' (Kaye & Tolmie, 1998a). This is referred to as "conflation without substantiation" (Kaye & Tolmie, 1998a, p.179). Children's rights and interests tend to be referred to indirectly and the issue of whose rights should prevail when the father's interests are conflicted with those of the child, is usually sidestepped or made to fit with the aims of the fathers. The answer

to this is usually along the lines of “we can never serve a child’s best interests by denying that child the love and affection of a parent” (Kaye & Tolmie, 1998a, p.180). There seems to be a common failure to acknowledge that children are not possessions but have needs above and beyond those of the parent (Kaye & Tolmie, 1998b).

Use of Evidence

The majority of the arguments presented by father’s rights groups are based on ‘self evident’ truths, which are in fact contradictory and hard to prove (Kaye & Tolmie, 1998b). The frequent use of statistics to substantiate and lend credibility to the claims made are rarely sourced and often based on surveys of members, who are definitely not representative of the general public. Comparisons made between the statistics used by the father’s rights groups and those produced by academic sources clearly show that the statistics employed by these groups are frequently inaccurate and used to sensationalise (Kaye & Tolmie, 1998a).

For example the percentage of contested custody hearings found in favour of the father by father’s rights groups varies widely. Parents Without Rights claim that only 5% of cases are found in favour of the father. Men’s Rights Agency put this figure at 18%, which is close to the Lone Father’s Association figure of 24%. Men’s Co-fraternity claim their members only win 10% of cases in comparison academic research puts this figure at between 37-41% (Kaye & Tolmie, 1998a).

Father’s rights groups are playing an increasingly important and visible part in the discussion around the Family Court and domestic violence legislation, they are seen to be leading the charge in the backlash against the influence of women’s groups such as Women’s Refuge and the perception that the Court system is a ‘conspiracy of women’ (Kaye and Tolmie, 1998a).

DOMESTIC VIOLENCE AND THE LAW

The connection between domestic violence and the legal system is both strong and important. The decisions made by the Judiciary, and the role they play as service providers, have direct implications for victims and have the potential to dramatically change their lives (Rothenberg, 2002). They have the ability to grant protection orders, to decide on custody issues that could make the difference between staying a violent relationship or being able to make a new start, away from the fear of violence.

The Judiciary

The role of a Judge is to preside over judicial proceedings and give judgment in a court of law. Their task is to listen to the presentation of cases for prosecution and to rule on admissibility of evidence, methods of conducting testimony, and other matters of procedure. They inquire into and weigh evidence and determine rights and obligations in light of facts established, or summarise facts for juries. Finally they pronounce judgment in light of their own findings or those of a jury (Statistics New Zealand, 2003). The training and experience required is a law degree, a practicing certificate and at least seven years experience as a practicing barrister or solicitor (Statistics New Zealand, 2003). In reality the experience required is closer to twenty years.

Members of the judiciary are thus appointed from a small, homogenous, single professional pool and Maori and women tend to be under-represented in terms of the general population (Gatfield, 1996; Harris, 1995).

The Family Court

The Family Court was set up in 1980 as a closed specialized court. The private nature of the Court was designed to protect the parties involved from unnecessary painful public exposure (Ministry of Justice, About the Family Court, 2004).

The aim of the Family Court is to help people resolve their own problem as much as is possible. It places emphasis on providing counseling, conciliation and mediation. Judges and Family Court Coordinators are appointed solely to the Family Court. Counselors, Psychologists, Psychiatrists, Social Workers, and other social services are used throughout the process; either for support or for expert opinions and evidence.

The atmosphere of the Family Court is less formal than the District and High Courts. Judges and lawyers do not wear wigs or gowns and formalities seen in the other courts are not upheld.

As mentioned above, counseling is used as the first step. If an agreement can be made after this no further action is taken. If not then a mediation conference is held. This is chaired by the Family Court Judge. Both parties are encouraged to reach an agreement that is satisfactory to both. If no agreement can be reached then a hearing date is set. The Judge will then make the final decision (McDowell and Webb, 1995; Ministry of Justice, About the Family Court, 2004; Women's Refuge, 2004). In some cases involving children the Court may appoint Counsel for the Child. This is done to protect the interests of the child, which may get lost in the argument

between the parents. The first consideration of the Family Court is the welfare of any children involved; this is known as the 'best interests of the child principle.' (Ministry of Justice, About the Family Court, 2004).

Independence of the Judiciary and the Executive

The New Zealand Court system is based upon the Westminster model that works on the tenet that within the constitution the Judiciary remains separate from the Legislative and Executive branches of the Government. In essence, they are independent from the policy makers and do not have any part in the creation of new legislation. Their role is to interpret the legislation, not to make it. This means that Judges are expected not to comment on whether they believe a policy is appropriate or not (Ministry of Justice, Independence of the Judiciary and the Executive, 2004).

Patriarchy and the Law

The most defining issue in regards to patriarchy and the law is that traditionally the law has been written by men for men (McDowell & Webb, 1995). The law upholds and maintains male interests and male based dichotomies such as innocence/.guilt, lawful /unlawful, good / bad. These black and white ways of seeing the world do not necessarily encompass the grey shades that women tend to seek and experience.

Research about women's access to and experience of the law and the ability of the legal system to respond to women's needs was the focus of an intensive New Zealand Law Commission study between 1994 and 1997 (New Zealand Law Commission, 1996a, 1996b, 1997a, 1997b, 1997c, 1997d). Meetings and interviews were held and submissions were collected. The result was the paper titled 'Women's Access to Legal Services: Women's Access to Justice: He Putanga Mo Nga Wahine kit e tika. The study clearly supported the conclusion that there are substantial barriers to many New Zealander's ability to obtain the legal services they need to invoke the justice systems' protection (Morris, 1999).

The particularly important issue was the perceived distance between the legal system and women's day to day lives. The legal system was seen as alien and daunting because of the legal jargon, the formalities of proceedings, and the perceived superiority of the lawyers and judges. This removal from women's day to day lives is seen as difficult as the vast majority of issues that lead to the involvement in the legal system are central to their lives (Morris, 1999).

The initial lack of information available to the women about the law, its implications, and how to access legal services is another important finding of the study. There also appeared to be an acknowledged view that judges and lawyers lacked awareness of the situations that caused women to seek legal involvement. They were thought to be ignorant of women's fears around the financial cost and their fears around the violence in their and their children's lives (Morris, 1999).

As much as there appears to be a stereotype about women victims, there is a stereotype about lawyers as untrustworthy, intimidating, and insensitive. The study revealed complaints that lawyers did not listen, did not understand their needs, and did not explain things in a way that the women could understand; leaving many women feeling stupid and to afraid to ask for clarification (Morris, 1999).

The aim of my research is to analyse the way in which discourses, such as the father's rights discourse around the patriarchal family structure, work to create barriers to the eventual elimination of domestic violence. I understand domestic violence in terms of the feminist theory of power and control. The following chapter outlines feminist post structuralist theory as the foundation of my analysis, and the Domestic Violence Act 1995 and related legislation and their roots in feminist theory that are critical to the analysis that follows.

THEORETICAL BACKGROUND OF FEMINISM AND THE LEGAL SYSTEM RELATED TO DOMESTIC VIOLENCE.

This chapter examines the changes and developments in feminist theory alongside the changes and developments of the legal system relating to domestic violence over the past four decades. This examination will culminate in a review of research relating to the Domestic Violence Act 1995 and an exploration of the poststructuralist feminist theories that have become more prominent in the decade since the introduction of the Act.

The aim of this chapter is not to create a relationship between the developments within the legal system and feminist theory that at times may or may not exist but to show that each is related to changes in social conditions. The chapter begins with an overview of feminist theory starting with the rise of feminist thought in the 1960's through to feminist standpoint theory. This overview is followed by developments in the legislation and wider legal system related to domestic violence, ending in a detailed description of the Domestic Violence Act 1995 and an overview of the subsequent research on its effectiveness and applicability. The chapter concludes with a look at feminist post-structuralism and how it informs our understanding of the Domestic Violence Act 1995 and its consequences.

FEMINISM

The 1960's was a time of great political and social change. A central part of this change was the Women's Liberation Movement. This movement questioned what it was to be female, challenging the powerful image of the domestic goddess created within society during the 1950's. Questions were raised about how sexuality and femininity were defined by men, not women themselves. These questions were turned into campaigns against sexual objectification, pornography, and rape and violence both outside and inside the home (Weedon, 1987). The contemporary effect of these campaigns was not as radical as one might have hoped at the time. For a country that had given women the vote some seven decades earlier it remains surprising and somewhat disturbing that there was such limited acknowledgment of domestic violence and rape within New Zealand law and in some cases allowances for it. Domestic violence could be used under the umbrella of 'cruelty' as grounds

for separation and divorce under sections in the 1963 Matrimonial Proceedings Act and the Domestic Proceedings Act 1968 but was otherwise unacknowledged.

Equal Rights

The efforts of the Women's Liberation Movement during the 1960's and 70's developed into a battle for equal rights that has continued through to today. This battle includes the struggle for equal footing with men in society, in politics, in the law, in the work place, and in the family.

To some extent the battle for equal rights was reflected in the Domestic Protection Act, introduced in 1982. This signalled an increase in the involvement of the police and the legal system in what had previously been a 'private matter'. Although it was a step in the direction of making all forms of domestic violence unacceptable it was still a 'quasi-criminal remedy' which allowed the police to arrest the perpetrator without them being charged with a criminal offence (Webb et al., 2001). Another step towards equality was the recognition of rape within marriage as a crime in 1985 (Butterworths, 1999).

The Cultural Revolution

The feminist movement has produced no singular school of thought (Burman, 1994a; Tuana & Tong, 1995; Weedon, 1987). The feminist frameworks that have risen out of the initial Women's Liberation movement of the 1960's and 1970's are diverse. Each of these frameworks has different conceptualisations of women (around sexual identity, ethnicity, socio-economic status, age, mental health, disability and so on), the problems that are most central to them, and the strategies that will eliminate these problems. The main theme that does unite these frameworks is the belief that women's interests have been subordinated by men and that women have faced discrimination and segregation based on gender, including sexual objectification, violence and abuse (Stanley & Wise, 1993; Weedon, 1987).

The most prominent frameworks that have emerged are liberal feminism, Marxist feminism, radical feminism, psychoanalytical feminism and socialist feminism (Tuana & Tong 1995). Academia has three main frameworks: empirical feminism, standpoint feminism, and post-structuralist feminism (M. Gergen, 2001). There is no requirement to choose one framework, forsaking all others. Many feminists are comfortable shifting between them depending on who or what is the focus of study (Stanley & Wise, 1993; Tuana & Tong, 1995).

Empirical feminism makes use of mainstream positivist scientific methodology to focus attention on issues important for women. There is an element of wanting to use the 'enemies'

own framework against them and promoting women's issues through mainstream structures (Weedon, 1987).

The cultural revolution in feminist thought took the form of standpoint theory; the valuing of women's' experiences of the world as unique and different from men's experience as the dominant societal experience (M. Gergen, 2001). The focus is on qualitative methods rather than the traditional quantitative methods. This produces knowledge based on women having the freedom to tell their own stories and having their experiences validated (M. Gergen, 2001; Stanley & Wise, 1993).

Standpoint feminism criticises positivist empirical methods as being male dominated and tending to downplay or ignore the experiences of women throughout history. The main focus of this criticism is the idea of 'objectivity' where it is assumed that knowledge can be produced separately from the beliefs and values of the researcher(s) (Stanley & Wise, 1993). As mentioned above the variations under the umbrella of 'women' can and do result in very different experiences of the world.

Standpoint theory was and still remains a political movement and a research strategy which is openly pro-women. Unlike the equal rights and egalitarian movements, standpoint theorists do not want to compete with men for power but rather they want to create a way of life that is completely different, with different emphases, different expectations and different goals - they want to challenge the status quo (M. Gergen, 2001). The greatest measure of status quo is the law.

DOMESTIC VIOLENCE LAW REFORM

Traditionally domestic violence was considered a private matter in which others, including the law, should not get involved. This changed with the introduction of the Domestic Protection Act 1982.

This Act included a non-violence order aimed at direct police involvement. Police were given the power to arrest perpetrators without the need to formally charge them with a criminal offence (Webb et.al., 2001). Police policy also changed during the mid 1980's. Prior to 1987 the Police focus on domestic violence was on reconciliation rather than stopping criminal activity. The main role played by police was one of mediation. In 1987 the New Zealand Police adopted a pro-arrest policy which encouraged police to make arrests whenever there was

evidence of assault, without the need for victims to lay charges. This shifted the emphasis from the victim to the police at the scene. The response was changed from private to public (Webb et.al., 2001).

This change in policy was reaffirmed in 1993 alongside a media campaign that focused on domestic violence as a crime and the perpetrator as the one responsible for it rather than the victim. Police at the scene of assaults were required to complete a Family Violence Report, known as a Pol 400.

The late 1980's and the early 1990's saw more attention focused on domestic violence than ever before (Erez, 2002). This attention was not only to do with police policy and legislation; it was also about educating the public about domestic violence and the services that were available. Several social service groups began to gain more and more momentum and voice, mainly Women's Refuge and Rape Crisis.

In 1985 a conference was held at the Police College in Porirua, run by the co-ordinator for the National Collective of Women's Refuge and an Inspector of the New Zealand Police. The result of this conference was the setting up of the Family Violence Co-ordinating Committee as a partnership between state and community agencies. This committee was responsible for undertaking research and promoting media attention and education around domestic violence. In 1991 the national conference of this committee introduced the Duluth Abuse Intervention Project (Women's Refuge, 2004), a successful community co-ordinated response to domestic violence from the USA. This model was used to set up the HAIPP (Hamilton Abuse Intervention Pilot Project), which was soon followed by DOVE (Hawkes Bay), WAVE (West Auckland), the Hutt Family Violence Prevention Network, and the South Auckland Family Violence Prevention Network to name a few. The aim of these groups was an integrated response to domestic violence that prioritised safety for victims and accountability for perpetrators.

Throughout the introduction of these projects and the push for increased education and media attention the role played by agencies such as Women's Refuge was vital. They were also strong pressure groups within the government, lobbying for greater recognition of domestic violence as an issue and the importance of protection for women and children within legislation and policy (Erez, 2002; Women's Refuge, 2004). All of this was backed by a report commissioned by the Victims Task Force (New Zealand Victims Task Force, 1992). The report titled 'Domestic Violence and the Justice System' found that the Domestic Protection Act 1982 "readily accepts

the excuses and justifications for domestic violence thus often rendering spousal abuse consequence free” (Busch, Robertson, Lapsley, 1992 as cited in Clark, 2003, p.2). The report also claimed that nearly one woman a week had died from domestic violence under the Domestic Protection Act 1982 and one hundred recommendations for change were made (Clarke, 2003). In 1995 the efforts of these pressure groups, the co-ordinated community groups, and changes in police policy were rewarded with the development of the Domestic Violence Act, 1995.

The Domestic Violence Act 1995

On the first of July 1996 the Domestic Protection Act of 1982 was replaced by the Domestic Violence Act 1995. The aim of this new Act was to reduce and prevent violence in domestic relationships by recognising and acknowledging all forms of domestic violence as unacceptable and by ensuring all victims receive effective legal protection (Butterworths, 2004; Parliamentary Counsel Office, 2004). It was viewed by former Chief Justice Sir Ronald Davison as a social experiment as the state of domestic violence in New Zealand “required a completely new social philosophy to be adopted” (Davison as cited in Doogue, 2004 pg 2).

The above aim was to be advanced in two ways, firstly by the recognition of the unacceptability of all domestic violence, and secondly by the legal framework of ‘protective action’ (Butterworths, 2004). Protective action is predetermined in the Act as follows; giving the Courts power to make protection orders, enabling access to the Courts in a simple and time effective manner, providing programmes for victims, providing mandatory programmes for perpetrators of violence, and providing sanctions and enforcement mechanisms for breaches of orders. These legal initiatives through the Family Court were designed to provide the applicant with effective protection, whilst providing easy access to the Court of both victim and respondent.

One step taken in reducing the acceptability of domestic violence was the broadening of the definition of ‘domestic relationship’ so that many more people were offered protection under the Act. Relationships that are considered domestic include a spouse or partner, who may be past or present, de facto or married, or of the same sex. Partner also included parents of a child whether they live together or not and regardless of the length of union around the time of conception. Domestic relationships also included a family member – anyone related by blood, marriage, de facto relationship, adoption, or culturally recognised family group; flatmate; friend – really anyone who shares an intimate personal relationship as long as there is proof of intensity and longevity. The only exceptions were relationships covered in other legislation

such as landlord–tenant, employer–employee, employee–employee, and professional–client (Webb et al., 2001).

A major difference between the 1982 Domestic Protection Act and its successor was the inclusion of specific definitions of psychological, sexual, and physical abuse – all of which are held to be unacceptable. The definition of psychological abuse, which was not included in the 1982 Act was left open but included: intimidation, which is to frighten or overawe; harassment, which is to continually or repeatedly trouble and annoy someone; damage to property, which need not be owned by either party; threats of physical, sexual, or psychological abuse, these must be directed at the applicant; and abuse of a child, either by causing or allowing the child to witness abuse of the adult partner or by putting the child at real risk of witnessing the abuse (Butterworths, 2004; Parliamentary Counsel Office, 2004). Case law also included: chipping at a person's confidence, abuse of power, and exploiting a person's weaknesses among others (Butterworths, 2004). The inclusion of psychological abuse reflected the attention to the feminist power and control model as the main theoretical framework for understanding domestic violence, thus placing emphasis on psychological abuse.

Having defined what constitutes domestic violence and a domestic relationship how then does the Act put into practice its aim of 'protective action'?

The first of these steps as outlined previously in the chapter is the protection order. The protection order stands as the central feature of the Act (Butterworths, 2004). It offers protection from violence and can be made to include protection from contact. Protection orders always include standard conditions against physical and sexual abuse, threats of such abuse, damage and threats to damage property of the protected person, engaging in psychological abuse (as outlined above), and encouraging any other person to engage in any of the above behaviour. Orders may also include non-contact conditions, which prevent a respondent from watching, loitering near, or hindering access to or from the applicant's residence, place of business, employment or any other place frequently visited by the applicant without consent. Non-contact can also include telephone calls, letters, and emails, except in emergency situations or under specific situations set out by the court, for example, custody arrangements. Third parties can also be named on the order to prevent associates of the respondent from perpetrating abuse on behalf of the respondent (Butterworths, 2004; Parliamentary Counsel Office, 2004)

An additional standard condition of an order states that a respondent may not hold a firearms license and must surrender all firearms and explosives to the police within 24 hours of being notified of the order. The Court has discretion with this condition and it can be challenged by the respondent (Butterworths, 2004; Parliamentary Counsel Office, 2004).

The protection order has a certain amount of flexibility to it, in that while the non-abuse conditions always apply, the non-contact conditions can be removed and reinstated numerous times by the applicant if the situation changes (Butterworths, 2004).

The process begins with the Court granting a temporary order, where notice may or may not be given to the respondent depending on circumstances and the urgency of the case. The order will automatically become final after three months unless the respondent takes steps to challenge it or it is discharged by the court. The Court usually takes a very cautious line to discharge both temporary and permanent orders, but will consider doing so if there is proof of false evidence, the applicant has moved to a safe place, a long period of time has passed since any abuse has taken place, the respondent has completed the mandatory programme successfully and reformed, or the respondent has started a new relationship and is no longer perceived as a threat to the applicant (Butterworths, 2004).

Another element of the 'protective action' is the introduction of mandatory programmes for respondents. These programmes are required to focus on preventing domestic violence and changing the respondent's behaviour. This is usually achieved by attempting to increase respondents understanding of the impact of their actions on the victim and children. Participants are taught skills to deal with conflicts in a non abusive way. It is also a requirement of the Act that programmes be available to applicants and applicant's children to help them deal with their experiences and help them rebuild their lives. These are not mandatory but all applicants need to be made aware of their availability by the Court (Butterworths, 2004; Webb et al., 2001).

Failure to comply with the conditions of a protection order, including programme attendance leads to a respondent being liable, on summary conviction, to jail time of up to six months or a fine of up to \$5000. A larger penalty of two years imprisonment can be given to a repeat offender if they have been convicted of three offences relating to the order, excluding programme attendance, and two of those convictions were committed within the past three years. Breaches of the Act are viewed as criminal offences and therefore if the breach involves

actual physical violence then perpetrators may be charged with assault or other relevant crime under the Crimes Act 1961 (Butterworths, 2004).

The Guardianship Act 1963 S16B

Alongside the Domestic Violence Act 1995 amendments were made to Section 16B of the Guardianship Act 1963. Persons who are found guilty of using violence under the stipulations of the Domestic Violence Act 1995 cannot be granted custody or granted unsupervised access of any children unless the Court is satisfied that the children will be safe. Violence as defined in the Guardianship Act is limited to physical and sexual but when used in conjunction with the Domestic Violence Act it is widened to include all definitions of violence outlined in the Domestic Violence Act. Witnessing violence and suffering from the emotional effects of living in a violent home are included as a form of abuse for children (Darlow, 1997).

Research related to the implementation of the Domestic Violence Act 1995

The Domestic Violence Act 1995 has been in place for nearly a decade and one would imagine that being such a high profile piece of legislation, it would have been studied repeatedly since its introduction. It was surprising to find that the Ministry of Justice had conducted research on the Act only twice, first in 1998 and again in 2000 (Barwick, Gray, & Macky, 1998, 2000). Since 2000 the focus has shifted dramatically from the effectiveness of the Act in achieving its aims of protecting victims of violence in domestic relationships to a bitter dispute over the effects of protection orders on custody, whether orders are used by women as weapons, and the effects this has on non-custodial parents' (usually fathers) relationships with their children. There are many discussion papers which focus on the implications of protection orders on custody arrangements but few which focus on the ability of the Act to protect victims (Doogue, 2004; New Zealand Law Society, Family Law Section, Domestic Violence Standing Committee, 2004). This is a shame as it would be interesting to track the developments over the past decade, especially considering the amount of case law that has developed in the past ten years. One explanation for this was given by District Court Judge Jan Doogue in an address made to the 3rd Annual Child and Youth Law Conference in April 2004. She believed that the social and political climate around domestic violence has changed since the introduction of the Act. The legislation has been effective in its aim to de-normalise domestic violence with in society, provide immediate protection for women in danger, and make all acts of physical and psychological abuse unacceptable, but it has had the effect of negatively affecting some children's relationships with their non-custodial parent. Doogue (2004) is of the opinion that the

law has swung too far. In providing protection for women from their abusive partners, these partners as non-custodial parents are denied access to their children.

What research there is looks at the opinions of service providers including judges, lawyers, police, domestic violence agencies, Family Court coordinators and staff, programme providers, and protection order applicants and respondents from several centres around New Zealand. In looking at these findings I believe it would be of interest to relate it back to the initial protective aims of the Act set out in the previous section.

A Wellington Community Law Centre review of the Act (Darlow, 1997) found that the Courts viewed the Act as a serious piece of legislation and were succeeding in the initial aim of making domestic violence unacceptable.

Giving the Courts power to make protection orders.

Darlow (1997) also found that case law indicated Judges were leaning on the side of caution and were expanding the definition of 'domestic relationship' to help protect more people. Ministry of Justice research indicated that many service providers agreed with the protection order and believed that its flexibility was one of its greatest strengths (Barwick et al., 1998, 2000).

Enabling access to the Courts in a simple and time effective manner.

There was some concern amongst service providers that some groups did not have simple access to the Courts. These groups include those who do not qualify for legal aid but could not afford legal representation, Pacific Island women and other minority groups were unlikely to apply for protection orders, as were women with criminal histories (Barwick et al., 1998, 2000). Maori women make up over 25% of all applicants for protection orders but there is some concern that the incidence rate of domestic violence amongst Maori is much higher. The Ministry of Justice reviews suggest that Maori women may lack confidence in Pakeha systems and may fear discrimination (Barwick et al., 1998). This is consistent with overseas research which has found that minority groups do not tend to rely on mainstream services due to fear of discrimination (Erez, Belknap, 1998). Women from higher socio-economic groups also tend to be absent from the statistics, again this is consistent with overseas research (Erez, Belknap, 1998). They feel that they will not be taken seriously mainly due to the public perception that domestic violence is a lower class problem. Other findings from the Ministry of Justice Reviews include the fact that many women lack knowledge of the process of obtaining a protection order so tend to stay away. Others are fearful of retribution, some are embarrassed and

ashamed, some – often due to the opinions of their lawyers, decide that their problems are not serious enough to warrant going to the Courts (Barwick et al., 2000).

In terms of providing timely service there is much criticism over the time taken to serve the orders on the respondents. This is critical as the protection order is not enforceable until it has been served. This leaves the applicant unprotected at a time were they are at an increased risk of danger if the respondent is aware that the order has been sought (Barwick et al., 1998). This is where the temporary 'without notice' protection orders come into play¹. They are one of the most often and most contentious ex parte powers of the Family Court (Clark, 2003). There are two tests that must be satisfied for a temporary order to be granted; that the respondent is using, or has used, domestic violence against the applicant or a child of the applicant's family and that the order is necessary to protect the applicant or child. Secondly that the delay caused by proceeding on notice would or might entail a risk of harm or undue hardship on the part of the applicant (Clark, 2003). This second test is the one that causes the most controversy. In terms of judicial interpretation there seem to be two camps. The first interprets the test plainly and therefore there a low threshold is used. The second applies the test in situations they view as a true emergency and a real risk is present rather than a speculative one (Clark, 2003). The fact that there are two camps could lead to inconsistent application of the Act, depending on which Judge dealt with the protection order may affect whether an ex-parte order was granted or not.

Another issue that is raised with temporary protection orders is the delay in having the case heard. Once the respondent has been served with the order they may apply at any time to have the order discharged or varied. The Family Court must arrange a hearing date as soon as practicable and no more than 42 days after the date of the application. This 42 day limit is not often adhered to due to a serious lack of resources and Court time in the Family Court. These delays affect both the applicant and the respondent. The applicant is looking for the most efficient and effective protection possible from the Court, whilst the respondent is facing considerable sanction under the order that can effect his employment through possible limited access to his home, car, and removal of his firearms licence, and his relationship with his children is put on hold (Clarke, 2003).

¹ These orders are also known as 'Ex Parte' orders

Providing programmes for victims.

Providing mandatory programmes for perpetrators of violence.

Providing sanctions and enforcement mechanisms for breaches of orders.

Many applicants and respondents interviewed during the course of the research felt the mandatory programmes were not always appropriate or effective. There are also problems of non attendance that were often not addressed, with only one third of respondents completing the mandatory programmes. This non attendance was thought to be poorly policed by the courts, with the majority of non-attending respondents not facing any penalty (Barwick et al., 1998, 2000). There was also concern about programmes being provided for applicants and their families, both in terms of access and quality. Many applicants interviewed felt their right to attend had not been fully explained by the Court staff (Darlow, 1997).

Summary

The introduction of the 1995 Domestic Violence Act was a great step forward in the recognition of domestic violence as a social problem in New Zealand. The role of the women's movement was important in terms of influencing change. However problems remain with women often left unprotected due to inconsistencies in the application of the Act, the failure to police protection order breaches, and delays in scheduling Court time. There are also concerns about the accessibility of the legal system for women who do not qualify for legal aid but can not carry the financial burden of legal proceedings and minority cultures who may lack faith in the Pakeha legal system.

POSTSTRUCTURALIST FEMINIST THEORY

Alongside the developments in cultural standpoint feminism and the wider social de-normalisation of domestic violence is the development of poststructuralist feminism. Like feminism there is no one definition of post-structuralism. It is the derivative of several different disciplines and has been influenced by many different theorists including Foucault, Lyotard, Derrida, and Mouffe. Not only is it hard to define because of its numerous influences but because of its very nature. It resists the shackles of being a fixed entity. Post-structuralism is based on the idea that all objects are dynamic and are constructed by talk and this applies to itself and its own definition (Weedon, 1987). My interpretation of post-structuralist feminism is limited to the versions that I felt fit well with me. These are informed by the work of Gavey (1989, 1990), M. Gergen, (2001), and Weedon (1987).

As with standpoint theories, poststructuralist feminism values women's experiences as different from those of men, whose experiences are regarded as forming and formed by dominant social discourse. The differences between poststructuralist and other feminisms lie in the poststructuralist theories of language, knowledge, discourse, power, and subjectivity.

These theories provide a platform from which to challenge the traditional ideas of reality, truth, and the most damning of them all 'common sense' (Weedon, 1987). By challenging these ideas using poststructuralist theories of language and discourse, subjectivity, knowledge, power, and social processes, we can come to understand existing power relations and use this understanding to identify barriers for women and create strategies for change (Gavey, 1989).

The basis of poststructuralist theory is the assertion that language is not a fixed window to the real world underneath, both transparent and reflective, but instead a fluid system of competing discourses full of plurality and competition (Gavey, 1989, Potter & Wetherall, 1997, Weedon, 1987). Meaning is attached by the reader and dependent on the discursive context. Because this context shifts meaning also shifts (Weedon, 1987). For example the meaning of 'domestic violence' depends on whether the discursive context is a legal based discussion between a judge or lawyer, a Women's Refuge conference, or Joe Bloggs on the street who has never come into contact with victims or perpetrators as far as he knows. Meanings are historically and culturally specific. It is highly unlikely that 'domestic violence' existed in many discursive contexts in New Zealand one hundred years ago, rather violence in the home was understood as 'disciplining' or 'chastising' – it was a legitimate form of punishment for a wife or child who was seen to have overstepped the mark in some regard or another.

All interpretations, although fluid, have important social implications (Weedon, 1987). Whilst it is necessary to acknowledge that objects are socially constructed by language it is also necessary to point out that the material world still exists independently from language. Though domestic violence is interpreted and its meaning is constructed it does not deny that physical injuries do occur. No matter how domestic violence is interpreted bruises, broken bones, fear and emotional damage exist. It is through language that these physical and social experiences are made meaningful (Gavey, 1990).

This plurality of language exposes power struggles and the politics involved in social relations. The 'objectivity' of the dominant male discourse is replaced with the subjectivity of poststructuralist discourse (Weedon, 1987). The term 'discourse' is used to indicate the plurality of meanings that make up language. The post-structuralist framework that this

research is based on uses the Foucauldian notion that language consists of historically, socially, and culturally determined discourses (Gavey, 1989; Parker, 1992; Weedon, 1987). For example discourses around domestic violence in 2004 are specific to the current meaning attached to it in spoken interactions, and in the actions associated with that speech, such as physical and psychological abuse (Weedon, 1987). In terms of our understanding of domestic violence it is dependent on the discourses that are available within particular social, cultural, and historical context, whether it is seen as a result of social learning, power and control, or abnormal pathology (Morgan, 2004). Discourses are hugely powerful in shaping the world and peoples' experience in it. The above ways of constituting domestic violence have implications for women, children, men, and how they interrelate with each other in relationships and they affect how domestic violence is dealt with in society (Gavey, 1989; Weedon, 1987; Wetherell & Edley, 1998).

So, if language is made up of competing discourses what effect does this have on what we learn as truth or fact? According to poststructuralist theory knowledge is no longer made up of a singular reality or truth. Knowledge is not neutral or fixed but consistent with the values associated with the dominant discourse of the time (Wetherall, Gavey, Potts, 2002). In twenty first century western civilization this dominant discourse is based on a positivist tradition of objective observation. Derived from the framework of the natural sciences, there is a belief in one universal truth and reality which can be 'known' by applying strict quantitative methodology only accessible to those who are 'experts' in this type of methodological practice (M. Gergen, 2001; Potter & Wetherell, 1995; Stanley & Wise, 1993). Six hundred years ago it was the word of God that was held as the dominant discourse for knowing the world around us. Knowledge is socially constructed; it is culturally and historically specific. There are multiple truths and realities based on different discourses.

Within society not all versions of truth are given equal weighting, and power relations determine which versions are given preference and which are sidelined (Gavey, 1989). This is important in post-structuralist feminism. By taking into account that knowledge is questionable and linked with power, space can be made for marginalised groups such as women, and the knowledge that is specific to them (Gavey, 1989). In terms of this research post-structuralist theories of knowledge allow dominant discourses and domestic violence and the legal system to be examined and areas identified in order for space to be made for women and their experiences and knowledge of domestic violence to be taken into account.

Power struggles are at the heart of knowledge and discourses. Power relations structure all areas of life. They determine who we are and who does what for whom within society

(Weedon, 1987). As mentioned above, differing discourses suggest that one group is empowered and others are not therefore the language, knowledge, and discourses used are all based on power relations.

Being able to identify different discourses allows people to look at their own subjectivity – or sense of self. Subjectivity is the end result made up of the components of experience and understanding of ourselves, it is influenced by discourse, power and knowledge (Weedon, 1987). Subjectivity is often jumbled and at times contradictory. People are changeable beings, and depending on particular discourses are understood differently by different people depending on the social, cultural and historical context operating at the time (Weedon, 1987, Gavey, 1989). Women who have experienced domestic violence can be concurrently a mother, a sister, a daughter, a girlfriend, thin, pretty, ugly, unconventional, a good girl, helpless, a victim, strong, white, employed, and so on. As with knowledge, language opens up positions for us to take or reject. All of these positions mean different things at different times to different people and to the women themselves depending on the particular influential discourse at the time. Compare this to the positivist tradition within psychology of the rational individual made up of unalterable traits – it makes one think doesn't it?

Summary

Using the framework of feminist post-structuralism the Domestic Violence Act 1995 itself is a piece of text to be read, full of competing discourses and positions for subjects to take up. Family Court Judges as users of this text are rendered as subjects and are caught within the discourses around knowledge, subjectivity, and power. How they experience this text is the focus of this study; how they construct their position within the Domestic Violence Act and how their experiences may or may not create barriers for effective protection of victims. As a group I expect these Judges to have recognisable discourses based upon their similar experiences of language, knowledge, power and subject positioning within domestic violence discourses.

METHODOLOGY/METHOD

The aim of this chapter is to explain the methodology behind the analysis of the Judges' talk about domestic violence. The theoretical background is taken from Parker's (1992) guidelines for discourse analysis and Potter and Wetherell's (1987) themes for discourse analysis. These guidelines are introduced and their relation to the current study outlined. Following on from the theoretical background are the practical steps taken in actually conducting the research. This includes the recruitment of participants, the participants themselves, the interview process, transcription, discourse analysis and ethical considerations.

DISCOURSE ANALYSIS

Discourse analysis as a particular form of social analysis relates well to the epistemological underpinnings of feminist poststructuralist theory (Weedon, 1987; Banister, Burman, Parker, Taylor, Tindall, 1996). Discourse analysis does not belong to any one epistemological framework. The term itself has been used to describe analytical systems that are based on very different theoretical assumptions (Coyle, 2000). The roots of the discourse analysis that is used within this study are found within the frameworks of speech act theory, ethnomethodology, conversation analysis, semiotics, linguistic philosophy, rhetoric, and most importantly for this research; post-structuralism (Coyle, 2000; Parker, 1992; Potter & Wetherell, 1987).

Ethnomethodology is based upon the epistemological assumption that the everyday details of social life are studied closely to reveal 'how the orderliness of everyday actions and perception are accomplished' (Bowers, 1996 pg.126). This includes the much debated notion of common sense, and how it is created and put into action in the social world (Bower, 1996). The main focus of ethnomethodology that relates to discourse analysis is the idea that the social world is a result of actions and perceptions.

Conversation analysis has much in common with discourse analysis and ethnomethodology. The emphasis here is on what passes between two or more people in social situations. Potter and Wetherell (1987) explain conversation analysis as displaying social interaction as 'a collaborative product organized around current activities' (pg. 86) The difference between

conversation and discourse analysis is that emphasis that conversation analysis places on the interaction between the speakers such as an interviewer and interviewee, rather than the broader discourses that arise (Potter and Wetherell, 1987).

Discourse analysis has a strong link with post-structuralism in that it is based on the idea that 'meaning is not static and fixed, but fluid and provisional' (Coyle, 2000, pg. 243). Like post-structuralism, discourse analysis rejects the idea that objective truth is available through observation. Instead discourse analysis works on the assumption that there is no singular truth and the world is made up of discourses that construct knowledge, subjectivity, social practices and power relations (Parker, 1992; Weedon, 1987).

Discourses as building blocks

Discourse analysis views language very differently from the traditional social psychological notion of language as a window to 'factual' psychological processes. Language is not a neutral medium but something used to construct social life (Coyle, 2000). An individual creates a system of organised statements from linguistic resources available to them according to their historically specific place in society (Parker, 1992). These discourses are designed to create a coherent version of events. Within the field of discourse analysis there is an assumption that these versions of events are designed to perform a particular social function, such as justifying, questioning, or accusing – they are action orientated (Coyle, 2000; Potter & Wetherell, 1987).

The framework described above is just one of many different interpretations of discourse analysis. In terms of carrying out research there is no one set of instructions for conducting analyses. Methodology can not be set because discourse is historically and socially specific. Each project is developed in relation to the topic, its context within society, and the orientation of the individual researcher, but Parker (1992) provides a number of conditions to help identify and engage with different levels of discourse.

PARKER'S DISCOURSE ANALYSIS CRITERIA

After becoming familiar with several styles of discourse analysis, I decided that Parker's (1992) guidelines would prove to be the most useful in carrying out my study. This is because they adequately addressed several important aspects of this research, especially in relation to feminist post-structuralism: discourse, knowledge, language, subjectivity, and power relations.

Parker's guidelines are made up of seven main criteria and three auxiliary criteria. The main criteria deal with defining and locating discourse within texts and establishing objects and subjects within the discourse. The auxiliary criteria help identify discourse within a wider social context, dealing with the support of institutions, power, and ideology.

Criterion one – A discourse is a coherent system of meanings

As mentioned above, discourse provides a coherent version of an event. This cohesion is created through the use of linguistic resources such as metaphors, analogies, narrative characters, imagery, and so on. These resources are determined by the historical and social context of the person producing the discourse (Parker, 1992; Potter & Wetherell, 1987). The systemisation of these linguistic resources into coherent meanings is the basis of analytical coding.

As discourse analysis is not objective, within this research the process of identifying coherent meanings inevitably involves me as the analyst, bringing my own sense of how a particular system of meanings is brought together. This is not a straight forward task and other analysts, with different experiences, could easily have decided differently. For example, in terms of the talk around barriers, another analyst may have found different constructions of evidence within the interview texts.

Criterion two – A discourse is realised in texts.

The definition that Parker (1992) gives for *texts* is 'any form that can be given an interpretive gloss' (pg.3). This ranges through speech, writing, non verbal behaviour, Braille, Morse code, runes, advertisements, fashion systems, stained glass, architecture, tarot cards, and bus tickets. Parker (1992) states that these texts do not require an 'author' – a bus ticket does not have an author with explicit motives, but discourse analysis elaborates beyond the intended meaning of a text. The analysis of a text is a process of exploring the connotations and implications that the texts produce.

As Parker explains, these implications are different depending on the position of the reader. Take a Temporary Protection Order under the Domestic Violence Act 1995 for example. The connotations for the lawyer, the judge, the applicant, and the respondent are vastly different from each other. The act of domestic violence itself is given meaning and is thus a text and can become the focus of analysis. The focus of this research is the construction of domestic violence by Family Court Judges as service providers within the legal system. Published

papers and interview transcripts from these service providers are utilized as texts and through these texts discourses around domestic violence are made visible.

Criterion three – A discourse reflects on its own way of speaking

Within the construction of a coherent system of meanings the discourse may reflect on the terms chosen, or openly negate itself. These reflections are part of the implicit rather than an explicit meaning (Billings et al., 1988 p.23 as cited in Parker, 1992, p.4). Not all texts are conscious of the language used but when this reflexivity occurs it allows the reader to think about the discourse as an object in itself this enables the speaker to comment on their choice of terms, to think over their choice of terms, or to comment about the meaning of terms (Parker, 1992).

Within this research the interviewees and the Judges through their papers sometimes reflect on their own speech. This is done in order to reposition themselves if they feel their current position is awkward or unfavorable. An example of this is a Judge, having talked about men who lose control being different from those who are seen to be 'male batterers' commenting 'now I'm not justifying the loss of control.' The Judge is trying to avoid an uncomfortable position within the construction of types of domestic violence

Criterion four – A discourse refers to other discourses

As with criterion three, the building of a coherent version of events quite often leads to contradictions when constituting subjects and objects. These contradictions are often the result of employing other discourses. Parker explains that discourses 'embed, entail, and presuppose other discourses' (pg.5). The resulting contradictions raise the questions of what other discourses are involved and why.

A good example of this is within the legal discourse of the Domestic Violence Act 1995 a judge or lawyer comments that a respondent has 'bashed' an applicant. The colloquial term 'bashed' refers to discourse that is not consistent with the formal legal discourse, where and how the colloquial term 'bashed' finds its way into this discourse?

Criterion five – A discourse is about objects

In talking about objects Parker (1992) states that there are two layers of objectification in discourse analysis. The initial layer is the more obvious layer of reality that the discourse

constructs, and second layer is the discourse itself as an object of analysis. The discourse as an object is brought to life through the linguistic resources used to describe the first layer of reality. So in effect discourse is about objects and discourse analysis is about discourses as objects (Parker, 1992).

Many objects that discourse refers to do not exist outside of discourse. Discourses enable their existence by providing linguistic resources to describe their characteristics. Take the terms; domestic violence, spousal abuse, wife battering, partner abuse, and marital violence. Each of these objectifications of violence are created through different discourses and thus brought into being. Even within a particular discourse there can be different objects, for example in the discourse of domestic violence there are other objects. In this research psychological violence is at times an object in its' own right, while ex-parte protection orders are constructed as an object separate from on notice orders.

Criterion 6 – A discourse contains subjects

A more expanded statement might be; a discourse contains a space for subjects. Discourses address their audience in particular ways, opening up positions that the audience may or may not step into. These positions determine what the audience as the subject can or can't do or say within the particular discourse.

In terms of carrying out discourse analysis Parker (1992) suggests that from the outset the researcher should make explicit who the subject is within the discourse. The next step is to identify what rights the subject has to speak within that discourse. An important point here is that it is not so much who the author of the text is intending to address, rather who the text itself is addressing.

For example, within a women's refuge discourse on domestic violence women as subjects are victims, men are abusers; within a legal discourse women are applicants, men are respondents. The rights to speak for both women and men are very different within each discourse.

Criterion seven – A discourse is historically located

All discourses are bound by their historical context. Discourses are not fixed or static – their use and relationship to other discourses changes over time and according to culture. In terms

of discourse analysis this means that discourses must be placed within the historical period in which they were produced.

Discourses themselves have a history, in which the object they are referring to has been previously constituted by that discourse and/or related discourses, for example, the history of domestic violence within New Zealand legislation. In the past century domestic violence has been talked about in certain ways that are historically specific and reflected in the legislation. It is not so long ago that rape within marriage was not a crime. As concerns this research there are debates over the current location of domestic violence discourses within New Zealand. Some Judge's are advocating that domestic violence has reached the status of being 'denormalised,' while groups such as Women's Refuge believe we have a long way to go before domestic violence is seen as completely 'unacceptable.' These different views on the location of domestic violence in New Zealand reflect the different positions that these groups address and from which they deal with domestic violence.

Parker (1992) advocates for discourse analysts to be aware of where and how these discourses arose and developed. Chapter two of this thesis provides the kind of historical context that informs a specific discourse analysis of relevant texts.

Auxiliary criterion one – Discourses support institutions

This criterion is strongly linked with the idea that discourses contain subjects. By placing the audience into certain positions (Parker, 1992), institutions are reinforced or subverted. According to Parker (1992) it is important to identify these institutions, and whether they are being supported or undermined. The current study focuses on the institutions of the legal system and the patriarchal family to examine how discourses related to judicial experiences of domestic violence support or undermine them through the texts that are analysed.

Auxiliary criterion two – discourses reproduce power relations

Knowing that discourses support institutions and subjects are positioned according to the particular discourse, it follows that these discourses reproduce social power relations. For example, the legal discourse that many women victims of domestic violence find themselves tangled in supports the judge as the expert: a hierarchical position of social power that enables judges to influence, and sometimes determine, the course of life events for the women. Within the patriarchal familial discourse the male is positioned in the role of provider and protector – a

position of relative power while the woman and children are positioned as requiring and receiving the protection and provision.

Auxiliary criterion three – Discourses have ideological effects

Here Parker cautions would-be discourse analysts that it is easy to place unnecessary emphasis on ideology. This emphasis may cause the researchers to obscure the relationship between discourses and ideologies which suggest that, as with institutions and power relations, ideologies are supported by discourses - rather than operating as belief systems in themselves.

An example of ideological effects in the current study is the idea that having a father around, even though he is violent, is more beneficial for a child than not having one around at all. This belief is supported by patriarchal familial discourse, which positions the father as a necessary protector and provider for children.

Evaluation

So, having looked at the application of discourse analysis, where does it fall short? Coyle (1995) believes that discourse analysis can be accused of 'overcomplicating' what can be intended as straightforward speech. This can be countered by Parker's (1992) claim that it is more important to focus, not on what the author was intending to say, but rather on who the text is addressing and how. In terms of practical application the results of discourse analysis can leave the individuals who produced the text feeling criticised and claiming 'we never meant that' (Coyle, 2000, pg. 255). The aim of discourse analysis is not to invalidate a person's text but to elaborate the perhaps unintended consequences of the language that is used.

An example of this is the prevalence of patriarchal familial discourse with the Judge's text, which has the effect of undermining the position of the women victim within the legal discourse. I am sure that most Judges would not intentionally undermine a victim of crime but nonetheless, that may be an unintended consequence of the discourses that are realised in the texts analysed.

Reflexivity

In undertaking this research using discourse analysis I understand that I too am using specific discourses to analyse the text.

My research is biased and influenced by my own experience and history. I draw from language resources that are available to me as a young, pakeha, middle class female. From these resources and my position within a feminist post-structuralist framework (as outlined in the previous two chapters) I will attempt to construct a purposeful and coherent version of the discourses under analysis to produce an account of the ways in which discourses may work as barriers to the effectiveness of legal interventions that are designed to protect women and children from men's violence in the home.

PARTICIPANT RECRUITMENT

Interviews

Criterion

The criterion for participation was that the participant be an appointed Family Court Judge, currently based in my local region.

Recruitment

Two methods of recruitment were used. Firstly I used a personal contact within the judiciary to approach a Family Court Judge. Secondly I used snowballing from the initial contact to recruit other Family Court Judges.

The initial approach by my personal contact was successful and I obtained permission to email the Family Court Judge. The email introduced myself and my purpose for contacting them, explaining my status as a master's student. I also included an information sheet that outlined the proposed study and my contact details should they be interested in finding out more (see Appendix A). The initial Family Court Judge responded positively to this information and agreed to meet with me to discuss the research.

A short meeting was held in the Judge's chambers and they agreed to participate and approach other family court judges for me.

I received two further emails from other Family Court Judges who expressed interest in the study. I then emailed them back with the information sheet and an outline of the questions that be covered, which was requested by all the judges (see Appendix B).

Interview times were arranged with two of the three Judges and interviews were carried out. The third Judge pulled out due to timing issues.

The small sample of participants reflects the limited pool of possible participants – there are only 42 Family Court Judges in New Zealand at the moment. Unlike positivist psychological research, which traditionally samples widely in order to gain a representative spread of the population, discourse analysis places more importance on gathering enough text in order to determine the variety of discursive patterns that appear when discussing a topic (Coyle, 2000).

The interview texts were supplemented by text produced by other Family Court Judges on the topic of domestic violence. These texts take the form of published papers adapted from speeches made in public forums. I felt that using speeches allowed me to look at how Judge's expressed their views on a public stage that was free from the pressures and restrictions of interviews and set interview questions. The criterion for choosing these papers was that they dealt specifically with domestic violence and were published within the last two years. I felt it was important that they were recent publications so that they reflected the current issues around domestic violence and the Judges' dealings with it. The first paper chosen was presented by former Chief Family Court Judge Patrick Mahony at the Te Awatea Domestic Violence Centre 7th August, 2003. The paper was titled *'The Response to Family Violence in New Zealand; The Role of the Family Court'*. The second chosen was a paper presented at the 3rd Annual Child and Youth Law Conference by Family Court Judge Jan Doogue in April 2004. The paper was titled *'The Domestic violence Act 1995 & s16B of the Guardianship Act 1968 – the effect on children's relationships with their non-custodial parent.'*

Participants

Age and ethnicity was not a focus of the study and therefore not asked of the participants, although all participants appeared to be Pakeha and over the age of 40 including those whose papers I chose for analysis. Interview participants were asked for the length of time they had been a Family Court Judge, both had been Family Court Judges for over 9 years. Both interview participants were currently presiding, whilst one of the authors of the papers has since retired.

Reflexive comment

All the interview participants engaged with me as a young woman and as a student. There were times when I felt that I was being addressed in a parental fashion. Both interview participants were eager to make sure I had 'what I needed' from them at the conclusion of the interview. This positioning had the effect of making me aware that within the research relationship the Judge held the 'higher status.' This is in contrast to the more common position of the researcher as having a higher social status over the participant within the research relationship (Wetherell, Gavey, Potts, 2002).

INTERVIEWS

Location

I asked the interview participants where would be the most convenient for me to meet with them. Both requested to meet in their chambers. The second interview was brought forward from the arranged time to follow on directly from the first interview as it was a more convenient time for the Judge than the time we had previously arranged.

Questions

The participants had all expressed a desire to view the questions before the interview. Because of this I went into the interviews with the specific questions in mind and I hoped to facilitate talk around these questions (see Appendix B). The questions were designed to be open-ended so that the participants could direct the flow of the interview.

I did feel that because the participants had already seen the questions there would be an expectation that I would follow the question schedule. I explained at the start of each interview that depending on time and how the interview proceeded, that not all the questions would be asked. I hoped that this would dispel any preconceived notions that either the participants or I had about how the interview might go. I was pleased to find that this was the case and all the interviews flowed well, although at the end of one interview the participant explicitly said they felt that one of the questions I didn't ask was important and began to talk around that particular issue.

As advocated by Potter and Wetherell (1987) I attempted to enable the flow of the conversation and follow-up interesting talk while still keeping within the general parameters of the question schedule in order to deal with each of the topics I wished to cover.

My Approach

Because I was worried that the interviews might feel contrived I was careful not to appear to be supporting any particular position. I wanted to appear very open to, and encouraging of, the participants' experiences.

I was also very aware that in terms of discourse analysis theory I would be contributing just as much to the interview as the participants (Coyle, 2000; Potter & Wetherell, 1987). Knowing this I attempted to keep my own comments to a minimum while still encouraging the participants to follow up interesting talk. I attempted to convey this through open body language, such as maintaining appropriate eye-contact, assuming a non-defensive posture and using nodding and smiling to facilitate further conversation.

The interviews were 40 and 65 minutes respectively. Both the interviews were audio-taped with the consent of the participants and both participants were informed of their right to stop the audio-tape at anytime. The tape was stopped only once and this was due to a phone call received by one of the participants. It was later discovered that the first five minutes of the 65 minute interview was inaudible due to background noise and what sounds like interference from a cell-phone.

As mentioned earlier the interviews were semi-structured. Within discourse analysis less structured interviews allow the interviewer and participant to explore the position of the participant more deeply. The less structured interview also enables the interviewer to respond and follow-up issues that were raised, especially if the issues were not anticipated (Burman, 1996).

Both participants were advised that they could access their transcript and edit it if they wished. Neither of them requested to do so. Both participants were provided with a summary of the results at the conclusion of the research.

TRANSCRIPTION

All transcription was carried out by me. This was done for two reasons; the first being financial, the second being that I wanted to really get to know the text before I set about analysing it. The transcription included everything that was said by both the interviewer and the participant whilst the audiotape tape was recording. All punctuation was noted in the transcription, this included sighing, laughing, pauses, changes in volume, and emphases of particular words or

sentences by the speaker. This form of notation is designed to retain the meaning whilst taking into consideration time and available resources.

ANALYSIS

Coding

Coding was carried out on both the interview transcripts and the published papers. I attempted to look for recurring patterns using Parker's ten criteria as laid out above.

I looked for categories of objects that related to my research question around barriers constructed within the Judge's talk relating to domestic violence. This search was done by choosing strong terms that stood out when reading the text. An example of this are the terms that emerged in the interview text used to describe violence; 'serial male batterer', and 'interactive spousal violence.' These terms stood out on the page and thus became a focus for further analysis. I then attempted to find similar recurring terms and patterns in the terms use. As these categories developed I began analysing the discourses they were informed by in terms of Parker's ten criteria. The categories that emerged related to father's rights, types of violence, evidence, the power and control model, the position of men's and women's lobby groups, and children's rights.

ETHICAL CONSIDERATIONS

Approval for the current study was granted by the Massey University Human Ethics Committee in May 2004. Potential participants were clearly informed, both orally and in writing, of their rights in regards to confidentiality, withdrawal from the study, and refusal to answer any question. Informed written consent was obtained from each participant before being interviewed.

The issue of anonymity and confidentiality was of particular concern to the judges being interviewed; being such a small, public group they felt vulnerable to the risks of identification. To avoid any such breaches of confidentiality a single alphabet letter was assigned as a unique identifier for each of the judge's text. In line with ethical standards all participant materials (tapes, transcripts, consent forms) were held in locked storage. Each was stored separately from the others so there was no possibility of linking the unique identifier with the participants' true identity. As the researcher, I was the only person who could access the information – the only exception being the signed consent forms, which were securely stored with my supervisor.

In terms of the papers analysed, these are available on public websites and directly from the Ministry of Justice therefore no confidentiality concerns or restriction applied.

The only confidentiality issue that did arise was during the analysis of the interview texts. Much of the Judges' talk focused on their experiences with cases and therefore could not be used in the analysis as it may have led to identification. This issue of confidentiality made it difficult to relate the Judges' discourse to their experiential context. I attempted to remain as sensitive to their experiences throughout the analysis however it was necessary to prioritise confidentiality over sensitivity to experiential context.

CONSTITUTING INFLUENCE

A Discourse Analysis of Chief Family Court Judge Patrick Mahony's Paper presented at the Te Awatea Domestic Violence Centre 7th August, 2003¹

'The Response to Family Violence in New Zealand; The Role of the Family Court'

This chapter outlines the analysis carried out on the discourses identified within Judge Mahony's paper. This paper has been chosen for analysis as it is important in the context of Family Court Judges' discourse on domestic violence since it demonstrates how Judges present their arguments on a public stage. It is also free from the constraints of a research interview. The paper itself sets up the value of women's groups such as Women's Refuge in lobbying for changes in domestic violence policy and legislation during the 1980's and 1990's, which culminated in the Domestic Violence Act 1995 and Section 16B of the Guardianship Act 1968. This paper also provides an important background for examining the backlash against the role of women's groups. This backlash is explored in the following two chapters.

CONSTITUTING PROTECTION

The paper was presented at a Domestic Violence Centre so this immediately identifies the intended readers of the text as predominantly women who deal with the everyday realities of domestic violence on a regular basis. In conducting this analysis I have assumed that this audience will be sympathetic to women victims of domestic violence and they will be supporters of women's movement groups such as Women's Refuge.

If the readers of the text are women sympathetic to domestic violence victims then the text needs to be able to address these readers in a way that will encourage them to engage with it. This is achieved initially by the identification with the patron of the centre.

¹ Judge Mahony retired from the position of Chief Family Court Judge in early 2004

Constructing Appearance

Judge Mahony opens his paper with a quote from Governor General Dame Silvia Cartwright, who as the patron of the Te Awatea Domestic Violence Centre, opened it in 2002. The quote is taken from her Swearing In as Governor General in April 2001.

We have much to be proud of, our part in the international quest for peace. Pride in achievement here at home must be more muted. We may lead the world in family violence legislation and policy but at least on the face of it, we are also at the forefront in the perpetration of child abuse, family violence and serious sexual assault

(9 – 15)

The result of using this quote to open the paper is the immediate identification of the rest of the paper as being aligned with Dame Silvia and thus identifying the views expressed in the remainder of the paper with the patron of the centre.

The quote itself sets up the discourses that will be used by the Judge throughout the speech. The notion of *international quest for peace* constructs a version of New Zealand as a peacemaker and a nation that abhors injustice elsewhere in the world. This construction is reinforced by the notion that New Zealand leads the world in anti-violence policy and legislation. This is then contrasted with the Governor General's view that *at least on the face of it* New Zealand leads the world in the perpetration of domestic violence. Here the Governor General gives two constructions of 'appearance,' – the picture New Zealand paints internationally as peacekeepers and then nationally as a country that leads the world in domestic violence statistics despite our impressive legislation.

This opening quote with its terms *perpetration, legislation, policy, and assault* also engages a legal discourse that is used intermittently throughout the paper. This legal discourse, although used infrequently, distances the text from the target reader of women working at the Te Awatea Domestic Violence Centre. This is contrasted with the emotive, more personal discourse used to connect with the reader.

Constructing Horror

Another way that the Judge attempts to engage with the reader early in the text is by enabling a horror response which asks the reader to engage with the text empathetically. This is achieved by presenting a strong, emotionally charged description of domestic violence and its consequences on women victims and children.

At her Swearing In as Governor General in April 2001, (sic) she developed the theme of peace, referring to New Zealand's proud record for international peace keeping duties. In doing so she nevertheless drew a comparison with the violence in our communities and homes which, for some little and innocent children, have become places of brutality and death.

(3-7)

The notion of *little and innocent children* is a powerful one that evokes feelings of parental protection within a familial discourse. Familial discourse has specific positions for parents as protectors and children as protected. This is an effective rhetorical strategy as the intended readers of this text are being addressed as women working in the area of protecting other women and children from domestic violence. The reader is being offered the position of female protector and the notion of *innocent children* goes right to the heart of the discourse around parental protection. The notion of innocence is then placed alongside a contrasting notion of horror where the community and homes have become *places of brutality and death*. This horror again reinforces the space made available for the reader to position themselves as parental protector.

The Judge then explains a recent trip he made to the Fijian Magistrates Court to lecture there on the attempts being made here in New Zealand to deal with domestic violence.

But what brought home to them the stark horror and terror engendered in the home were the clips from the New Zealand film 'Once Were Warriors' – the late night shouting and abuse, the thuds, and then the sobbing, and the children huddled together under the beds upstairs.

(19-22)

Again the idea of 'appearance' is used. Fijian Magistrates are seen to understand domestic violence in New Zealand by viewing a film that follows a family in South Auckland. There is an inconsistency here with the international reputation of New Zealand as progressive in domestic violence policy and legislation being undermined by a single well known film.

The horror response is also constructed here using the notion of *stark horror and terror*, as well as the notion of 'effect' – *the late night shouting and abuse, the thuds, and then the sobbing, and the children huddled together under the bed upstairs*. These effects of violence again open

up space for the reader to engage empathetically. The images used are all very emotive and paint a clear picture of the negative impact of violence in the home.

The Judge continues with the impact of 'Once Were Warriors' to identify with the reader through the horror response.

This was a powerful reminder of the stark horror of domestic violence in its more extreme forms, the harm it does to children, depriving them of their right to be loved and cherished in a secure and safe environment within the family, and its debilitating impact on adult victims of domestic violence.

(23-26)

In this passage the construction of violence is quantified in terms of *more extreme forms* rather than the previous encapsulation of domestic violence in general. This quantification suggests that there is a scale involved in domestic violence from 'minor' to 'extreme,' this may limit the readers sense of empathy with the victims of 'minor' violence in favour of those who are seen to suffer more on the scale.

The notion of depriving children of their *right to be loved and cherished in a secure and safe environment within the family* uses a similar device as used by father's rights groups. The rhetoric of children's rights is realised through familial discourse where children are constructed as having certain rights according to their position within the discourse. Father's rights groups construct children as having the right to have a relationship with their fathers, while here the Judge constructs children as having the right to live free from violence. This connects back to the earlier construction of New Zealand's international reputation as international peacekeepers. New Zealander's as constructed as working hard to help others internationally to live free from violence, this should apply here at home too.

The notion of *debilitating* in terms of the effect on adult victims falls within two established discourses around domestic violence. Firstly the construction that victims are rendered 'helpless' through the process of learned helplessness, which paints women victims as weak and incapable of action. A contradiction is then created when she does try to leave a violent relationship. At this point she is showing strength and therefore can not be helpless which opens up the possibility that she may not honestly be a victim of domestic violence. Her rights to the legal and other support available to victims of domestic violence are questionable. The second construction of *debilitating*, which is advocated by women's groups such as Women's

Refuge, is based within the power and control model. This is the notion that the abuser creates an atmosphere of total fear and gains such power over his victim that she is cut off from all supports; family, friends, and money. She becomes completely isolated and debilitated through lack of options. It is this power and control construction of the effects of domestic violence so advocated by women's groups that often grates with the dominant discourse construction of the 'helpless' victim. The power and control model does not necessarily imply that the woman is incapable of helping herself, but that her resources for action are depleted. When the notion of 'helpless victim' is put into play with the power and control model, it again opens up the possibility that a woman who finds the resources to leave the relationship and take her children may not be an 'honest' victim. The association of the term *debilitating* with adult victims in the Judge's speech, perpetuates a construction of victimisation as resulting in helplessness.

The next excerpt is made in response to the 1987 Ministerial Committee of Enquiry into Violence report, otherwise known as the Roper Report. The report referred to domestic violence as 'the cradle for the perpetuation of violence and crime in the community.'

These are among the compelling reasons which justify measures across a broad front to reduce violence within families and in our communities and research to help us understand the causes and effects of violence in all its forms

(30-33)

The notion of *measures across a broad front* suggests that the Judge is appealing to the reader that action is not limited to the legal arena but they too can be a part of the drive to reduce violence. This is reinforced with the inclusive construction of *our communities* and *to help us understand*. These inclusive terms create a sense of common purpose which is powerful, especially when used by an authority figure such as a member of the judiciary as there is a perception that they are wise and hold a certain amount of status.

Summary

The paper begins with the construction of appearance. Appearance is used to build rapport with the reader by identifying the paper with the patron of the centre and the valuing of New Zealand's role as peacekeepers, which is contrasted to the appearance of New Zealand's rates of domestic violence. The reader is then asked to engage empathetically with the text, this is done through the construction of a horror response to the effects of domestic violence, the valuing of children's rights to live free from violence, and through an inclusive call to action. The Judge's use of *debilitating* in terms of the effect of violence on adult victims has two

implications, in that it can value the feminist power and control model but also opens up the position of the 'honest victim' who is 'helpless' which can be problematic in the it doesn't attend to the supportive resources that are implied in the power and control notion of debilitating.

CONSTITUTING INFLUENCE

The main theme that runs through this paper is *influence* - what groups such as Women's Refuge have been able to achieve, or have been seen to achieve, through their lobbying to change public policy related to domestic violence during the 1980's and early 1990's.

The construction of influence as initially positive is important as it creates a bond between the text and the reader, especially considering it is a paper presented by a male judge to a group of women involved in domestic violence advocacy work. The reader is being positioned as having a part in the historical *influence* and able to contribute to continuing this influence with the invitation by the Judge to participate in *measures across a board front* (30-31) to decrease domestic violence in New Zealand. The implication of this construction of influence is a valuing of the women's movement.

The first excerpt lays the foundation for the construction of influence. The Judge introduces the notion of the Women's Refuge movement gaining momentum during the 1980's and 1990's.

By the early to mid 1980's the Women's Refuge movement was gaining momentum. Apart from offering safe houses to women and their children they became an influential lobby group bringing to public attention the serious physical and emotional damage to women through domestic violence.

(45-49)

Here the Judge constructs influence in relation to the role of Women's Refuge as a lobby group – not in relation to their role in providing safe houses. The implication of this is the construction of their lobbying activities as 'political influence', whereas their role of providing safe houses is constructed as a separate activity, and therefore open to interpretation as 'outside' the sphere of political influence.

The notion of *bringing to public attention the serious physical and emotional damage to women through domestic violence* suggests that people are not aware of the frequent occurrence of domestic violence, or of its terrible consequences for victims. The implications of this difference

reflects the different constructions of domestic violence, its causes, and place in New Zealand society

It is also important to note that the Judge directly mentions the damage to women to the exclusion of the effect on children, which had previously been used by the Judge within the protection discourse. Here the Judge is addressing women's group members about the role of Women's Refuge in raising public awareness about the damage to women. He is opening up a space for the reader to be addressed as a woman involved in women's issues – as being a part of the *influence*.

The discourse constructing influence is continued, this time in terms of the Government.

They were also influential with Government in bringing about legislative reforms. Their message to the New Zealand legislators and the public coincided with the views expressed in the Roper Report and the earlier 1987 report of the Select Committee on violent offending, both of which recognised the link between family violence and violence in the community.

(50-55)

The notion of *coincidence* is important here. The idea that the similar views of the Women's Refuge movement and the Roper Report and Select Committee Report were coincidental actually plays down the possible influence that the movement may have had. This perhaps has nothing to do with intent but rather with the Judge's construction of lobbying as an influence. By constructing this notion of coincidence it gives greater credence to these views within an objective – research based discourse, because they were seemingly found independently. This down plays the possibility that the Women's Refuge groups had influence with the findings of the two reports in the first place. This also has the effect of constructing influence in terms of political lobbying alone.

The implications of playing down the influence of the Women's Refuge movement within the two reports is to widen the base of support for the legislative reforms that took place in the early 1990's, which culminated in the 1995 Domestic Violence Act. It also enables the Judge to imply a certain amount of objectivity. The end result, the 1995 legislature, is not to be seen as the result of direct pressure from a lobby group but rather the result of objective research that *coincided* with the views expressed by a particular lobby group. The implication of this is the

ability to attribute the legislation to forces outside the women's lobby and not just as a response to women who were working in the area of domestic violence.

Another implication of playing down the influence as coincidence is the protection of the legal discourse in which the Judge is positioned especially at this point, where he is publicly representing the judiciary. The 1995 Act is thus protected from criticism by those, namely father's rights groups, who have called it a result of a 'feminist conspiracy' and those who believe that the law has swung too far in favour of victim rights (Kaye & Tolmie, 1998a).

The Judge however is not so cautious in naming the influence of a women's group in the passing of the earlier 1982 Domestic Protection Act.

The Christchurch Battered Women's Support Group had a strong influence on this legislation as is apparent from a number of speeches in Parliament

(149-151)

Compare this excerpt to the previous one and the Judge's unwillingness to give Women's Refuge any form of direct credit outside 'coincidence' for the 1995 Act. It appears to be unproblematic to identify the Christchurch Battered Women's Support Group with the 1982 Act as it has since been replaced. It is interesting to note that the Judge does not identify the related speeches in Parliament. Were they supportive of the 'Group's influence, or critical? Did the speakers agree with the Act or did they think it unnecessary and too 'feminist'? These omissions of information create a superficial support for the Judge's construction of influence. The Judge is name-dropping outside the sphere of Women's Refuge whilst providing little information about the tone of the speeches he used as evidence of *strong influence*. Again, the Judge's text functions to defend his own legal discourse from potential criticism from groups such as the father's rights movement, who over the past few years have becoming increasingly vocal about the influence of women's groups and feminist theory in terms of the Family Court and domestic violence legislation and policy.

Similar constructions of influence are used by the Judge in talking about the effect of the report on domestic violence orders published in 1992 by the Victim's Taskforce, which was set up under the Victims of Offences Act 1987.

Their report published in 1992 entitled "Protection from Family Violence" was a strong influence on the development of new legislation, although the Justice Department was

already conducting its own research and developing the policy for the Domestic Violence Act, which was eventually passed in 1995 and came into force on 1 July the following year.

(163-167)

Here the Judge uses the notion of influence to acknowledge the work done by the Victim's Taskforce, stating that the report *was a strong influence on the development of new legislation*. This is then undercut by the inclusion of *although the Justice Department was already conducting its own research and developing policy for the Domestic Violence Act*. This reinforces the constructions of influence used by the Judge to highlight the role of women's groups and victim protection, while at the same time undercut it with an objective discourse that seeks to separate the influence of the victims groups from the 'objective' findings of the Justice Department, which should and did have, the final say in the development of new policy. As seen earlier the implication of this is to protect the legal discourse from criticism that it is too 'pro-women,' while still rhetorically valuing the role of women's groups in the development of domestic violence policy and legislation.

The notion of objectivity is carried through to the next excerpt, this time in terms of looking outside New Zealand for reinforcement.

The influence of the Duluth Power and Control Model and international research led to the development of a new policy with domestic violence being viewed as a problem of male violence against a woman, a strengthening of the view that domestic violence could not be dealt with effectively as a relationship problem

(155-159)

The notion of *international research* is used here as a way of establishing 'objectivity' and support for the views expressed by women's and victim's groups in New Zealand. The dominant discourse of scientific research, especially international research, as a marker of 'objectivity' is strongly entrenched within current societal discourses. Again women's groups are highlighted – the Duluth model was created by a group of women who had experienced violence in the United States, but this influence is always accompanied by some other form of 'objective' construction to make the Judge's acknowledgment of this influence seemingly more credible.

Summary

The immediate function of Judge Mahony's paper is to value and acknowledge the political lobbying of women's groups on the development of domestic violence policy and legislature during the 1980's and 1990's. Alongside this the judge engages a notion of objectivity that justifies his support of the groups' influence by pairing each area of influence with an objective source. This serves to protect the legal system from claims that it is under the control of a 'feminist conspiracy' and asserts that it is objective. He argues that the current policy, which prioritises safety of victims, is not the result of lobbying from women's groups, but the result of objective research here in New Zealand and internationally. This reveals itself as a possible reaction to pressure from father's rights groups and other critics, who are claiming that the current legislature is too much in favour of the victim.

CONSTITUTING CRITICISM

Having set up both the influence of the women's movement and the findings of objective research, the Judge then constructs a notion of 'criticism', where the women's groups' criticism of the Court and the previous legislature is highlighted. This enables an interesting contrast in the construction of women's groups influence. Within this construction of 'criticism', what was previously described as 'influence' is now given a negative gloss when it is being used by women's groups against the Court system. The legal discourse is protected by the Judge, who takes a defensive approach to the comments made by the women's groups. This situation is made more complex by the potential alienation of the reader whose empathy may be lost due to the Judge offering them an unfavourable position.

The construction of criticism as a negative in relation to influence begins with the description of the 1985 joint Police and Women's Refuge conference held at the Police College in Porirua.

I attended that conference as a lone judicial figure in a somewhat hostile environment to Courts. It was a conference where strong emotional tides were running and where tragic human stories were told

(82-84)

The Judge uses the notion of a *lone judicial figure* to construct a defensive position and open up space for the reader to feel sympathy for his predicament in a *hostile environment*. This defensive construction, and the reason for the attack he was under, is then justified to the reader with the explanation *it was a conference where strong emotional tides were running and where tragic human stories were told*. The use of tragedy brings the horror response back into

play. The reader is reminded of the subject matter being dealt with and is asked to retake the position of protector when thinking about the stories told.

The implication of this is a reader who is asked to sympathise with the Judge for his position under attack, while still maintaining the position of empathy toward victims of domestic violence. There is a certain amount of competition here for sympathy from an audience that one can expect to already sympathise with the people at the conference who were engaged in the criticising.

The Judge then goes on to identify criticism from women's groups as being aimed toward the judiciary and the Court system rather than toward the legislation and policy they are given to work with.

The Act (1982) nevertheless was not wholly successful and the Family and criminal Courts were the subject of considerable criticism, particularly from women's groups.

(152-154)

Here the Judge is more direct in his defence, naming the criticism by *women's groups*. The Judge also identifies the criticism as being against the judiciary and the Court system rather than the tools they were given to work with. The direct naming of the criticism opens up a position for the reader to again be sympathetic toward the Judge and the judiciary for the attack they have been under, whilst providing enough justification i.e. *the Act nevertheless was not wholly successful*, to appear on side with the target reader. It also reproduces a separation between the Act and policies which constrain the Courts, and the judiciary and system which are subject to the Act. Thus, it is the legislation and its associated policies that are attributed with the burden of responsibility for any 'failure'.

In this next excerpt the criticism is again given authorship and is constructed as an attack.

Under the '82 Act the Court was criticised, particularly by women's groups for failing to give sufficient weight to the rights of victims.

(189-190)

Again the notion of criticism is used by the Judge. The same 'criticism' when used by the women's groups toward the policy makers is labelled 'influence.' This defensive rhetoric

enables the Judge to protect his 'home turf' – the Court system, while still seeking to support women's groups and what they have achieved by elsewhere constructing it as 'influence.'

Summary

In this section the legal discourse, in which the judiciary is positioned, is valued. The reader is also asked to sympathise with the Judge, who is the focus of criticism from women's groups about the failings of the Court system in dealing with domestic violence. The opening of the position to sympathise with the Judge may lead to alienating readers as it undermines the previous valuing of women's groups political lobbying.

This chapter identifies the public valuing of the women's groups political lobbying during the 1980's and 1990's, which culminated in the Domestic Violence Act 1995 and S16B of the Guardianship Act. This valuing, although undermined at times by the simultaneous valuing of the legal discourse in which the Judge is positioned, establishes the context for the backlash against feminist theories of domestic violence and the role of women's groups which will be the examined in the following chapters.

CONSTITUTING FATHERHOOD

*A Discourse Analysis of District Court Judge Jan Doogue's Paper at the 3rd Annual
Auckland Child and Youth Law Conference, April 2004.*

*'The Domestic violence Act 1995 & s16B of the Guardianship Act 1968 – the effect on
children's relationships with their non-custodial parent'*

This chapter describes the results of analysis carried out on the discourses identified in Judge Doogue's paper. The analysis focuses mainly on the construction of fatherhood and the use of a patriarchal based familial discourse to promote the position of 'father' within the family and within society. Attention is drawn to the sometimes contradictory use of a gender neutral legal discourse and the gendered familial discourse, especially in terms of identifying the role domestic violence plays in custody issues and the ability of violent men to be good parents.

The reaction to Judge Doogue's paper was strong. It was seen as controversial and highly critical of the Domestic Violence Act 1995 and section 16b of the Guardianship Act 1968. It received publicity in the national papers with the New Zealand Herald running an article titled; 'Judge Attacks Family Court Laws: 10 year old access rules destroying child-parent relationships' (Weekend Herald, 3-4 April 2004, p.A5). The publication of Judge Doogue's paper was also swiftly followed by a reply from the Family Law Section of the New Zealand Law Society. This reply commented that 'Judge Doogue's views have not been universally accepted' (p.1). This was backed by the former Commissioner For Children, Dr Ian Hassal, who stated 'some of the arguments and implications in the paper are not and do not justify the overall impression of substantial injustice resulting from the law itself as opposed to its administration' (p.1) The problems that Judge Doogue identified seem to be implementation issues rather than legislative issues.

The reply from the Law Society also noted that Judge Doogue's emphasis on balancing rights of the father to access is possibly at odds with the best interest of the child principle, which is at the heart of the Family Court (New Zealand Law Society, Family Law Section, Domestic Violence Standing Committee, 2004). Issues are also raised about the constitutional appropriateness of a Family Court Judge criticising legislature and the effects on the Family Court as a whole from media pressure and pressure from father's rights groups as outlined in the introductory chapter

The presentation of this paper, less than nine months after Judge Mahony's paper at the Te Awatea Domestic Violence Centre, marks a move away from the previously held position of the judiciary. There appears to be a backlash against valuing the role of women's groups, the influence of the power and control model, and the focus on prioritising protection of domestic violence victims. The current move is towards acknowledging men's perceived rights as fathers and the construction of domestic violence outside of the power and control model.

UNDERLINING FATHERHOOD

Fathers vs. Respondents

As mentioned in the introduction different discourses are used when talking about access to children and domestic violence. Custody issues and the rights of fathers to have access to their children are represented using gendered terms, whilst domestic violence and its perpetrators are constructed using gender neutral terms. This language creates a separation between men as fathers and men as violent spouses/partners/boyfriends.

Research reliably indicates the benefits for children of having a father present in their lives. However this research cannot be extrapolated to the relationship between a violent parent and their child.

(170-172)

Here the notion of a *father* in a child's life is elevated and singled out, but in the next sentence the gender neutral term *parent* is engaged when talking about the possible effect of violence on the child. The importance of a *father* in the child's life is directly linked to the patriarchal familial discursive construction of a two-parent family headed by the husband/father whose gendered parental position is specific and distinct from that of mother. Contrasted with this hugely powerful discourse is the faceless, gender neutral *violent parent* with whom no gendered imagery, aside from the violence, is associated.

The parent against whom a protection order has been made can be effectively debarred from seeing their child for a period of months in circumstances where the primary caregiver, of whatever gender, holds a protection order, alleges physical violence and does not agree to any access whatsoever.

(122-125)

Here there is explicit identification that domestic violence can be perpetrated by both men and women and that the primary caregiver can be either the mother or father. The Judge engages a gender neutral legal discourse when talking about protection orders. Compare this to the text talking about the relationship between fathers and children: *Research reliably indicates the benefits for children of having a father present in their lives (170-171)* There is a sharp contrast in the two discourses. The patriarchal familial discourse implies a strong parental relationship based around notions of provision and protection (as outlined in chapter one), whilst the gender neutral legal discourse explicitly excludes familial connotations and appears 'objective.' Rather than being objective it provides a contradiction that men as fathers are important in their child's life, while those men who have been identified as perpetrating violence are not associated with the same rights and responsibilities as the father's but only identified as parents - a term which does not carry the same weight within the patriarchal familial discourse.

Fathers as Respondents

In the previous section there is a clear discursive move to separate men who are fathers from men who are violent. This is somewhat negated when the Judge identifies that all the protection order respondents surveyed in the research that is the basis of the paper were male.

These respondents (all men)

(86)

Also of interest here is the use of brackets mid sentence, which rhetorically suggests that the inclusion of this information is of little importance or an aside to satisfy a reader's curiosity. The implication of using this aside is to reinforce the contradiction between the patriarchal familial discourse and the gender neutral legal discourse. The use of the term 'respondent' is based within the gender neutral discourse and to keep this discourse coherent the use of brackets around *all men* minimises the inclusion of a gendered term. It also supports the patriarchal discourse by downplaying the role of men as violent, as if to say 'well by chance all the respondents we talked to were male, it's not as if we expected it to be that way.'

Fathers as secondary caregivers

Another contradiction which puts into question the construction of *primary caregivers*, of *whatever gender* is the inclusion of statistics which state the majority of primary caregivers are female.

Statistically, the primary caregivers of children prior to separation are more frequently mothers than fathers.

(133-134)

Having identified men as the majority of protection order respondents and mothers as primary caregivers the Judge is able to bring a gender discourse into the legal discourse by repeatedly using the term *non-custodial parent*, which in the context of the above statements is another way of saying *father* and is used throughout the paper. This undermines the Judge's constructions of gender neutrality. Also in this excerpt the Judge uses the empirical notion of statistics to lend credibility to the information. This plays on the dominant scientific discourse of objective facts whilst not actually providing any source or information other than using the term *statistically*. It is also worth noting the use of the phrase *prior to separation*. This implies that things might change after separation. Within the text, this phrasing opens up the possibility for fathers to be primary caregivers in equal or higher proportion to mothers after separation, which is one of the aims of the father's rights movement.

As mentioned above the notion of *non-custodial parent* and *father* become interchangeable and enable the Judge to use the connotations of *father* that are associated with a patriarchal familial discourse whilst appearing to use an 'objective' gender neutral legal discourse.

The Domestic Violence Act 1995 & s16B of the Guardianship Act 1968 – the effect on children's relationships with their non-custodial parent.

One of the most prominent places where this inter-changeability is used is in the paper's title. The implication of this is that the title could read 'the effect on children's relationships with their father's' although there is a contradictory overlay of gender neutrality and objectivity.

The effect of the legislation on children and their contact with non-custodial parents is profound.

(298-299)

Here the notion of the *effect* of the legislature as being profound on children and their non-custodial parents implicates patriarchal familial discourse when non-custodial parents are also constituted as fathers. This functions to position the child as deprived of the protection of the male parent and what the father can provide economically and emotionally for them.

Children's relationships with their non-custodial parent are being regulated by default rather than by assessment of their actual needs and how they might best be met.

(76-78)

In this extract the association between *non-custodial parent* and *father* implies that there are certain needs that children have that can only be met through contact with their fathers. This reinforces the associated notion of the patriarchal role of the father as a provider and protector.

Although there is a specified time-frame within which protection order applications are meant to be heard if a temporary protection has been made, this time-frame can be difficult to achieve. This is untenable because by inattention to children's needs arising at this critical time the opportunity to maintain a relationship with the non-custodial parent can be lost not just in the short but also the long term.

(126-130)

A similar theme follows in this extract; that without sufficient attention the child loses something specific that the father can provide within the father-child relationship. There is also a claim here that this relationship can be jeopardised in both the short and long term, which lends a sense of urgency to the argument. The rhetoric of specificity used here by the Judge and by father's rights groups in general is a powerful one as it singles out the father as the only person in the child's life who can provide this specific form of provision and protection. This rhetoric constructing the father-child relationship as unique is hard to argue against. The text itself does not tell us exactly what this specific contribution from the father is, nor what is lost when this relationship is removed. It is left open to the reader to decide what is specific about the relationship. This suggests that there is an assumption that the reader will know what this is and that the reader can identify with the patriarchal familial discourse.

Fatherhood as Natural and Meaningful

Here the notion is introduced that the father – child relationship is *natural and meaningful* and something that is rightful. This notion of *rightfulness* is closely linked with the patriarchal discourses used by father's rights groups.

There are now vociferous calls for the abolition or reform of the Domestic Violence Act 1995 and its sister provision s16B of the Guardianship Act 1968 because they have been seen by many in the community, particularly fathers, as having been employed by the Court to deprive them of natural and meaningful relationships with their children.

(52-55)

There is a sense of entitlement constituted through the notion of *natural and meaningful*. This entitlement implicitly supports the patriarchal familial discourse, and it is this sense that gives credence to the father's rights groups. The use of the term *natural* implies that it is what should happen if nature was to take its course. The use of a commonsense notion of 'natural' also plays on the notion of objective truth. Objective truth is very hard to question as it is constructed within the dominant discourses of society. The term 'meaningful' again plays on the idea that fatherhood, as determined by a patriarchal familial discourse, has something 'specific' and separate from motherhood to contribute to a child and that what they have to contribute is of unique value. The use of the terms *vociferous*, and *deprive* creates an emotive rhetoric. *Vociferous* as 'noisy, insistent speech,' reinforces the sense of entitlement that is used to support the father's rights groups by proposing that they are insistent and have something important to say and plan on making enough noise to be heard. The notion of *deprivation* is effectively used by father's rights groups in setting themselves up as victims, which is a large part of their rhetorical strategies (as outlined in chapter one). By setting themselves against the 'all powerful' feminist conspiracy within the Courts they appear powerless, evoking sympathy and support from their audience. The notion of deprivation or being deprived of something at the hands of someone else evokes a sense of being victimised. In this case the Domestic Violence Act 1995 and section 16B of the Guardianship Act 1968 are victimising men as they affect their relationships with their children.

An interesting note here is that although the Judge mentions father's rights groups these groups are not explicitly named but left as a whole entity rather than individual groups with individual members and agendas. This suggests that as commented by the New Zealand Law Society Family Law Section (2004) the patriarchal familial discourse is being supported through a secondary relationship with the media, rather than direct contact between the judiciary and these groups. The Judge is being informed, not so much by the father's rights groups directly, but by the discourse that surrounds this movement and its increasing exposure in the media.

It would seem that some children are being deprived of contact that would benefit them.

(290)

As mentioned above the use of *deprivation* builds victim status. In this excerpt the Judge brings children within the patriarchal discourse by emphasising the earlier claim that fathers have something to specific to contribute to the child which the child is entitled to. This use of discourse to constitute an entitlement is hard to question, especially in regard to children. Children's entitlement is an emotive issue: their safety and development are seen as priorities within dominant social discourses. By using this construction of children's entitlement the patriarchal familial discourse taken up by the father's rights groups is setting up a potential contradiction. They are implicitly challenging the notion of whether children are entitled to live without violence in their lives by placing potential benefits over potential safety issues. This sets the right of children to have a beneficial relationship with their father's (as advocated by father's rights groups) against children's rights to live free of violence.

The 'disenfranchisement' of fathers, and therefore the loss of a relationship between them and their children, can start with the service of the documents.

(89-90)

Disenfranchisement is a term traditionally used when someone is deprived of their rights in relation to voting or parliamentary representation. In a democracy it also implies the loss of rights of citizenship. Again the use of this term constitutes entitlement alongside the patriarchal ideas of 'parliament' and 'rights of citizenship,' which up until just over a century ago in New Zealand was exclusive to men. From a feminist perspective this reinforces the idea of the 'men's club' which is currently epitomised by the father's rights groups.

It is important to add here that the service of documents is when the respondent is informed, either by the police or by their lawyer that a protection order has been made against them. From this point onward all the conditions of the order are enforced. This can mean that they are not able to go home, have access to their car, continue employment (if their job requires the use of a fire-arm), or have access to their children if the children live at home.

The legislation must be implemented with appropriate sophistication and in a way that neither operates at one end of the pendulum – thus depriving particularly fathers and children of appropriate relationship with one another, nor at the other end of the pendulum thus elevating perceived father's rights over and above what is safe for children.

(197-200)

The use of the term *pendulum* indicates that it may be a simple process to swing from one situation to the other unless care is taken. It suggests that there are extremes and a middle ground that is satisfactory. The pendulum also sets the mother and father up in opposition to each other in the eyes of the law. At one end is the right of fathers to have complete access to their children, no matter whether they have been violent towards the mother and children or not. At the other end is the complete restriction of access and the elevation of the mother's rights to keep herself and her children safe from a potentially violent and dangerous relationship. In terms of this pendulum imagery the law is currently seen to be supporting the mother to the exclusion of the father. Unlike the previous section, this is not about setting children's rights in opposition but rather about the right of the mother to not have a relationship with a man who has been violent towards her.

Summary

The Judge's construction of fatherhood makes use of a patriarchal familial discourse and shares many similarities with the construction of fatherhood by father's rights groups. Rights are privileged over responsibilities in terms of children's safety. Within the familial discourse fathers not only have rights but also obligations and responsibilities and within the Judge's text these are not constructed explicitly. This construction is contrasted with the gender neutral legal discourse used by the Judge to construct objective notions of violent parents as separate from fathers. A contradiction is set up with the identification of respondents as mainly men and non-custodial parents. Thus gender and its patriarchal familial connotations are brought into the 'objective' gender neutral legal discourse

UNDERSTATING MOTHERHOOD

Mothers as Gatekeepers

As has been mentioned earlier, mothers have been identified as the majority of primary caregivers. When a relationship is violent and her safety and the safety of her children are threatened and a protection order is gained, it usually means that the mother retains custody of the children.

Women are the arbiters of access that men have to their children and that in some cases the temporary protection order is in fact used as a weapon against the father.

(154-155)

Protected persons controlled access to a considerable degree.

(157)

Here the Judge uses the victim status often employed by the father's rights groups. The mothers are portrayed as having the 'power of a judge' in terms of being *arbiters of access* and deciding when and where they will let fathers see their children. There is also contradiction in imagery and terms. The idea of a protection order, which is a order of law intended to allow women *and* their children to gain protection from a violent partner, is constructed as being used as an offensive weapon to stop men having access to their children, this is then followed by a statement which goes back on the defensive – *protected persons controlled access to a considerable degree* – this is not the same thing as using a weapon, it seems very reasonable that an applicant would control access with a man they believed to be violent in order to protect herself and her children. There are suggestions that women falsely make allegations of domestic violence in order to punish or to seek revenge against a partner but due to the level of commitment and emotional energy needed for a woman to pursue a protection order it is hardly a situation conducive to seeking revenge or wanting to attack someone who has been their intimate. In saying that the Judge portrays women as controlling access is not to say that the law is vulnerable and is being subverted, rather the Judge is arguing that it is biased toward women and that this imbalance creates the situation where access is controllable.

Women as victims

Having portrayed women as being on the offensive against their partners, the Judge then switches tack to construct them as having *little option* and making *unsafe arrangements* due to *attitudes* and *overt pressure*.

I have no doubt that the delay has also caused some women to make unsafe arrangements for their children because they have felt little option in the face of attitudes adopted by Judges and Lawyers and by overt pressure from respondents themselves.

(158-160)

The use of the terms *little option* and *overt pressure* creates a picture of helplessness and submission – of being a victim. This is in contrast to the offensive woman who uses the legal system and the Domestic Violence Act as a *weapon*. It is also interesting to note the switch back to the gender free *respondent* even though it is clear that the Judge is talking about the *father* or *father-figure*. Here the Judge uses gender neutral legal discourse when talking about

judges, lawyers, and respondents. This enables the Judge to distance the male *respondent* who has been found to be violent from the male *father* who has rights to access within the patriarchal familial discourse.

Summary

The Judge constructs mothers in two different ways. Firstly within the patriarchal familial discourse mothers are constructed as powerful 'arbiters of access' who use protection orders as weapons. This sets up men as victims and powerless, which is an effective rhetorical strategy. Secondly mothers are constructed as victims, faced with pressure from judges, lawyers, and respondents, within a gender neutral discourse. This return to gender neutral discourse protects the rights and responsibilities of fatherhood by removing them from the argument. It removes the possible association between men as domestic violence perpetrators and men as fathers thus preserving the elevated position of father within the patriarchal familial discourse.

UNDERMINING THE DOMESTIC VIOLENCE ACT 1995

As explained in the introductory chapter the role of the judiciary within the constitution of New Zealand is separate from that of the legislative and executive branches. There is an understanding in the New Zealand constitution (as outlined in chapter one), and thus in legal discourses, that the judiciary, being separate, does not comment or criticise the legislation but interprets it and applies it according to their 'judgement' within the provisions of the law itself. Being that it is seen as inappropriate and potentially a conflict of interests it is interesting that Judge Doogue is seen to be openly critical of the Domestic Violence Act 1995 and section 16B of the Guardianship Act 1968.

The Great Social Experiment

Several times in the paper there is reference to the Domestic Violence Act 1995 and s16B of the Guardianship Act 1968 as *experimental*, and as a reaction to a social climate that no longer exists in New Zealand.

The social and political climate around domestic violence has changed since the Act came into force.

(23-24)

Sir Ronald's report presaged that to an extent the Domestic Violence Act and s16B of the Guardianship Act 1968 were social experimentation.

(292-293)

The notion of social experimentation plays on the ideas of trialling something to see if it works. The implication that the *social and political climate around domestic violence has changed since the Act came into force* means that the trial should be declared a success as it has succeeded in *denormalising* domestic violence.

The main benefit that has been identified is that the Act has brought domestic violence to the attention of society.

The legislation has been effective in de-normalising domestic violence.

(24)

The Domestic Violence Act 1995 and s16B of the Guardianship 1968 have had the tendency of de-normalising violence within the community.

(290-291)

The use of the term *de-normalising* gives the direct indication that there was a feeling that domestic violence was 'normal' in society prior to the introduction of the Act. In claiming that domestic violence had been 'de-normalised' the Judge does not provide any evidence that this is the case. Statistics, or claims to statistical evidence, are used elsewhere in the paper but not used consistently to back up claims that are made, this provides an inconsistent argument. Statistics are powerful tools in building a coherent argument within the dominant discourse.¹ It is also important to note that the *denormalisation* of domestic violence was not the only goal of the 1995 Act, it was also designed to provide protection for victims from further violence. Even if domestic violence has been *denormalised* in society the need for protection remains.

Controlling the Model

As discussed during in the introductory chapters, the power and control model provides the theory of violence behind the Domestic Violence Act 1995. Throughout the paper, Judge

¹ An example of this is in the father's rights literature. These groups use statistics polled from their own members. These statistics, whilst providing dramatic reading, are hardly representative of the general population as members of father's rights groups would tend to be men who have grievances with the Family Court – and not all of these men are also father's rights group members (Kaye & Tolmie, 1998a).

Doogue undermines the power and control model as being too narrow a definition of domestic violence. She claims that much of the violence that she and other Judges deal with falls far outside this model.

The Domestic Violence Act 1995 and s16B of the Guardianship Act 1968 were based on the classification of violence within the power and control model. In my experience and that of other Judges this model does not fit the profile of many cases coming before the Family Court in New Zealand.

(13-16)

These Judges are not quoted directly, nor is there any sourcing used by the Judge to let the reader know who these Judges are and where and when they agreed that the power and control model did not fit. Again the use of supported evidence is not sourced, which raises a number of questions: how many cases does the model not fit? What kind of cases are these? Are they repeat offences or are they one offs? There is also a sense that *models* of violence are being set up in opposition to one another and are competing to provide 'accurate' profiles of domestic violence.

In my view we need to provide a more sophisticated approach to the implementation of this legislation, all the while recognising that it is not fair nor just to view all violence as fitting within the classification of the power and control model.

(25-28)

The use of the term *more sophisticated* brings a power relationship into play. It suggests that the current model is of a lower, more simplified form and that in the Judge's view a more suitable, more intelligently thought out approach should and could be found. The notion of *unfairness* is another rhetorical strategy as it uses constructs a victim status for those who are so treated. What is of note here is that the Judge does not identify to whom it is unfair. Taken in context of the paper it could mean that it is unfair to the fathers, which sets up a contradiction. The fathers to whom this model is seen to be unfair have been identified by the Court as violent— is it fair to put their children in a potentially dangerous situation with them?

Not all violence fits within the power and control model. As we know, psychological functioning of both parents just prior to and after separation is often impaired sometimes leading to uncharacteristic behaviour including violence.

(210-212)

The use of the phrase *as we know* by the Judge is a rhetoric device which sets up an inclusive/exclusive power relationship. It suggests that if one doesn't *know* then they are out of the loop and should know. This is a similar device to the notion of commonsense as it plays on the idea of a collective, universal truth.

The use of the notion *impaired psychological functioning just prior to separation* leading to violence is a situation where there is a question over which comes first. The Judge is claiming that the separation comes before the violence, while groups such as Women's Refuge would suggest that in a majority of cases where violence is involved around the time of separation the violence was in fact the reason for separation.

Summary

The notion of the Domestic Violence Act 1995 as a 'social experiment' can be interpreted as viewing it as a trial used to see if something will work. The implication is that the social climate, according to the Judge, has changed. Domestic Violence has been 'denormalised' and the trial can be declared over.

The Judge's construction of the power and control model as 'oversimplified' suggests that the theory behind the model does not fit with Judges' experience in the Family Court. The labelling of the model as 'not fair' creates a sense of injustice, and while there is no explicit reference to whom it is unfair, there is an implication, through the argument of contextual violence that it is the fathers who lose out under the model.

In comparison with the paper presented by Judge Mahony the objects that are valued by Doogue are very different. Mahony elevates the role of women's groups and the lobbying power these groups had during the 1980's and 1990's in influencing changes in domestic violence policy and legislation. This is in contrast with Doogue's construction of the power and control model as simplistic and the 1995 Domestic Violence Act as 'social experimentation'. Mahony emphasised the horror of domestic violence for children and adult victims, Doogue emphasises the loss of relationship between father and child. These different emphases reflect

the different discourses that are most prevalent regarding the issues facing the Court system in dealing with domestic violence. These discourses include the legal discourse in which the Judges are positioned, the patriarchal familial discourse that supports the father's rights movement, and the feminist discourses that support the protection of victims of domestic violence over the and above the possible effects of the relationship between the father and children.

The constructions of domestic violence within legal discourses, the applicability of the power and control model and the position of father's and children's rights are the carried through in the analysis of the interview texts in the following chapter.

CONSTITUTING TYPES OF VIOLENCE

This chapter describes the discourses realised in the Judges' interview texts. The analysis focuses mainly on the construction of evidence within a legal discourse, the distinctions between types of violence, and the place of the familial discursive construction of fatherhood within the Family Court

The aim of the interviews with the Family Court Judges was to elicit talk around domestic violence, the Judges' experience with dealing with domestic violence, and the discourses they used to construct their talk. Both Judges freely shared their experiences. Their talk was mainly positioned within a legal discourse that imposed restrictions on the Judges as servants of the law. They were confined by the limits of the rules of law and the criteria set out in the Domestic Violence legislation. Their position as Judges and the limitations in which they operate make them visible targets for external influences such as men's and women's lobby groups, who often direct their points of view and criticism at the Judges.

CONSTRUCTING BARRIERS

Evidence

Evidence is identified by the Judge as a necessary ingredient for a without notice protection order to be made. Without sufficient evidence the order can not be made.

I hear there are concerns that we are now making the barriers higher and higher to have orders made and it's often difficult to have evidence

(Judge B 16-18)

In this extract the Judge talks about *barriers* in regard to the level of evidence needed in order to obtain an ex-parte order. The notion of *barrier* implies a negative hurdle to overcome, making it difficult to provide adequate evidence to the Judge. The effect of this construction is that providing enough evidence is construed as a difficult task for the applicant. This can either be supportive of the applicant – whom the Judge realises may have difficulty expressing her story because of embarrassment, shame, or fear, or can make the task of proving oneself appear more difficult, as the evidence has to be of a certain standard. This standard of evidence is set by the legal system and imposed on domestic violence victims who attempt to engage with this system. These women most often do not come from a legal background and find the legal system overwhelming and hard to deal with (Darlow, 1997). What is important

from this excerpt is the question of why the barriers have been made higher. Is it related to the backlash against prioritising protection of the victim over perceived father's rights?

Often people haven't called the police, often they don't go to their doctors, and if they go to their doctors they tell a porky about the cause of the injury

(Judge B 19-20)

Here the Judge indirectly specifies what constitutes evidence i.e. the filing of a Pol 400 with the police, or a truthful diagnosis from their doctor. The notion of *telling a porky* to their doctor sets up an interesting inconsistency, in that the woman did not tell the doctor about the source of the injuries but is willing to tell her lawyer and the Court in order to obtain a protection order. This inconsistency, in terms of the legal discourse understanding of evidence, puts doubt in the mind of the Judge as the woman has been shown to tell two different stories. So perhaps, within a legal discourse, sufficient evidence is based on consistent storytelling therefore the construction of sufficient evidence as a barrier is based within the legal constraints of rules of law, and legislative criteria.

The notion of good storytelling is carried through by the Judge.

I think the real struggle is for people to tell their story in, in enough detail that it's compelling (.) and if they don't' (sic), so that it's difficult for us to act ex-parte.

(Judge B, 20-22)

In this excerpt the Judge constructs the storytelling as important in order for there to be enough evidence to work with. Here the Judge sets up a partnership with the applicant based upon the applicant giving the Judge enough detail so that they can *act ex-parte*. The effect of this construction is that there is a sense that the Judge wants to be able to make the order but can only do so if the applicant helps them out by providing enough detail. The Judge as an individual may want to help but the Judge acting as a servant of the law is constrained by the barriers set by the legal discourse in which they are positioned.

I think there are huge problems with ah, our becoming inured to the effect of violence, that um (.) I think that it's easy to, for us to forget just the extent of fear that occurs if you've been given, given a good punching or a good kicking and wait a few days, then come to the Court ah, (.) I have to keep reminding myself oh, how long the trauma of that is likely to last

and I think that it is really difficult to depict that in the evidence and it's very easy for us to, to underplay.

(Judge B, 40-45)

Here the Judge is reflecting on the judiciary's lack of understanding of the effects of violence or the de-sensitisation toward violence that may occur in their day to day dealings with stories of violence. The Judge acknowledges the difficulty in translating that fear into *evidence* as constructed within a legal discourse – which is a way of speaking and understanding that is probably quite foreign to most women applicants.

The notion of evidence is realised within a legal discourse and the majority of women who apply for protection orders have not had much experience with the legal system. The expectations of the Judge regarding adequacy of evidence may not be fully understood by the applicants who are often too fearful, ashamed, or nervous to explain their situation in detail. The implication of this is that the Judge and the woman victim are approaching the application for a protection order from vastly different positions. The expectations of each are quite different. The Judge, who is positioned within the legal discourse, is constrained by the rules of law and the legislative criteria set out in the Domestic Violence Act 1995, whilst the applicant approaches from the position of a victim seeking protection that they have a sense of entitlement to.

Withdrawal of Application

The construction of *barriers* in gaining a protection order is not restricted to providing a detailed enough story for the Judge. Barriers are also constructed in terms of facing the possible reaction from the respondent and the limitations of the legal system to protect applicants.

In talking about a recent case Judge B commented:

The women elected to withdraw the application, which often happens because they are so frightened about the impact of the notice itself that it's better to go on living without the legal structure than to face the confrontation of what happens when the respondent is served and (.) so she withdrew the application.

Judge B (28-31)

In this excerpt the Judge uses the term *impact* when talking about the reaction of the respondent to the notice and that the result of the notice could lead to a *confrontation*. The

terms *impact* and *confrontation* could imply 'anger' and 'violence' in the context of the power and control model. The effect of using these terms is the creation of a sense of caution from the Judge in avoiding explicitly naming the consequences of applying for a protection order. Because of the possibility of this *impact* and the fear surrounding it, it is seen by the applicant to be easier to live without engaging in the legal process. The notion that the withdrawal of the application *often happens* suggests that the current legal intervention is not completely accepted by applicants as providing them protection and the Judge accepts this by explicitly acknowledging the possibility of a violent confrontation after the notice is served even though the protection order is designed to keep the respondents away.

This acknowledgement of the lack of faith by applicants in the protection order is confirmed by Judge A

Um, it's not uncommon in some cases for there to be a protection order made but before it gets to a hearing even in the Family Court it's withdrawn. Um, and then sometime later there is a new application [hmm] and the process is gone through and on some files you can see that this has happened 3,4,5 times.

(Judge A, 61-65)

Here the Judge talks about the process of applications being made and withdrawn repeatedly. As with the previous excerpt the withdrawal of the order implies a lack of faith by the applicant that the outcome will be her and her children's protection. The reapplying suggests that there either a small amount of trust in the legal structure or perhaps a lack of alternatives to help in leaving a violent relationship. The other possibility is the extent of power and control held by the respondent, who may convince the woman to stay.

Summary

The construction of barriers reflects the constraints set by the legal system in which the Judges are positioned. Barriers are issues about how hard it is to translate the women's stories into defined evidence as required within the legal discourse. Women often find it hard to engage with the legal discourses and the issues that arise around their protection after the application has been made lead to withdrawal of the applications, often numerous times.

TWO KINDS OF VIOLENCE

In Judge Doogue's paper she criticised the power and control model as being too narrow a definition of domestic violence. This view was reinforced in the Judge's interviews.

Redefining the Power and Control Model – The Male Batterer

Like Doogue in the previous chapter the Judges acknowledge the limited place of the power and control model within domestic violence policy. They also agree with Doogue that it is too *simplistic* and does not encompass all the types of violence that come before them in the Family Court.

The old power and control wheel (.) I think is still valid, ah and I see on a daily basis examples of that. But it is, it can also be a simplistic model (1) I think the, ah, the actions and interactions of domestic violence can be a lot more subtle (.) than that traditional model suggests or allows.

(Judge A, 68-71)

Again, like Doogue, there is a suggestion that the power and control model, in being simplistic, misses *the subtleties* of violence and applies mainly to situations where there is a *male batterer*. The implications of this is to position the power and control model as being applicable to only one type of violence – that of the *male batterer*. The notion of *traditional* suggests that the model has a wide level of acceptance within the legal discourse and its construction of domestic violence. This acceptance is not reflected in the rest of the Judges' text around the model.

This construction of the power and control model as too simplistic is reinforced elsewhere in the text.

The power and control model (laughs) is not one size fits all

(Judge A, 113-114)

Within the text there emerges two separate constructions of male violence against women, the *male batterer* and *interactive violence*, which results from provocation by the woman.

Some of the time it is one side exerting power and control and that's (.) um, and that appears when you have a serial male batterer, somebody, you know, for who there are episodes of battering again and again and again and it's just a matter of survival between

times for the wife and children (.) Sometimes you see (.) couples locked in a power struggle that, that's if you like, that's the power and control model but each side is exerting it and that becomes interactive spousal violence and I suppose I've come to see that over the years more commonly.

(Judge B, 91-96)

Here the Judge acknowledges the power and control model in terms of the serial *male batterer* but also in terms of *interactive spousal violence*. The use of the reflective term *if you like* suggests that the Judge is unsure about how well the theory would stretch to what they are suggesting. This reflects the construction of different types of violence within the Judges' text and the effectiveness of the feminist power and control model to only deal with feminist construction of violence as *male battering*.

The phrase *I suppose I've come to see that over the years more commonly* suggests that perhaps at one stage the Judge saw more of the *serial batterer* or that they have chosen to look outside the power and control model for explanations of violence. The implications for both are interesting. In the first instance it could be that the nature of relationships has changed and women are attempting to fight back. Secondly, and probably more accurately, is the increasing influence of competing constructions of violence and explanations of violence. These other constructions, including those that assert men's rights, undermine the power and control model. The effect of this is the pigeon holing of the power and control model as relating only to *male battering*.

The *male batterer* still exists but has been constructed as different from the man involved in interactive violence.

It obviously makes a difference if there has been a relationship which is typified by the man drinking too much and beating the woman every night or once a week, ah (.) where, where that sort of (.) male (.) violence towards the female partner and children, or in front of the children (.) is simply characteristic of his lack of control or violence, or whatever.

(Judge A, 95-98)

Here the Judge talks about a *typical* situation of male battering, with a man who drinks too much and seriously injures his partner *every night, or once a week, or whatever*. This plays on the stereotype of the lower socio-economic picture of domestic violence. Violence, and the situations in which violence occurs, are much more varied and as previously advocated by the

Judges, much more subtle than this suggests. The implication of this *male batterer* characterisation is to create a distinction between the *typical* male batterer as an out of control, violent drunk and the man who is provoked by his partners verbal abuse and hits out once and regrets it.

This distinction is then made explicit

Yes there is violence here and there is violence there but that violence is of a different kind.
(Judge A 104-105)

The implication of making the distinction between *male battering* and interactive violence is the creation of a situation where some domestic violence is viewed as justifiable, or at least having some justification.

Interactive Violence – Women as Provocative, Men as Victims

The distinction between battering and interactive violence is made on the basis that in interactive violence women provoke their male partners through verbal and psychological abuse to the extent that the men lash out physically and this is not being recognised by the current legislation. The reason for this is perhaps the construction of *interactive spousal violence* depends on a competing discourse that defines domestic violence differently from the feminist theory based Domestic Violence Act 1995, which defines violence from within the power and control model.

The way in which women exert their control is different from the way in which men do and our domestic violence laws find it easier to diagnose the way men do it than the way women do.

(Judge B, 96-98)

The implication here is that women are just as likely to abuse their partners, but use psychological and verbal abuse rather than physical violence. This supports a gender distinction that women are 'talkers' and men, being unable to identify with their emotions, have no defence except for physical aggression.

This identification of women as abusers being used as a defence for male violence toward women is perhaps an unintended consequence of the inclusion of psychological abuse in the

1995 Domestic Violence Act. Nevertheless it is seen as an increasingly valid defence or at least making it harder for the Judges to make decisions.

It's quite hard to make a decision about who was the aggressor or where does the balance of abuse sit, where the defence is about provocation and about (.) typically, 'she's a woman, she can talk and talk and talk and talk and get under my skin and so deprive me, depress me, reduce me and all I've got is to punch her and my, (sic) yes I punched her, or I kicked her, or I pulled her hair but it's the only thing I've got left because she's been going on for hours and hours.'

(Judge B, 55-60)

Here the Judge constructs men as victims and women as provocative, via psychological and verbal abuse. The woman *deprives, depresses and reduces* the man until all he has left is physical violence. This construction of the man as victim uses the notion of psychological abuse, as defined in the 1995 Domestic Violence Act against women as a defence for the man's violence. It is in fact very similar to the defence for Battered Women's Syndrome, in that the psychological abuse compounds until the victim is left with no defence other than physical violence to escape their tormentor. According to the Judge's construction of men as victims the male defendants are in fact using the same rhetorical strategy that their women counterparts were using a decade ago. The construction of women as provoking violence being used as a defence for domestic violence suggests that psychological abuse has been widely identified within New Zealand, and especially the legal system, as an unacceptable form of domestic violence.

Another gender difference is introduced with the notion that men, compared to women, are less likely to seek help if their partner is psychological and verbally abusing them and this is another 'justification' for being violent.

I've seen relationships where guys have literally been pushed to distraction [hmm] to the breaking point of lashing out with their fists after days, months, or maybe even years (.) of (.) that sort of ah, psychological, um conflict in the relationship, which is rarely complained of by men (.) who will probably find it very difficult to admit to or to seek assistance, you know, 'I'm constantly being put down by my partner,' etc, etc, etc, um but if he finds himself pushed to the point where he loses control and assaults her (.) of course there is a defined act.

(Judge A, 78-83)

Another gender difference is constructed by the Judge. Women are identified as being able to *push men to distraction* by putting them down and verbally abusing them. This is identified by the Judge as *psychological conflict*. Men on the other hand are constructed as being unable to ask for help and thus being pushed to the point where they lose control and become violent. The use of the term *push* is important as it removes choice and constructs the man as a victim, given no choice but to defend himself the only way he biologically can – physically.

An inconsistency that appears here in the identification of a physical act as a *defined act* within the Judge's talk compared to the verbal and psychological abuse inflicted by the woman. According to the Domestic Violence Act 1995, psychological abuse is a defined act of domestic violence. The problem with psychological abuse is that it is often very difficult to establish evidence. This links back to the adequacy of storytelling. The legal system, as governed by rules of law and legislative criteria, requires certain types and levels of evidence, these levels are more easily achieved if there is proof of a defined act.

The notion of a *defined act* is used again in regard to provocation. There is also a construction of the consequences of the protection order being overly harsh and the result of losing a battle of wills.

It might be quite an isolated act but once he has hit her everything collapses because immediately there is evidence of violence, there are all these rules that fall into place, the, the (sic) contact with the children is restricted, he can be put out of his house, refused access to his car, and everything else on a without notice application simply because he is the one who has lost control. Now I'm not justifying the loss of control but I'm saying that we are much more aware of the subtle, destructive, corrosive processes that can go on and of the distinctions that need to be drawn between types of violent relationships

(Judge A 84-90)

Here the Judge constructs the loss of control as an *isolated act* separate from whatever psychological abuse the man might have been inflicting on the woman. The consequences of the protection order are seen to be the result of a battle of wills that the man lost *simply because he was the one who lost control*. The loss of control is portrayed as a victory for the woman, even if it comes at the cost of physical injury and victimisation. This construction is very similar to Doogue's construction of the protection order as a weapon.

The Judge also uses a reflexive comment *now I'm not justifying the loss of control*. This implies that the Judge is attempting to avoid the implication that he is mitigating the man's violence.

Summary

The construction of *male battering* and *interactive spousal violence* as different types of violence and the power and control model as a *simplistic* model used to define violence are the result of competing constructions of domestic violence, influenced by different discourses. What the Judges are separating into types of violence are types of *construction of violence*. The effect of this blurring of constructions of violence and types of violence is the alienation of one or other discourse over the others.

Constructing Children's Rights

Throughout the previous analysis chapters children's rights have been constructed through familial discourses and used to support both the argument for and the argument against custody access for father's who have been served with a protection order.

My immediate reaction first and foremost is to say 'hey, I know where you're at, I'm a parent, I've got children, I've got rights, I understand where you're coming from but I also understand where your children are at and (1) if the issue here is about your children's safety and your children's right to be protected from exposure to violence and the awful, awful tugs of war that we see in these, you know parent conflicts then how 'bout talking about children's rights first.'

(Judge A, 198-203)

Here the Judge presents both arguments and as according to the 'best interest of the child principle' priorities the child's right to be free of violence over contact with the father. The Judge uses the rhetorical strategy of speaking directly to the respondent through the text and attempting to identify with the respondent. Similarities are highlighted and the Judge constructs themselves as a parent.

There is also explicit acknowledgement of the construction of fatherhood via the patriarchal familial discourse. This discourse constructs fatherhood as beneficial and separate from motherhood.

The problem is you have to balance trauma for children witnessing domestic violence against the trauma for children having been deprived of one of their key relationships even for a short period

(Judge B, 75-78)

This excerpt identifies the role of the Judge as 'unbiased' and having to *balance* the two types of trauma. This creates a sense of 'objectivity' and of 'judgement' over which is the lesser of two evils. The construction of finding the *balance* as an issue sets up the right of children to live free from violence as being separate from the right of children to have a relationship with their father. There is no connection made between these rights and the father as the perpetrator of the violence.

Constructing Men's Groups

In their talk about respondents as fathers the Judges construct two types of men's groups; the 'nurturing men' and the men who are seen to be a part of the backlash against feminism.

You get the nurturing men who are pushed away by the over-controlling women; 'no I want to be wife, mother, lawyer' or 'wife, mother, doctor,' or 'wife, mother, accountant.' Those sort of head kind of professional groups [ahah] and if, if they have a, have a nurturing man it's very difficult for them to give up control domestically and say 'sure, we can share this.'

(Judge A, 153-156)

Here the Judge constructs the *nurturing men* as seeking to fill a gap left from women entering the workforce. This remains based within a familial discourse but unlike the patriarchal familial discourse the gender roles are blurred and men are seeking to fill the role of full time caretaker/parent. The construction of women as controlling implies that a woman who wants to be *wife, mother, career woman* is going to have difficulty giving men a place in the home that is more involved than the role of father as constructed within the patriarchal familial discourse.

This notion of blurred gender roles differs from the patriarchal familial discourse, which has rigid gender roles and seeks to maintain the two parent family, where the man is the provider and protector, while the woman stays at home with the children.

Then there's the group that won't give up the territory and they're the dangerous ones because they are the ones who want to be in control and know um, will use typically male abusive practices to be in control. They will threaten violence and exact violence, they'll um (.) do it psychologically in terms of reducing the um (.) competence of the mother (.) but at the end of the day they have a point, which is about that they want to parent these children, they happen to want to do it in a slightly old-fashioned way, but it's the same goal, which is to have (.) a place in the partnership for fathering.

(Judge B, 163-169)

These men are constructed by the Judge as *dangerous* and using *typically male abusive practices* although these practices are not described. The Judge also talks about the ultimate goal being the same as the nurturing men, *a place in the partnership for parenting*. The implication of this goal is the elevation of fatherhood as important and desirable, no matter the route taken to achieve it. These men are identified as fathers who want a place in the family to parent but not as violent men who use these *typically male abusive practices* within the home towards their wives and children. There is an explicit separation of the public and private practices of these men.

Summary

The lack of connection between the construction of men's groups as public advocates for the participation of fathers in parenting and the perpetration of violence in the home by the same men indicates the influence of these men's groups in lobbying for change and their ability to separate their public image as a lobby group from the reason *why* they have are in the position to have lost their relationship with their child in the first place: that they were perpetrators of domestic violence.

The analysis presented in this chapter suggests that Judges dealing with domestic violence from their position within the legal discourse encounter difficulties reconciling conflicting discourses engaged to construct violence. The particular relevance of their position in legal discourse is exemplified by the way in which legal standards of evidence can create barriers to evidence of psychological abuse, as psychological abuse is not made up of 'defined acts'. The Judges' talk around different types of violence and the relevance of the power and control model reflects the competing discourses constituting causes of domestic violence. These discourses include feminist talk of women's victimisation by men, and men's rights' groups talk of women's responsibility for provoking and perpetrating violence. This talk engages

discourses that constructed the Domestic Violence Act (1995) as well as resistance to the Act that constitutes a backlash to women's status as 'protected' under the law. Lastly the ability of the father's rights groups to separate the role of father from the perpetration of violence reflects the growing influence of the father's rights movement and its realisation within the Judges' talk.

DISCUSSION

This chapter brings together the implications of the analysis of discourses constructed in the Judges' talk around domestic violence – both publicly in the form of presented papers and privately in the interview texts. These implications are then discussed in terms of the Judges' position within their own legal discourse and within the discourse of the Domestic Violence Act 1995 and how their experiences of these positions may or may not create barriers for women victims of domestic violence.

The Domestic Violence Act has two main aims which are constructed from within feminist discourses on domestic violence. These aims are firstly the promotion of the view that domestic violence does exist and causes great harm to victims and secondly the protection of these victims and their children from further violence at the hands of the respondents and their associates.

The analysis of Judge Mahony's paper presented in August 2003 at the Te Awatea Domestic Violence Centre identified the construction of women's groups' political lobbying power as influential. The Judge's talk, in which the role of women's groups is valued, asks the reader to engage empathetically with the text through the construction of a horror response to the effects of domestic violence, the valuing of children's rights to live free from the violence, the realisation of the debilitating effects on victims, and the continued importance of public education regarding domestic violence as unacceptable. These are all things that are valued by women's groups and the feminist theory that underpins the Domestic Violence Act 1995. Thus the feminist aims of the Act and the role of women's groups in bringing about the legislative and policy changes are reinforced and valued within this legal discourse.

The results of the analysis on Judge Doogue's paper presented at the 3rd Annual Auckland Child and Youth Conference in April 2004 reveals a backlash against this valuing of feminist theory relating to domestic violence. No longer are the feminist aims of the Domestic Violence Act valued but rather claims are made that the initial aim of 'denormalising' domestic violence has been achieved so the Act is no longer necessary or valid. Here the Judge constructs the aims of the Act differently within the legal discourse. The aim is constructed as not to raise public awareness of the unacceptability of domestic violence, as it is within feminist discourses, but instead to 'denormalise,' domestic violence in New Zealand which has different implications

and requires a different approach to be achieved. The other aim of the Act, as constructed by the feminist theory in which the Act was initially positioned, is the protection of victims. This aim is not explicitly mentioned in Doogue's paper but is implicitly undermined with the negative construction of the Act in its ability to allow women to control the relationship with the respondent as destroying the 'beneficial' relationship between father and child.

These different constructions of the aims and effect of the Act represent a move away from the valuing of the feminist construction of domestic violence within the legal discourse. The current move is toward valuing the patriarchal familial construction of the specific and beneficial nature of the relationship between father and child, and rights of the father within the legal system.

Throughout the analysis of Judge Doogue's paper and the interview texts the construction of fathers as having a right to access and the benefit for children in having a father in their lives is kept separate from the association of these same men as perpetrators of violence. This is an important rhetorical strategy as it allows the conflation of father's and children's rights without identifying the responsibilities of these men to protect their children and keep them safe from harm that are implicit within the patriarchal familial discourse. An implication of this move toward valuing the father child relationship is the undermining of women status as victims within the legal discursive construction of domestic violence. Women are being constructed as being able to use the Act to their advantage and the father's rights movement constructs a dichotomy such that if they are losing custody and settlements then the women must be somehow gaining unjustly.

As realised in the Judges' talk there is also a move away from the feminist theory of power and control which was the initial framework for understanding domestic violence within the Domestic Violence Act. Violence is constructed within the Judges' talk as contextual and interactive and women as using their ability to talk to get under men's skin and provoke a violent response. This construction of violence reflects the shift away from valuing the role of feminist theory and political influence of women's groups toward the political influence of men's and father's groups – who claim that the law is too far in favour of women and is damaging the relationship between father and child. This use of the relationship between father and child as constructed within the patriarchal familial discourse is a useful rhetorical tool as children's rights are valued in almost all discourses constituting family.

Within the Judges' talk the division of violence, into 'types of violence' could be interpreted as the Judges' realisation of different constructions of violence. However, the judges' understand

this within an empirical epistemological framework where these different constructions become competing facts. This understanding does not foreground the implications of the different discourses that produce violence of different types, nor does it imply that functions of these discourses may be quite contradictory. Subjects within these constructions of violence are positioned within one or other of these contradictory discourses so that different kinds of violence become mapped onto different individuals. For example, some women are provocative and some are innocent victims while some men are controlling batterers, some just 'lose it' and others are innocent victims. These positions do not enable the possibility that subjects' positioning within these discourses might be contradictory depending on the way in which violence is understood, and what is taken as evidence.

As identified in the introduction I realise that Judges, as figureheads of the Court and Legal systems and as servant of the law, are restricted by the rules and criteria set by the legal discourse in which they are positioned. However there are barriers to the aim of effective protection of victims as constructed by feminist theory (the same framework in which this research is positioned). These barriers, such as levels of evidence, are hard to translate into a women's experience of psychological and emotional abuse from her partner.

The use of post-structuralist feminist discourse analysis as the framework for this research enables us to establish a picture of conflicting discourses and their functions in supporting or undermining the feminist and legal intent of the Domestic Violence Act. The Judges, positioned as they are within the legal discourse, do not understand domestic violence in terms of feminist poststructuralist discourse analysis. Rather Judges understand domestic violence in terms of the application of the relevant law to the situation at hand. Unfortunately the valuing of feminist theories of domestic violence and the role of women's groups within the legal discourse is no different from the valuing of men's groups theories of domestic violence and the roles of father's rights groups. Judges as figureheads are the focus for much political lobbying from all sides and the legal discourse in which they are positioned values most of all the weighing of all information and arguments and judging all cases as fairly as possible. Judges are not aware of the different discourses at work and without any consciousness are being influenced by the most public lobby group, and at this moment in time it is the father's rights movement.

My own understanding of the role and position of Judges as service providers to victims of domestic violence has changed. Judges are far more bound by the limits of the law and their own position within the legal discourse than I ever imagined. In some ways this has increased

my respect for their position as decision makers but also worries me that the legal system and the law itself is at times merely a reflection of the most vocal and prominent lobby group.

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Appendices

INFORMATION SHEET

INTRODUCTION

The aim of this study is to investigate how Family Court Judges, as expert service providers, understand and make sense of domestic violence based on their personal experiences. The research will be carried out by me (Juliet Thompson) as part of my Clinical Psychology Master's degree.

PROGRAMME

The research itself will be undertaken as part of a wider programme under the supervision of Mandy Morgan, a senior lecturer at Massey University. To date the programme consists of ten similar studies undertaken with doctors, police, lawyers, female abuse victims, and men attending anti-violence programmes. The overall aim of the programme is to look into how service providers understand domestic violence and whether this understanding creates, facilitates, or interferes with effective and lasting intervention.

WHAT IT ENTAILS....

What this means for people participating in the study is that I will spend approximately 45 mins asking a set of pre-given questions. These questions (which are attached) are mainly concerned with your experiences related to protection orders and domestic violence in general. These questions are designed to let you, as participants, talk in your own words about your own experiences. I am looking for personal comment from individual experts. If, when reading over the questions, you feel unable to answer some of the questions because they don't appear to be relevant please let me know. I will be happy to renegotiate any questions which you feel uncomfortable about.

With your permission, the interview will be audio-taped so that it can be recorded and transcribed. I will do the transcription myself so that no other person has access to information you might give me. All audiotapes will be stored securely until the research is completed, and then they will be either destroyed or returned to you if you so wish.

WHAT I'LL DO WITH IT ALL.....

The technique of analysis that will be used is 'discourse analysis.' This particular method gives the researcher the ability to identify commonly used ways of talking about a subject. The interviews will be studied as a whole and similarities and differences in the concepts that emerge from the interviews will be identified.

This type of methodology differs from the traditional quantitative analysis in that I am not interested in facts and figures. I am looking for personal experiences and understandings that can only come from talking to individuals – this will provide a valuable insight to how a certain group of service providers experience domestic violence.

WHAT CAN I EXPECT FROM THE RESEARCHER?

If you choose to take part in the research, you have the right to:

- refuse to answer any questions, to withdraw from the study, and to withdraw any information up until your transcript has been edited and returned to me.
- ask any further questions about the study that occur to you during your participation.
- provide information on the understanding that it is completely confidential to the researcher. All records will be identifiable only by code number, and will be seen only by the researcher and her supervisor. Though excerpts from your interview may be included in the thesis, a pseudonym will be used so that it is not possible to identify you.
- turn off the audiotape at any time during the interview.
- have access to your transcript, and be able to comment on, or make changes to it.
- to be given a summary of the findings from the final report.

If you are interested in taking part, please let me know. We can then arrange an interview at a time and place suitable to us both. Also, please feel free to ring me if you have any further questions. You can ring me anytime on (04) 479 3347 or 021 610 563. You are also free to contact my supervisor (Mandy Morgan) on (06) 350 5799 extn 2063 if you prefer.

Thank you.

Juliet Thompson

QUESTION SHEET

How long have you been a Family Court Judge?

Have you received any specific training related to domestic violence?

What are the most common issues that arise in dealing with making ex-parte protection orders?

Dealing with respondents who challenge the ex – parte orders?

Dealing with breaches of the order?

Do you believe that your views about domestic violence have changed since you became a Family Court Judge?

In your experience what do you see as the causes of domestic violence in relationships, does the power and control model fit in with what you see on a day to day basis?

Can you think of one particular experience or case during the course of your work that has made a lasting impression on you?

As the person who ultimately makes the final decision about protection orders, do you feel that there is sufficient collaboration amongst service providers (i.e. police, lawyers, social services) in providing timely and effective support for victims and abusers?

What comes to mind when I say 'fathers' rights groups'?

Is there anything else that you would like to talk about?

CONSENT FORM

I have read the information sheet for this study and have had the details explained to me. My questions about the research have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I also understand that I am free to refuse to answer any particular questions, withdraw from the study, and to withdraw any information supplied at any time.

I agree to provide information to the researcher on the understanding that it is completely confidential and will not be used for any purpose other than this research.

I agree to the researcher audio-taping the interview, and know that I have the right to ask for it to be turned off at any time during the interview. I am also aware that I may have my tape returned to me at the conclusion of the research.

I understand that the researcher may use brief direct quotations from the interview in her reports of the study provided these do not identify me in any way.

I wish to participate in this study under the conditions set out on the information sheet.

Signed: _____

Name: _____

Date: _____

RETURN OF AUDIO-TAPE AUTHORITY

This form will be held for a period of five (5) years

I confirm that I have had the opportunity to read and amend the transcript of the interview/s conducted with me.

I agree that the edited transcript and extracts from this may be used by the researcher, Juliet Thompson, in reports and publications arising from the research.

At the conclusion of the research I understand that I am able to have the audio-tape of my interview returned to me. If I do not want it returned I understand that it will be destroyed.

I wish to have my audio-tape returned to me

I do not wish to have my audio-tape returned to me

Signed: _____

Name: _____

Date: _____

TRANSCRIPTION KEY

(Judge A, 1-4) = Judge identifier and transcription passage number

[interviewer talking] = Speech or encouragement from the interviewer

Underlined = Underlined words indicate an emphasis in speech

(.) = less than one second pause

(1) = more than one second, less than two seconds pause

(2) = more than two seconds, less than three seconds pause

(3) = more than three seconds, less than four seconds pause