Talking Responsibility: Discourses of Accountability at the Waitakere Family Violence Court.

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"We must be able to imagine a life free of violence for us to be able to achieve it"

Merepeka Raukawa-Tait

So I dream every night of a world where violence is unimaginable

ABSTRACT

To meet the six aims of the court's protocol, the operations of the court need to be effective from a variety of different vantage points: from perspectives of victims and defendants, the judiciary and court administration, and also from the perspectives of community organisations, lawyers, police and community probation. This research was undertaken as part of a wider project to assess the extent to which the court protocols are effective in achieving the court's aims from the point of view of all those who take part in translating the court's principles into everyday practice. These perspectives are all vital to the dynamic process through which the state, the judiciary and the community collaborate at Waitakere (holistic accountability).

Interviews and focus groups were conducted with court professionals practicing from diverse vantage points in the WFVC process. Through a discursive analysis of interview data it was evident that offender accountability was interpreted differently among participants, and variations in interpretations co-articulated with different perspectives in understanding the philosophy of therapeutic jurisprudence, its relationship to procedural justice, and the responsibility of the court to provide legal protection for victims. This thesis is an analysis of court participants' interpretations of offender accountability and how these interpretations are produced through different theories of justice. Constructions of domestic violence and accountability are analysed to show how dominant constructions reproduce victims' responsibility for their own safety.

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Ever present for me are the families within Waitakere communities who inspire the vision of living free from violence.

Love and hugs
Sarah

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CHAPTER ONE

INTRODUCTION

This research has grown from a chance meeting between Mandy Morgan, Leigh Coombes and Judge Recordon at the 29th International Congress on Law and Mental Health, July 2005, in Paris. After listening to a presentation given by Mandy and Leigh, Judge Recordon took them for a beer and asked them if they were interested in evaluating a court he was part of. The court was the Waitakere Family Violence Court (WFVC) and, although it had been running in various forms since 1992, no evaluation of the court had yet been undertaken. On returning from Paris Leigh and Mandy asked if I would like to be involved in the project and what followed were many conversations, emails and visits to Waitakere, by Leigh, Mandy and I, to meet the stakeholders in the WFVC and to negotiate the form the research took. Here began the undertaking of a collaborative programme of evaluative research with the WFVC. The court involves professional, state and community agents in a dynamic response to family violence. The Waitakere Family Violence Court and its stakeholders are supportive of the need for the court to be evaluated as they are deeply committed to doing something different that will help victims of family violence and reduce the occurrence of family violence in their community.

This thesis is the fifth product to come from the independent evaluation of the WFVC that has now been running for two years. The overall evaluation of the WFVC protocols is primarily interested to know to what extent the court protocols are effective in achieving the court's aims as documented in the 2005 protocols. The first report utilised a narrative analytic strategy to evaluate the evolution and current processes of the court, based on day-to-day experiences of people who worked in the court (Morgan, Coombes, & McGray, 2007). The second report provided statistical information on the implementation of the WFVC protocols (Coombes, Morgan, & McGray, 2007). An evaluation of how the court may enhance victim safety was completed in December 2007 and this is currently being extended to address how victim advocacy services provided in relation to the court are understood by those who use them. How the protocols of the court are effective in facilitating accountability of offenders, based on the experiences of those who have been through the WFVC (i.e. perpetrators of family violence), is a question being

addressed in ongoing projects in the programme of evaluation that is underway and will continue in 2008 and beyond.

Current Study

In deciding what to focus on for my research, I started with the 'simple' question that kept coming up in conversations with stakeholders - "tell us if it's working". To start to untangle this question, I first asked "what is working and what is the WFVC trying to do?" To answer this question I focussed on the six aims in the protocol, and moved the question to; "is the WFVC achieving their aims?"

The current protocols the court practices were implemented in 2005 and are unique in New Zealand. The aims of the 2005 protocol are:

1. To minimise systemic delays in Court process
2. To minimise damage to families
3. To concentrate specialist services within the Court Process
4. To protect the victims of family violence consistent with the rights of defendants
5. To promote a holistic approach in the Court response to family violence
6. To hold offenders accountable for their actions

The first two aims are concerned with timeframes, but are timeframes an end goal in themselves or a means to achieving a desired outcome? The second two aims; taking a holistic approach and concentrating specialisation in the court raised similar questions.

Based on conversations with the stakeholders it was clear that timeframes, holistic approaches and specialisation were connected to other, broader goals, and so my question became: what is this outcome they desire? I concluded that the first four aims are in fact processes that are recognised as international best practice and attend to the two key objectives of the WFVC: victim safety and offender accountability.

Focussing on victim safety and offender accountability I felt closer to at least being able to start to answer whether the court was working, but when I started to look at court professionals' talk around victim safety and offender accountability I hit a stumbling block: what is meant by offender

accountability? It is a term used often but so rarely discussed it appears to be taken for granted. Is it strategy in achieving enhanced victim safety or is it independent of victim safety?; is offender accountability about getting more guilty pleas?; or is it about appropriate punishment? If it is about guilty pleas, then yes, the court is working (Coombes et al., 2007). But if 'accountability' means something else, then the question of whether or not the court is working remains unanswered. This research project undertakes to explore how offender accountability is understood within the fields of domestic violence and the criminal justice system, and analyse how offender accountability has been taken up in a therapeutic court by the court professionals at the WFVC. Examining different constructions of offender accountability allows me to attend to the meanings of accountability and their relationship with the practice, processes, successes and challenges of the court.

Working with qualitative data collected from interviews and focus groups with community victim advocates, lawyers, police, community probation, Judiciary and court administration I set out to explore how accountability is understood by these professionals who work in the WFVC. The research draws predominantly from a critical social psychology paradigm in its understandings of language, knowledge and power. How we understand and experience the world is produced through the language available to us (Banister, Burman, Parker, Taylor, & Tindall, 1994; Davies, 2007; Parker, 1990). This research is also informed by feminist theory and aims to be part of an ongoing body of work in this area that continues to challenge the current social and legal practices that minimise women's experiences of domestic violence.

My Position

I undertook this research in part to continue to draw attention to the issue of domestic violence and the barriers to ensuring protection and safety from ongoing abuse for victims. In talk of domestic violence there continues to be a common-sense understanding that a victim of domestic violence is in some way responsible for the violence against her that is not present in the talk about victims of stranger violence (Gavey & Towns, 2005). I set out to challenge social practices that continue to legitimate discourses that hold victims responsible for the violence perpetrated against them, and to change the question from "why didn't she leave", to "why does he beat her?" In this research I analysed respondents' talk around understandings of domestic violence because different representations of domestic violence bring in to view the various subject positions made available to offenders, and I was interested in how each representation works to

mitigate or emphasise offenders' responsibility for their violent behaviour. The reproduction of the various representations of domestic violence work to create a background of what is normal and acceptable when negotiating meanings of accountability.

What's in a name?

> Although battering is rooted in gendered notions of entitlement and of the roles men and women should play in heterosexual relationships and although the vast majority of such crimes are committed by men against women, violent criminal behaviour by one intimate against another is not defined in gendered terminology (Frederick & Lizdas, 2003, p.37).

When talking about violence in this project I struggled with the various terms that were used to refer to the problem at the heart of the court's intervention: violence against women within families. I considered family violence, domestic violence and intimate partner violence. All three of these terms fail to address the gendered nature of the violence. In Waitakere, as is also the case New Zealand wide and internationally, the overwhelming majority of victims of domestic violence that come before the court are women or girls, most being intimate partner violence (Coombes et al., 2007). Men's violence against women, however, excludes the few other family relationships that involve violent offences and appearances at the WFVC. From sitting in the court over a period of months I observed that there were a few instances of violence between brothers, elder abuse by a father's son, and a couple of instances of young women assaulting a member of their family. Using terms that remain gender neutral are problematic as they suggest mutual responsibility for the violence (Gavey & Towns, 2005). Mutual responsibility acts to silence women talking about the violence they experience as it creates uncertainty around what violence is, who the perpetrator is and who the victim is (Gavey & Towns, 2005).

While I acknowledge that the WFVC deals with cases other than men's violence against women, and the use of gendered language acts to silence their experiences, it is personally and politically important to me that my research takes a form that attends to the gendered nature of domestic violence. My preference would be to use gendered terms throughout my research but I found when writing that to do so lost the context of the area of study of my research. I have used 'violence against women' wherever possible, predominantly in sections discussing the feminist women's movement, and hope it is enough to keep it visible. In the main, however, I have relied on the terms domestic and family violence. Domestic violence is the term adopted by most courts internationally. In the New Zealand context the term family violence is more commonly used and is the term that has been adopted in New Zealand Government polices addressing violence

against women. The term intimate partner violence is used only when referencing other research and reports to be consistent with their language and findings.

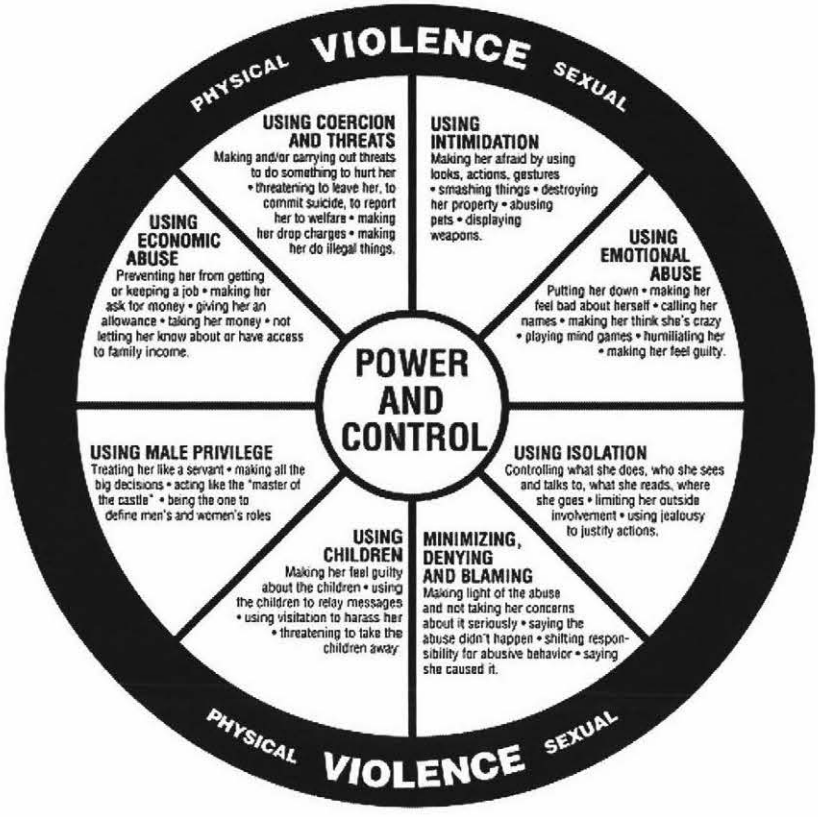
Understanding Violence Against Women

> Homicides due to interpersonal violence substantially outnumber war-related deaths and for every homicide there are thousands of non-fatal cases (World Health Organization, 2002, p.ix).

Violence against women is an endemic social problem that occurs within families from all cultures, classes, backgrounds and socio-economic circumstances (Ministry of Social Development, 2002). When trying to understand what constitutes violence against women it is important to be mindful that we are not dealing with a homogenous and universal phenomenon that is understood or experienced in the same way by all victims and their abusers. How violence against women is experienced is mediated by contextual and social factors. Victims of violence against women who are members of minority groups also experience "other forms of inequality and oppression, such as racism that constrain and shape their lives in different ways" (Sokoloff & Dupont, 2005, p.39). Violence against women cannot be separated from the political, social and cultural settings in which it occurs and we need to take an approach to understanding violence that remains mindful of the systems of power and privilege in place (Sokoloff & Dupont, 2005) and takes account of the ways in which some women are victimised not only by their partners but also by institutional forms of racism, ongoing practices of colonisation and marginalisation of difference.

While the lived experience of violence against women for victims is diverse, there is some convergence and a place for shared understanding. Violence against women is widely recognised as an ongoing pattern of economic, psychological and physical control over the victim by their abuser (Coombes, Morgan, McGray, & Te Hiwi, 2008; Goodman & Epstein, 2005; Mirchandani, 2006; Pence & McMahon, 1999; Stewart, 2005; Stubbs, 1994). Based on the Duluth model of power and control (Figure 1) violence against women can involve many different events that in isolation may feel trivial but actually belong to an ongoing systematic practice of violence used by the abuser to control the victim through creating and maintaining a climate of fear (New Zealand Women's Refuge, 2008).

Figure 1: Duluth Power and Control Wheel



Source: Minnesota Program Development, Inc., Domestic Abuse Intervention Project, 206 W. 4th Street Duluth, MN 55806.

It is estimated that that between 3 and 4 million women experience severe abuse each year in the United States (Stark & Flitcraft, 1996; Tsai, 2000). In The United Kingdom an average of 2 women a week are killed by a male partner or former partner, while one incident of family violence is reported to the police every minute (HMCS, Crown Prosecution Service, & The Home Office, 2005). In New Zealand the estimated prevalence rate for violence against women commonly agreed by service providers in Aotearoa/New Zealand is 14% (Snively, 1994). The New Zealand Safety Survey (Morris, 1997) estimated that 15-21% of women had experienced physical abuse and 44-53% had experienced psychological abuse[1]. In 2005 police attended a

[1] Although this estimate is now dated, the network of specialised family violence researchers in Aotearoa/New Zealand have agreed that no further research on prevalence is warranted because there is sufficient evidence of a serious social problem and resources for research should be directed elsewhere (Personal correspondence, Dr Mandy Morgan 15th June 2008)

recorded 56,380 POL 400[2] occurrences; and over half the murders in New Zealand each year result from family violence (Boshier, 2006). Between 2000 and 2004 there were 121 people murdered in family violence related incidences (New Zealand Family Violence Clearinghouse, 2007). There are also significant overlaps between male violence against female partners and child abuse and neglect (Fanslow, 2002).

Violence against women and its gendered nature remains a highly debated area. Recent research has proposed that women are as violent as men towards their partners (Archer, 2002; Ferguson, Harwood, & Ridder, 2005). These findings are based on general population surveys using the conflict tactics scale (CTS). CTS measures single acts of violence during a limited time set. The CTS fails to capture the complex and ongoing nature of violence that occurs in domestic relationships (New Zealand Family Violence Clearinghouse, 2007a). It misses the context, meaning, motivation and consequences of violence and excludes sexual violence, stalking and violence by ex-partners (Taft, Hegarty, & Flood, 2001).

Research that reports women are just as violent as men also does not account for deaths resulting from domestic violence in which women are overwhelming more likely to be victims. In New Zealand, between 2000 and 2005, 45 women were murdered by their male partner or ex-partner compared to 3 men killed by their female partner or ex-partner (New Zealand Family Violence Clearinghouse, 2007b). In the United Kingdom in 2003/2004 nearly 40% of all female homicide victims were killed by their male current or ex-partner compared with about 5% of male homicide victims who were killed by their female current or ex-partner (HMCS et al., 2005). In the United States between 1975 and 2005 the pattern is very similar. Female murder victims in every age group are more likely to have been killed by their partner or ex partner than male murder victims (Bureau of Justice Statistics, 2007). One third of women murder victims were killed by their partner or ex partner compared to only 3% for men, and while the proportion of men being murdered by their partner or ex-partner is dropping, it is increasing for women (Bureau of Justice Statistics, 2007; Wolf, Aldrich, & Moore, 2004).

Johnson (2006) explains the difference in findings between gender symmetry and asymmetry by concluding that domestic violence is not a single phenomenon and by looking at the level of

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[2] A POL 400 from is completed by the police for every family violence situation they attend regardless of whether it results in arrest. With increasing awareness of family violence and changes in police coding in 2005 we would expect to see increase in POL 400s without it necessarily corresponding to increases in family violence occurrences.

power and control that accompanies different forms of violence outcomes. "Terrorist violence" (control) and "resistance violence" occur as a consequence of a gendered process of domination and subordination and a systemic and structural process of exploitation and deprivation including psychological abuse (Stark, 2006). In such cases, women who perpetrate violence against their partners do so to resist the ongoing terror of systematic abuse by their abusers. Johnson found little evidence (around 3%) of women using violence as part of an ongoing systematic control strategy, that is, the violence perpetrated by women does not go along with sexual control, emotional abuse, economic control, threats, intimidation, punishment, and isolation that characterises the gendered process of "terrorist violence".

When trying to understand the phenomenon of gendered partner violence we need to also remain aware of the occurrence of minimisation which can have a serious effect in relation to interpreting prevalence statistics Minimisation is a common coping strategy for women of domestic violence, especially in surveys (Boonzaier, 2008; Piispa, 2002). It is also common for women to take on feelings of being to blame for the violence (Boonzaier, 2008). The process of minimising violence against them and overestimating their part in the abuse leads to many victims of violence under-reporting their victimisation.

Research working with samples drawn from police intervention, shelters and court is predominantly dealing with people that have experienced "terrorist violence", gendered processes of ongoing violence which is often escalating and involves more severe types of physical violence accompanied with various mechanisms of control, including intimidation and fear. This type of abuse is unique to women victims in the area of domestic violence: there is no equivalent in research for men (Stark, 2006). Terrorist violence encompasses more than being physically hurt. It is about the long term effects of being abused, and highlights the importance of looking at more than isolated incidents of violence and the need to understand domestic violence within a wider context.

Domestic violence within a legal context predominantly involves a pattern of male violence directed at an intimate female partner or ex partner (Johnson, 2006). Even though the legislation related to domestic violence does not use gendered terms, the social phenomenon is gendered and involves a deliberate strategy to exert power and control over others (Mirchandani, 2006; New Zealand Family Violence Clearinghouse, 2007a; Shepard, 2005; Stewart, 2005).

Domestic violence within this context is embedded in social power relations; it is not only about an individual's issues of control (Stark, 2006). There are already in place gendered social structures that assist the abuser and these social sanctions are not available to women in the same way (Stark, 2006). "Women are available for this regulatory regime only because sex discrimination persists and because they remain default homemakers and caretakers. It builds on normative stereotypes which makes it hard to distinguish where sexist constraints end and personal regulation of domestic routines begin" (Stark, 2006, p.1022). Male perpetrators of domestic violence draw from socially available discourses of masculinity, in particular male dominance and entitlement to explain the violence (Boonzaier, 2008; Towns & Adams, 2000). This is very apparent when talking to women about sexual violation; women are expected to be sexually available to their men, sex is an entitlement of a husband, (Boonzaier, 2008) and sexual abuse and coercion are justified by this entitlement. Women experience sex with their partner as "being like rape" accompanied by shame and humiliation but drawing on constructions of men as sexually active and female sexuality as passive (Boonzaier, 2008) it is normalised and rarely reported.

Understanding violence against women as systematic, patterned and socially sanctioned, and involving many forms of violence including physical, sexual, social, emotional and financial that are part of an ongoing pattern of control, has led me to examine the history of the legal system in relation to domestic violence. I have focussed on the development of government policy and changes in the justice sector system over time to put the understandings of those who work in the Waitakere Family Violence Court in an appropriate context.

CHAPTER TWO

DOMESTIC VIOLENCE AND THE JUSTICE SECTOR

OVERVIEW

Until very recently violence against women was seen as a 'private matter' that did not warrant state intervention. A concerted effort since the late 1970s by the women's movement has been responsible for raising the issue of the effects of violence against women and advocating for social change (Crocker, 2005; Goodman & Epstein, 2005; Holder, 2001). As part of social change advocacy there has been a call to place violence against women squarely into the realm of the western justice system. Up until the 1980s there was little legal recourse for women victims of men's partner violence. For example, in New Zealand until 1984, there was immunity from prosecution for husbands raping their wives as long as they were living together at the time (Robertson et al., 2007). When a domestic violence case did reach court it was commonly treated with more leniency than similar acts of violence against strangers (Bennett, Goodman, & Dutton, 1999). Legal change is seen by many as critical to changing social sanctions that allow violence against women (Crocker, 2005). From the 1970s onwards there was a directed push by advocates for the criminalisation of all types of domestic violence and for domestic violence to be taken seriously by the courts (Holder, 2001; Tsai, 2000).

The criminalisation of domestic violence has occurred historically at the same time as a movement within the justice sector for court innovation in the way that courts can address social issues occurring in communities that lead to crime. This movement has resulted in the advent of problem solving courts. In relation to violence against women, the philosophy of problem solving courts has many commonalities with the women's movement, such as a recognition that domestic violence needs to be taken seriously and the call for a court system that is focussed on victim safety. However it is important to note that problem solving courts did not result directly from the women's feminist movement and therefore, philosophically, their aims are sometimes in tension, in particular with regard to recognising domestic violence as a gendered problem.

DOMESTIC VIOLENCE LEGISLATIVE CHANGE

Since the 1970s there has been increasing demands for violence against women to be understood as a serious concern for everyone, including the government, rather than as a private issue to be dealt with behind closed doors. These demands have resulted in many changes in the justice sector in New Zealand and other western countries. These changes have been accompanied by major legislative and government policy reforms (Goodman & Epstein, 2005). In 1982 the Domestic Protection Act was passed in New Zealand. This provided the ability for women to obtain non-violence orders against abusive partners. Breaches of an order were a criminal offence. The introduction of this Act meant that the police became more involved in domestic disputes, although police on the whole continued to treat breaches and incidents of domestic violence as a private matter that did not warrant their involvement. Police commonly adopted the "crisis intervention approach" that included counselling and providing mediation when called out to a domestic violence incident; arresting the abuser was often the a last resort (Carswell, 2006; Goodman & Epstein, 2005; Tsai, 2000).

In 1985 a conference was held in Porirua that brought together government and non-government agencies to discuss coordinating interventions into domestic violence (Carswell, 2006; Judge PD Mahony, 2003). The conference saw the establishment of the Family Violence Prevention Co-ordinating Committee (FVPCC) to coordinate and oversee the development of coordinated interagency approaches in the area of family violence. Along side the establishment of the FVCPP, New Zealand witnessed a greater than ever focus on domestic violence in terms of increasing awareness and educating the public about domestic violence. Services in the area of domestic violence started to have a greater profile and voice, particularly the women's refuge movement (Thompson, 2005). The FVCPP also lobbied for police to adopt a pro-arrest policy in New Zealand (Carswell, 2006).

Changes in policing

With the introduction of the pro-arrest policy in 1987 in New Zealand, and continued pressure by advocates to seriously address violence against women, has seen police take "a far more consistent view of the seriousness of domestic violence" (Mather, 2004, p.2). The pro-arrest policy in New Zealand gave the police the ability to arrest perpetrators of family violence without having to rely on victims laying complaints when adequate evidence existed that a crime had been committed. This change in police practices in New Zealand mirrored changes that were

happening in other western countries that were also implementing mandatory arrest policies (Ford, 2003; Goodman & Epstein, 2005; Mazur & Aldrich, 2003; Tsai, 2000).

Mandatory arrest policies were examined through six studies undertaken in the United States known as the spouse assault replication program (SARP). The first experiment conducted as part of the programme was in Minneapolis and was replicated in five other cities. The researchers of the Minneapolis study concluded that arrests resulted in no increase in harm for victims and at times could improve things (Miller, 2003). Other studies looking at the effects of mandatory arrests have since been conducted but the findings of the first studies have never been replicated and remain inconsistent (Ford, 2003; Goodman & Epstein, 2005). Researchers suggest caution in the use of the findings (Lewis, Dobash, Dobash, & Cavanagh, 2001). Using data from the SARP project Miller (2003) concluded that arrest has only a moderate short term effect on reoccurring domestic violence. Other studies have found that the effectiveness of arrest is dependent on the other factors; for example, there is some evidence that arrest is most effective when the offender has something to lose, such as his employment (Dobash & Dobash, 2000; Jordan, 2004).

Accompanying pro-arrest policies was the adoption by police prosecutors of a policy of no-drop prosecutions; this meant that victims were not in the position to ask for charges to be withdrawn. Both of these practices are current practice in New Zealand and influence processes of the Waitakere Family Violence Court. Pro-arrest and no-drop policies are driven by a mandate of victim safety and especially a desire to protect victims from ongoing intimidation and violence by perpetrators once charges have been laid by the Police. The New Zealand Police Family Violence Policy (NZPFVP), first implemented in 1993, also aims to act as a general deterrent by sending a strong message that domestic violence is a crime (Carswell, 2006). The NZPFVP acknowledges the importance of coordinated approaches that promote holistic approaches to family violence (Carswell, 2006). This goal is shared with the WFVC in their commitment to coordinating the court response with police responses.

Domestic Violence Act 1995

The United States witnessed the passing of the Violence Against Women Act (VAWA) in 1994, which provided a nationwide legislative requirement for the criminalisation of domestic violence (Holder, 2001). In New Zealand the justice sector's ability to respond to domestic violence was also enhanced a year later with the implementation of the Domestic Violence Act (1995). This

remains the major piece of legislation concerning domestic violence in New Zealand. The Domestic Violence Act (1995) has two main goals; ensuring effective legal protection for victims of domestic violence, and promoting the view that all forms of domestic violence are unacceptable behaviours. The Act expanded the definition of domestic relationship to include not only partners but any family member and flatmates. It also provided an expanded definition of domestic violence to include psychological abuse, sexual and physical abuse *where* they occur in a pattern of behaviour against the victim.

Protection orders are at the core of the Domestic Violence Act, and they offer protection from both violence and contact. Protection orders are applied for through the family court and breaches of orders are prosecuted through the district court. The Domestic Violence Act (1995) also has a rehabilitative focus. Respondents of any successful applications for a protection order are required to attend a court-approved education programme. Funds are also available for protected persons and children to attend court-funded programmes if they choose to.

When the Domestic Violence Act was introduced in New Zealand there were high hopes that it would lead to greater protection for victims of family violence. Sadly, research has found that the intention of the act has not yet improved victims' safety or effectively prevented respondents from breaching the orders (Robertson et al., 2007; Towns & Scott, 2006). The cost of protection orders makes them prohibitive for many victims to obtain (Hann, 2004). In 1999 there were 6250 applications for protection orders, of which 62% became final orders, but every year applications for protection orders, and the number of applications that become final protection orders, have been decreasing. In 2006 there were 30% fewer applications for protection orders than in 1999 (New Zealand Family Violence Clearinghouse, 2007b). This is likely to be because protection orders have been found to be fairly ineffectual in protecting victims of family violence (Judge Castleton, Castleton, Bonney, & Moe, 2005; Robertson et al., 2007). Refuges in New Zealand reported that women had lost confidence in the justice system and found protection orders worthless (Hann, 2004).

The WFVC employs the Domestic Violence Act (1995) definition of domestic violence and deals with cases that include a wide spectrum of charges (Coombes et al., 2007), including prosecuting breaches of protection orders. The WFVC, however, does not issue protection orders as this falls under the jurisdiction of the family court. Currently there is little coordination and information

sharing between family court and district court; this was raised as an area of concern in a recent evaluation of the Domestic Violence Act (Robertson et al., 2007).

Evidence Act 2006

Another legal reform undertaken more recently, concerns changes to the Evidence Act (2006). These changes, introduced in 2007, have affected the evidence that can be presented in court. Where victims later recant their statements or refuse to cooperate with prosecution, their initial statement can be used by prosecutors to assist the case. Spousal immunity has been removed which means witnesses can be subpoenaed to give evidence against their married partner. Greater safety for victims has been incorporated into the court proceeding by allowing witnesses who are fearful of the accused to give evidence on video-tape or behind a screen. In cases where the accused is representing himself, he cannot cross examine the complainant without first attaining permission from the judge. Judges now also have the ability to disallow questions to witnesses based a various criteria including improper or misleading questions (Ludbrook, 2007). Changes to the Evidence Act (2006) hold some potential in strengthening the WFVCs ability to keep victims safe during the court process, and reduce the number of cases that proceed to defended hearings on the premise the victim is unlikely to testify.

Domestic Violence Government Policy Reforms

The current decade has seen increasing government focus on the problem of family violence in New Zealand. In 2002 the Ministry of Social Development released Te Rito, a policy document outlining the government's strategy for the prevention of family violence. Te Rito acknowledged the government's responsibility to keep people safe from family violence, so family violence initiatives needed to hold victims' safety as paramount (Ministry of Social Development, 2002). They also stressed the importance of holding offenders accountable by "consistently enforcing protection orders under the DVA" (Ministry of Social Development, 2002, p.22). Responsibility for holding offenders accountable was given to courts and the justice sector as a whole. Te Rito also recognised the need for collaboration across sectors and with communities to provide effective prevention against family violence. It also acknowledged communities' rights and responsibilities to be involved in family violence prevention initiatives. "Communities have a collective responsibility to prevent violence in families/whānau. Communities should be encouraged, guided and supported to develop their own local solutions to family violence prevention" (Ministry of Social Development, 2002, p.13).

Government support for collaborative community initiatives was not new; in 1991 the FVPCC established a pilot intervention project in Hamilton called the Hamilton Abuse Intervention Pilot Project (HAIPP) (Busch & Robertson, 1994; Carswell, 2006). The HAIPP was directly adapted from the a project setup in Duluth in the United States The Duluth Domestic Violence Intervention program (DAIP) is a community collaboration which works on the basis that victim safety requires dynamic community based solutions. All agencies involved in the DAIP share a common philosophical approach. The priorities of victim protection, accountability and deterrence guide all practice of the DAIP (Pence & McMahon, 1999). In relation to pro arrest policies, studies have found that arrest is more effective when it is implemented as part of a wider coordinated intervention (Jordan, 2004). Through the collaboration of all sectors the victim is supported and kept safe while keeping her informed and involved in the court process. This finding supports DAIPs model of interagency collaboration as best practice for effective interventions preventing violence against women.

In 2006 the New Zealand Government released the first report from the Taskforce for Action on Violence within Families. It contained four key areas for action; leadership, changing attitudes and behaviour, ensuring safety and accountability and providing support services. Ensuring victim safety and accountability was made the responsibility of the justice sector and early implementations of this initiative was the establishment of four specialised family violence courts, in Lower Hutt, Porirua, Masterton and Auckland City. There has been little released about the rollout of the four courts. There are concerns about the speed in which the courts have been implemented and the lack of community consultation in the process (Robertson et al., 2007). There have also been calls for the courts not to go ahead until further research has been done in the effectiveness of the two current courts in Waitakere and Manakau (Robertson et al., 2007). In 2007 an update report was released by the Taskforce which has announced the establishment of two further family violence courts (Taskforce for Action on Violence within Families, 2007).

The Criminal Legal System: Problems

With the introduction of mandatory arrest policies, no-drop prosecutions, the Domestic Violence Act and various policy changes, the past 10 years has seen an increasing number of domestic violence cases entering the criminal court system. However with the increasing number of domestic violence cases, the traditional criminal legal system has come under increasing and extensive criticism by researchers and victim advocates for its inability to deal with domestic

violence in ways that attend to the needs and safety of victims (Bennett et al., 1999; Curtis-Fawley & Daly, 2005; Dobash & Dobash, 2000; Holder, 2001; Jordan, 2004; Robertson et al., 2007; Tsai, 2000). Research identifying current issues with the legal system when dealing with domestic violence centres on the courts (in)ability to protect victims, widespread lack of understanding of the dynamics of domestic violence, and the law's failure to attend to the gendered character of domestic violence.

The dynamics of violence against women are complex, and differ greatly from violence that is perpetrated against strangers. Victims of domestic violence are far more likely to be re-victimised by their abuser than victims of stranger violence (Hart, 1993). Victims of domestic violence are at the greatest risk when they are attempting to leave the relationship and/or seeking legal redress (Fritzler & Simon, 2000; Jordan, 2004). There are also the issues of power and control that need to be considered. Victims of violence against women are often economically tied to their abuser and socially isolated during abusive relationships (Fritzler & Simon, 2000; Pence & McMahon, 1999; Wolf et al., 2004).

When dealing with violence against women the criminal legal system has traditionally ignored the gendered character of domestic violence (Pence & McMahon, 1999). The adversarial court processes of the criminal legal system rest on the assumption that those before the court are separate, autonomous individuals with equal power: an assumption that takes no account of the ongoing relationship between victims and offenders (Pence & McMahon, 1999). The western legal system's abstract assumption of a universal rational subject tends to mirror the norm of the dominant group which leads to a legal system that makes its decisions based on the values of white middle class males (Hudson, 2002). Taking for granted assumptions about separate individuals making rational choices result in a legal system "that takes little notice of the diversity of behaviours that might equally be reasonable" (Fox, 1997, p.230).

When the criminal justice system does not take account of the gendered dynamics of violence against women, it becomes part of the process that keeps in place gendered social power relationships that contribute to domestic violence. Behaviour that is deemed to be rational and reasonable is rewarded by being accepted while other behaviour is questioned (Hudson, 2002). When the criminal justice system assumes that behaviour is rationally chosen, the process of questioning the 'other behaviour' becomes focused on the victim. Questioning victims' behaviour leads to a distinction between good and bad victims that is based on an assumption that victims

have a choice about their victimisation (Jordan, 2004). To be deserving of legal protection, women need to be seen to be acting in a rational and reasonable manner in the eyes of the legal system.

Historically there has been a low conviction rate for domestic violence related charges that is often attributed to victims' unwillingness to testify. However, court practices have traditionally ignored the ongoing character of victims' relationships with offenders and have done little to support or protect victims of domestic violence while they are involved in adversarial court processes. Adversarial processes put victims at greater risk and the process of giving evidence often re-victimises her while demanding that she remain a credible witness. Leaving a violent relationship and/or seeking legal intervention can increase the chances of being abused or killed (Ford, 2003; Frederick & Lizdas, 2003). Victims who do seek legal intervention often experience threats and intimidation and retaliatory violence (Jordan, 2004). Research has shown that around 30% of victims are re- assaulted in the early part of any court action (Hart, 1993; Jordan, 2004). The act of leaving relationships can further increase the risk of further abuse after arrest, Klein and Crowe (2008) found that the re-arrest rate was higher for ex-intimate partners than for partners that had stayed.

The decision by victims to not cooperate with prosecution often results in them being understood as wasting resources and time (Cook, Burton, & Robinson, 2005) that could be better spent working with women who are willing to help themselves. Unwillingness to cooperate can be understood as very reasonable considering the real ongoing danger for victims once an arrest has taken place (Coombes et al., 2007). A study undertaken by Ventura and Davis (2005) found that based on the batterers' prior criminal history, victims' fears in cooperating were justified as "many of the domestic violence victims who did not actively participate in the prosecution involved batterers with histories of serious violent crimes" (p.274).

Victims who do choose to participate in a prosecution often experience re-victimisation as part of the process. Defended hearings and trials are often reduced to arguments about the individual psychological attributes of victims (Hartley, 2003). While rules of evidence restrict what can be presented about past violence by the defendant there are fewer restrictions when it comes to presenting character information about the victims (Hartley, 2003). Character assassination is a commonly used strategy of defence lawyers in defending domestic violence charges (Hartley, 2003). Amendments to the Evidence Act (2006) in New Zealand, that gave judges the ability to

disallow questions to witnesses based on various criteria, could reduce this strategy being deployed by lawyers, however the changes are new and their implementation has not been evaluated. While victims may be told they are not responsible for the violence before entering the court process, this is very rarely their experience of the court process. Victims' behaviour is scrutinised and often attributed to provoking the violence.

Crocker's (2005) research on decisions by judges in family violence cases found that understandings of what makes a credible witness in family violence cases draws heavily on gender stereotypes of women. Women who showed concern for the male offender and were not aggressive towards the offender while also presenting unemotional and composed accounts of the violence were most likely to be considered credible (Crocker, 2005).

If a victim does have the courage to come to court and be part of a prosecution they rarely have their entire experience taken into account. The legal process is only interested in isolated incidences (Robertson et al., 2007). After talking to victim advocates, Curtis-Fawley and Daly (2005) concluded that the traditional criminal justice system continues to fail victims of family violence because "criminal proceedings rarely, if ever, validate a victim's understanding of her experiences and rarely acknowledge that she is not to blame for the violence" (Curtis-Fawley & Daly, 2005, p.616). They found that the majority of domestic violence cases proceeding to court were for physical assault. However the legal term "assault" fails to encompass the range of abuse that victims report. Victims are asked for "just the facts" with no space for the victim's experience of the violence or the story of the historical circumstances that led up to the offence.

By privileging physical violence and excluding the history of violence that victims experience, the legal system minimises violence against women. Often breaches of protection orders do not lead to prosecution and it is common for perpetrators of breaches to just receive a warning if physical violence has not taken place (Robertson et al., 2007). If multiple breaches do go to court they are treated as a single event and receive minor sentences. The lack of confidence in protection orders has come about from a cumulative lack of action throughout the justice sector. Research in New Zealand found that women often experienced talk and action from police, lawyers and judges that minimised and trivialised the violence they were experiencing, and blamed them for it (Pond & Morgan, 2005). Domestic violence is often minimised throughout the legal process, when breaches of orders are not policed (Jordan, 2004), when charges are dropped or reduced (Robertson et al., 2007), and when offenders receive minor penalties, if any.

The increasing use of criminal redress for domestic violence comes with a responsibility to keep victims safe (Goodman & Epstein, 2005), but the justice sector's response to domestic violence often ignores the real risk of reporting the violence (Frederick & Lizdas, 2003; Hand, 2001). A justice sector that does not protect victims of domestic violence is "colluding with the abuser and inflicting further abuse" (Anderson, Gillig, & Sitaker, 2003, p.154). There is a need for courts to recognise their responsibility to keep victims of domestic violence safe when entering the court process, to understand victims' needs and how courts are not meeting them, and how not doing so can put the victim at greater risk (Bennett et al., 1999). When dealing with violence against women the criminal legal system needs to attend to gendered social power relationships (Pence & McMahon, 1999) while also realising that the legal system is not separate from or neutral to gendered power relations.

THE CRIMINAL LEGAL SYSTEM: RESPONSES

Emergence of problem solving courts

The last twenty years has been witness to some very positive changes by courts in their treatment of domestic violence cases (Tsai, 2000). Changes have come about through the joining together of two separate movements, the ongoing and increasing pressure from the women's movement for violence against women to be addressed by society, and the emergent group challenging traditional adversarial courts ability to attend to social issues that underlie offending. This has resulted in the development of specialist domestic violence courts, within the framework of problem solving courts.

Problem solving courts recognise the court's potential to attend to chronic social issues that traditional court systems are failing to manage with any success (Shelton, 2007). Problem solving courts have emerged from identifying the difficulties that courts face in addressing the complex underlying social problems of those before the court. The original problem solving court was a drug court established in Miami in 1989 (Farole Jr, Puffett, Rempel, & Byrne, 2005). Since then, similar specialist courts have developed to address underlying social problems such as juvenile drug use, mental health issues, and homelessness (Farole Jr et al., 2005). Specialist domestic violence courts have also emerged from this movement.

Problem solving courts can be understood as a set of principles and practices. They share a principle that the criminal justice system can and should play a role in resolving social problems

and that the court should be considered as part of the problem solving process itself. Problem solving courts practice by recognising that the court has coercive power that can be used to change people's behaviour (Wolf, 2007). Since they are focused on solving problems, they are non-adversarial (Farole Jr et al., 2005) Specialised Domestic Violence Courts (SDVCs) share the same principles as other problem solving courts, as well as needing to pay attention to the ongoing safety of victims. SDVCs have at their heart two key goals; victim safety and offender accountability (Hart, 1998; Holder, 2001; Keilitz, 2001; Sack, 2002; Stewart, 2005; Wolf et al., 2004). SDVCs recognise that handling domestic violence cases using the traditional adversarial process can greatly exacerbate the problems faced by victims (Fritzler & Simon, 2000; Johnson, 2005). They also acknowledge the need for cooperation with other government and non-government agencies working in the community and for institutional responsibility when dealing with domestic violence (Judge Castleton et al., 2005).

The first SDVCs came before any centralised government policy or agenda around domestic violence. They were born from local initiatives driven by people in the justice sector and the community who recognised that current legal interventions were not working to bring about any meaningful change for victims of domestic violence. In the United States there are now well over 300 specialist family violence courts (Sack, 2002; Shelton, 2007; Stewart, 2005), Canada has domestic violence courts in five main cities, and the province of Ontario has set up 55 specialist domestic violence courts (Stewart, 2005). The United Kingdom piloted five SDVCs from 2002 and now has over 60 courts in operation (Baird QC, 2008). In New Zealand, specialist family violence courts have been established in Waitakere and Manakau[3] for many years. More recently established courts have been set up as government initiatives. Courts specialising in domestic violence cases are not advocated by everyone; some argue that domestic violence should not be treated differently from other crimes because this practice continues to minimise family violence and means it is not taken as seriously as other violent crime (Shelton, 2007; Stewart, 2005).

Internationally, courts have been established according to different local needs while fitting into varying legalisation (Shelton, 2007). Courts with diverse structures and processes have been implemented, making it problematic to generalise and categorise different models. Instead, the

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3 Internationally courts are referred to as specialist domestic violence courts; in New Zealand they are called specialist family violence courts. This difference in naming is in part due to the scope of the domestic relationships included. In New Zealand the courts work with the definition of domestic violence from the Domestic Violence Act (1985) that includes all family members and flatmates. Many of the courts overseas only deal with intimate partner violence.

many different types of courts have been understood as part of a continuum. Over time there has developed a shared understanding of the core components or elements that should make up a domestic violence court within a problem solving framework that are international best practice. Courts along the continuum have incorporated all or only some of the recommend elements.

In the United States, for example, the majority of courts have only made a few changes to how cases are processed, in particular focussing on techniques to make the justice process speedier and more efficient with the goal of increasing successful prosecutions. These are often known as fast track systems (Keilitz, 2001). Although an improvement to traditional systems fast track systems continue to be very disjointed, lacking any coordination between the key parties involved (Judge Castleton et al., 2005). If specialist family violence courts are understood as problem solving courts then introducing only fast track systems would not met the criteria for an SDVC. To meet international SDVC best practice, courts must also implement a process aimed at addressing the underlying social problems of those before the court. In particular, courts at the other end of the continuum tend to have a focus on a "high level of interagency collaboration and cooperation" (Stewart, 2005, p.4) between the justice sector, government agencies and community services. It is these courts that are the focus of this research.

Best Practices for Problem Solving Courts

Coordinated community response

Domestic violence is a complex and entrenched social problem and problem solving responses depend on the collaboration of all sectors so that it can be addressed holistically; one segment of society cannot address it on their own (Frederick & Lizdas, 2003; World Health Organization, 2002). Courts that have come about as part of a coordinated community response recognise that domestic violence interventions require a wide range of social interventions to attend to their multifaceted and complex nature, of which criminal justice reform is but one necessary component. SDVCs, as part of a coordinated community response, recognise that the criminal justice sector in isolation is not in a position to stop family violence (Cook et al., 2005; Goodman & Epstein, 2005).

While the development of specialist courts have seen various approaches being implemented, collaboration with the community is understood as critical in terms of best practice in providing any chance of bringing meaningful change for victims (Cook et al., 2005; Mazur & Aldrich, 2003;

Sack, 2002; Standing Together, 2006). In the United Kingdom, a coordinated multi-agency response named 'Standing Together' has been implemented as a response to the crime of domestic violence in the borough of Hammersmith & Fulham. This project has 14 different agencies working together including ADVANCE advocacy service, the Crown Prosecution Service, police, probation, witness services and the West London Magistrates Court. Since its establishment in 2002 it has undertaken yearly reviews of its processes to develop the most effective response to domestic violence. It is this model that the Home Office is promoting for all new SDVCs being established in the United Kingdom (Standing Together, 2006). Standing Together directly references the Duluth model as their guiding framework (Standing Together, 2006).

The Duluth model of coordinated community responses to domestic violence was developed by Minnesota Program Development, which is a non-profit, non-government network of agencies working towards the elimination of violence in families. The Duluth model focuses on women and children's safety (Pence & McMahon, 1999). The model for HAIPP in Hamilton and WAVES in Waitakere is a comprehensive legal intervention that started with the goal of creating cooperation between all agencies in the community and ensuring they were all guided by the common philosophical approach of safety of victims (Pence & McMahon, 1999). The Duluth model is about macro level change that is focussed on changing social institutions and how they deal with domestic violence (Shepard, 2005). It is a model that clearly understands domestic violence as a gendered issue and the need for courts to attend to the ongoing, systematic nature of domestic violence. The Duluth model, at all stages of the coordinated response, privileges victims' understandings and experiences (Pence & McMahon, 1999).

From the outset in 1994[4], The Waitakere Family Violence Court (WFVC) recognised the importance of community involvement for the success of any court initiative. The WFVC was a local initiative put forward by two residing district court judges in Henderson. Judge Shaw and Judge Johnson strongly believed something different had to be done when dealing with domestic violence offences in court because the then Henderson District Court had very low prosecution rates for domestic violence cases. Based on internationally accepted practices at the time, in particular the Duluth Domestic Abuse Intervention Programme (DAIP) and the Hamilton Abuse Intervention Programme (HAIP), the first initiative was the establishment of the Waitakere Anti

[4] For a more extensive background on the evolution of the WFVC please refer to the preliminary report, an evaluation of the Waitakere Family Violence Court protocols (Morgan, Coombes & McGray, 2007).

Violence Essential Services Trust (WAVES). WAVES is an independent community non profit agency that has the role of coordinating the community collaboration, of which the Waitakere Family Violence Court is only a part. WAVES is responsible in coordinating the ongoing development of the court protocols.

The WFVC has worked under varying protocols; changes are negotiated through ongoing collaboration between the court and the members of WAVES. The WFVC has developed from a fast track system that included victim advocates to a problem solving court. From the introduction of protocols in 2001 the WFVC has adopted a more focussed therapeutic approach. In 2005 when they revised the protocol, the aims of the court were expanded to include promoting a holistic approach in the way the court responds to family violence. The six aims of the court protocols, implemented in 2005, are supported by court processes that are unique in New Zealand.

The 2005 protocol also clearly states the philosophy of healing the family is a paramount consideration in the overall management of each case (Waitakere District Court, 2005). The WFVC is an ongoing, dynamic process of learning and making changes within the constraints of normal district court practice. There have been no additional resources allocated to the WFVC during this time from central government. This has created many challenges to date, and continues to do so for the daily practice of the WFVC (Morgan et al., 2007).

Community or Government led collaborations

With the increasing number of domestic violence courts being established in New Zealand and around the western world, the question of how they are established and managed is becoming more contentious (Pence & McMahon, 1999). Rather than the development of courts being directed by independent community based organisations, they are increasingly becoming the domain of the government as the justice sector takes up the role of reform (Pence & McMahon, 1999). This can be problematic and with the establishment of more and more SDVCs as part of government led policy, criticism has been voiced that understandings of what constitutes community are often restricted to criminal justice agencies and other government departments (Frederick & Lizdas, 2003). For coordinated community responses to be effective they need to involve all sectors of a community. Change driven by the justice sector needs to involve adequate processes for community involvement and collaboration in a way that gives community a legitimate voice in the process. This is necessary to address declining public confidence in the

justice sector so that responses to family violence are coordinated (Cook et al., 2005). The WFVC was established after extensive consultation with community and government agencies facilitated by WAVES. The advantage of an ongoing consultation process is that responses can be flexible and attend to strengths and needs of the community.

Support and advocacy for victims

If victim safety is to be the cornerstone of the SDVCs then victims need to be provided with immediate access to advocates (Mazur & Aldrich, 2003). Evaluation research showed that more women victims of domestic violence are being supported since the introduction of SDVCs in the United Kingdom (Cook et al., 2005). Researchers also found a link between supported victims and their increased participation in the justice process. Victims are twice as likely to proceed with court charges when in contact with victim services during the process (Gillis et al., 2006).

In SDVC courts, advocates are responsible for acting on behalf of the victim in court. They also have responsibility for guiding the way in which the judicial system is monitored for victim safety. They cooperate with the judicial system to provide the victim with information and support. Advocacy services are responsible for implementing policies and protocols that protect victims, safeguard against minority discrimination and account for power imbalances between offenders and victims (Pence & Paymar, 1990). Where advocates work as a buffer between the victim and the court they can reduce the risk of harm to victims as well as enabling them to have a voice in the court process without the necessity for them to come to court (Coombes et al., 2008). International research has also linked victim advocacy to reduced rates of recidivism because the women themselves are supported in safety planning (Bell & Goodman, 2001; Cattaneo & Goodman, 2005).

At Waitakere, advocacy services are provided by a tri partisan community victim support network that consists of Viviana, Tika Maranga and Victim Support. Funding comes from community sources. The court also employs victim advisors as required under the Victim Rights Act (2002). The sharing of work between the community network and the victim advisors has been set out in the 2005 protocols which include a document specifically for the provision of victim services. At the WFVC, victim advocates have speaking rights in the court; they provide the court with information on victim safety and take on the role of mediating the relationship between the court and the victim (Coombes et al., 2008). Giving victim advocates speaking rights in the court legitimates victims' right to have their experience of the violence to be taken into account and

shares the responsibility for victim safety with the court. The practice also affirms a victim's entitlement to be provided protection by the court. Since victim advocates speak in court there is no requirement for the victim to attend unless the case proceeds to a defended hearing.

Integration and information sharing

Advocates play a crucial role in collating and sharing information. The SDVC in West London has found that instant information has been crucial for safety (Standing Together, 2003): speedy relay of case results to victims, including bail conditions, gives victims the most time possible to put any safety plans in place. An advocate being able to provide a victim with up-to-date information that affects her safety also reduces the necessity for victims to be at court and lessens her chances of being put in danger during court proceedings (Mazur & Aldrich, 2003).

More recently integrated domestic violence courts are being established to hear both criminal and civil (family) court matters in the same court. In New York, there are now six integrated domestic violence courts in which the presiding judges handle all issues affecting a single family (Mazur & Aldrich, 2003, p.6). Concentrated services for victims are more likely to occur in this setting (Sack, 2002) because it leads to better coordination of services. In Vancouver, combining the courts was the most effective strategy of establishing a domestic violence court. Fritzler and Simon (2000) argue that it has increased victim safety through better co-ordination and a reduced need for victims to seek resolution in different courts.

Prompt prosecution

Reducing systematic delays is one of the six aims of the WFVC, so fast tracking of family violence cases is a priority. To help deal with cases in a timely fashion, the WFVC has adopted a court model that separates domestic violence cases from other criminal cases for hearing by specialised judges. Family violence case files are stamped by the police so when they enter the court system they are easily identifiable. After a defendant's first appearance all (non defended hearing) appearances for bail hearings, monitoring and sentencing occur on a Wednesday in one particular courtroom. This is a common approach of many SDVCs; an alternative is to keep domestic violence cases as part of a normal list court but to give them priority through the court process.

The Winnipeg Domestic Violence Court in the province of Manitoba, Canada, was established with the goal of keeping case disposal within a time frame period of 3 months (Ursel, 1994). The Winnipeg Domestic Violence Court was well resourced to ensure it achieved the goal of

expeditious court processing. The court started with 28 hours of court time per week. Within the first year this doubled to 52 and by the second year had doubled again to 105 hours a week (Ursel, 1994). The Winnipeg experience highlights issues that accompany an increased focus on domestic violence. With increasing arrests by police under mandatory arrest policies courts experience an increase in domestic violence cases. In Winnipeg the level of resources made available matched increasing workloads and over the first three years the court was able to achieve its stated goal of a three month processing time of cases (Ursel, 1994). A later study of Winnipeg Domestic Violence Court has found that although they are dealing with cases in a timely fashion, this has not impacted on recidivism rates in the area. 80% of defendants appearing before the court between 1996 and 1999 had pervious offences against the same victims (Ursel, 2003) however the province of Manitoba recorded the lowest rate of female domestic homicides in Canada between 1992 and 2002 (Ursel, undated).

It is important that the aim of reducing systematic delay does not become dislocated from the overall key objective of SDVCs, which is enhancing victim safety. Speedy timeframes are understood to improve chances of getting a conviction; the longer a case stays in the court the less likely a victim will stay engaged with the process. The WFVC has seen a substantial increase of conviction rates since its inception. More guilty pleas are gained early in the court process than is achieved in other summary district courts in New Zealand (Coombes et al., 2007). In the early 1990's, before the WFVC was established, only about 15% of family violence cases resulted in a conviction (Johnson, 2005). Under current court protocols the conviction rate for intimate partner violence is now 75% (Coombes et al., 2007). 65% of these convictions come from a guilty plea within two weeks of the offence occurring (Coombes et al., 2007).

Specialised judges

Judges play a pivotal role in specialist domestic violence courts, and they are a key resource in ensuring the success of the court (Morgan et al., 2007). Some SDVCs use specialised judges which has the advantage of judges gaining a better understanding of the dynamics of domestic violence through training, improved information and judicial continuity (Keilitz, 2001). At WFVC four judges sit in the court, all who have an interest in the area and who have sought specialised training in family violence.

Specialised judges who deal with domestic violence on a regular basis, and through training, have knowledge of the dynamics of domestic violence and are able to play a major role in limiting

defendants' manipulation of the system (Sack, 2002), and in encouraging defendants to take responsibility for their violence. The specialised judges can play a role in fostering offenders to accept responsibility, to clearly place responsibility with the offender and to avoid practices that can diminish their responsibility for the violence. In practice this takes the form of the coercion of guilty pleas. The Salt Lake City Domestic Violence Court offers what they call a "substantial packaged plea". If a defendant faces two misdemeanour charges he is able to plead guilty to a single charge and receive a suspended sentence if he agrees to undertake counselling and community service (Mirchandani, 2006). The coercion of a guilty plea is understood as the offender admitting their involvement in the offence and enables the court to send the offender on courses. The Salt Lake City DVC considers that pleading guilty not an easy option because of the accompanying counselling, which involves a lot work for the offender (Mirchandani, 2006). The court believes that once engaged in counselling an offender's initial reaction to externalise blame shifts and they start to realise that they are responsible (Mirchandani, 2006).

The judge can use his/her position of authority in their dealing with defendants to ensure that the blame for the abuse is fully attributed to the offender (Lewis et al., 2001). The West London SDVC recognises the very key role judges have in holding perpetrators accountable by giving the message that domestic violence is serious. A bench book has been written that includes key messages judges are to give offenders throughout process including emphasising the need to convey the message that violence is an unacceptable behaviour (Standing Together, 2006).

Consistent specialised judges increase the likelihood that repeat offenders will come up in front of the same judge and court staff again. Appearing before the same judges reduces the offender's ability "to downplay or minimise the continuing violence" (Helling, Undated, p.12).

Judicial supervision and monitoring

The practice of monitoring has been adopted by SDVCs "that seek to take advantage of the coercive and symbolic authority of judges" (Mazur & Aldrich, 2003, p.8). Ongoing monitoring uses the judge's symbolic authority to convey the seriousness of the offence and ensure compliance to any court orders or court mandated programmes through reporting to court on progress in treatment programmes and compliance to protection orders and bail conditions (Farole Jr et al., 2005; Sack, 2002). While judicial monitoring is considered international best practice (Sack, 2002), and its practice in drug courts has met with success (West Huddleston, Freeman-Wilson, & Boone, 2004), little is known about its effectiveness in relation to domestic violence courts

(Rempel, Labriola, & Davis, 2008). Its practice has been shown to increase compliance rates (Gondolf, 2000) but research in the Bronx, New York reported no reduction in the re-arrest rate for any offence (Rempel et al., 2008).

The frequency and form of monitoring varies between courts. At Brooklyn Felony Domestic Violence Court intensive monitoring is considered one of its distinguishing features (Wolf et al., 2004). They require defendants to appear at court on a regular basis, in some cases weekly. They have also established relationships with programme providers to be kept informed about defendants' attendance. Judge Leventhal of the Brooklyn Felony Domestic Violence Court says "that they don't care what the defendant says or does at the batterers' program, only that he attends. Nor do they look upon attendance at the program as a reason to accept a reduced plea or to congratulate the defendant. This attitude reflects their contention that a batterers' programme as a condition of bail is strictly a monitoring device – it tells them where the defendant is at least once a week" (Wolf et al., 2004, p.11). The Brooklyn Felony Domestic Violence Court does not have rehabilitation as one of its goals; instead, it focuses on the practice of monitoring to ensure victim safety by helping to enforce protection orders (Wolf et al., 2004).

The Salt Lake City domestic violence court uses monitoring and programme attendance to create a court process that has the end outcome of offenders taking responsibility for what they have done; this is achieved in part by implementing a drawn out justice process. They seek "to create a court process long enough and cumbersome enough that it would socialize offenders into viewing domestic violence as a crime for which they needed to take responsibility" (Mirchandani, 2006, p.788). The WFVC also use judicial monitoring to motivate defendants to engage in programmes and to encourage change. The process of judicial monitoring is used at the WFVC for defendants who have pleaded guilty. Before a sentence is passed defendants have an opportunity to attend programmes and demonstrate that they are taking responsibility for their behaviour. At each monitoring hearing victims views are heard through the presentation of a memorandum to the court, and evidence of defendants' attendance is required. Judges use this time to talk to defendants about how the courses are going and how things are in general. Judges offer encouragement to offenders who attend change programmes by indicating sentence outcomes early in the process, although the sentence decision is informed through, victim statements and an offender's attendance records. If there are problems with attendance or if ongoing safety issues have been raised by the victim the judges may use their symbolic authority and give a final warning. This approach to monitoring is in line with a less adversarial problem

solving approach. Judges use the time to ask questions, seek information and explore solutions with the defendants and victims via the advocates (Farole Jr et al., 2005), keeping the community involved in the response.

The provision of a rehabilitative focus that is present in problem solving courts is consistent with findings "that sanctions that embody rehabilitation are significantly more effective than sanctions which embody deterrence (fine, jail) at stopping men's violence and abuse" (Lewis, 2004, p.209). However, when it comes to reducing the incidents of family violence in our society there is little if any evidence yet that that SDVCs are having an impact in changing men's violent behaviour. The use of rehabilitative treatment programmes for perpetrators of family violence is controversial because "while drug treatment is well established and has proven effectiveness, no counterpart in the domestic violence area, such as batterers programmes, has emerged as an intervention with comparable, proven efficacy" (Sack, 2002, p.3). While it is encouraging that early findings from Standing Together suggests that just under 70% of batterers' who complete their programmes are not using physical violence towards their partner after a year of completing their programme (Standing Together, 2003), these findings have not been replicated in other similar studies. The reliance on counselling to influence an offender to actively take responsibility is worrying to many (Stewart, 2005) especially where attendance might be rewarded with suspended sentences and reduced charges. There is some concern that after many years of struggle to get domestic violence taken seriously the shift to a more therapeutic approach with an emphasis on men's programme where it is understood through attendance rather than change will result in a backwards step in conveying the message that domestic violence is a serious crime that is not tolerated (Stewart, 2005).

While it has been argued that problem solving courts have the potential to replace justice with just treatment (Nolan, 2003) the practice of judicial monitoring is controversial with regard to due process which is often understood as being in conflict with the traditional expectation of the role of judges as neutral arbitrators. Coercing defendants is considered to be at odds with due process where coercion is understood to jeopardise the rights of defendants (Burton, 2006).

To bring about wide spread societal change, SDVCs can only ever be a part of a wider intervention into domestic violence. How the criminal justice response, consistent with legislative changes and policy reforms that seek to address domestic violence in New Zealand, attends to offender accountability is integral to their responsiveness within the collaboration. In the following

chapter I introduce the ways accountability is understood through different models of justice underlying the criminal justice responses to domestic violence.

CHAPTER THREE

THEORIES OF JUSTICE AND ACCOUNTABILITY

OVERVIEW

Offender accountability is understood to be the realm of the justice sector and traditionally this is the justice sector's primary goal. Under the Westminster system, the court is responsible for holding offenders accountable for offences and so offenders are accountable to the state.

> The justice sector is also the place where perpetrators are held formally to account for their actions (Taskforce for Action on Violence within Families, 2007, p.20).

Currently SDVCs understandings of what constitutes offender accountability are drawn from three dominate theories of justice, punitive, procedural and therapeutic. Each theory works to construct accountability and responsibility in varying ways that require negotiation by SDVCs and lead to tensions and challenges for specialist domestic violence courts in their attempt to attend to offender accountability.

While SDVCs have offender accountability as one of their key objectives they also set out to privilege victim safety (Sack, 2002; Shelton, 2007) in order to address the failings of the traditional legal approach to dealing with domestic violence cases. In her review of SDVCs internationally, Stewart (2005) argues that they remain predominantly offender oriented and focus on offender accountability and rehabilitation. Stewart goes on to question whether it is possible for victim safety to be adequately attended to when the main focus of the court is offender accountability and rehabilitation. I posit that the focus on offender accountability and rehabilitation that regulates SDVCs constrains the courts' attention to victim safety, necessitating practices and understandings of accountability that put victims' safety at risk. Along with Stewart (2005) I believe it is important to question, "what constitutes accountability and responsibility" (p.4) when evaluating SDVCs' responses to family violence as part of a coordinated community response.

What is Accountability?

From a constructionist perspective, studying accountability is important because justice is a social accomplishment that is mediated by our different constructions of accountability (Cook, 2006). While constructs of accountability are ubiquitous in SDVCs, no justice theories have explicitly emphasised the process by which accountability is achieved. Accountability is under-theorised in the literature concerning SDVCs. There is a distinct to lack of discussion of the ways in which accountability is constituted. There are very few instances where the term is defined let alone examined critically. It is used with little or no explanation, as if there is an assumption that when we talk about offender accountability we share an understanding of its meaning. Accountability is an area of theory that is neglected (Cook, 2006) and requires more attention. It is difficult to assess how successful a court is at holding offenders accountable if there is no consensus as to what accountability means.

In Cook's (2006) analysis of the dynamics of restorative justice practices, she argues that accountability is commonly understood as an offender facing legal intervention, and usually in the form of punitive sanctions. However, Cook (2006) posits that there are different operations of accountability and they share "the process of questioning someone's behaviour and the power to command an answer from that person" (p.108). Cook (2006) states that when "examining accountability it requires the analyst to recognize that some individuals can and will scrutinize others, who are then obliged to respond to that scrutiny" (p.109). Therefore, examining the various structural and socially located processes of accountability that appear in the complex relationships of intimate partner violence within the legal system brings into view how each construction affords different individuals or groups the legitimacy to scrutinise others and demand various responses. This view of the processes of scrutiny, demand and response considers how power constitutes relationships and interpretations of offending behaviour. What is often missing from understandings of accountability within the justice sector is the exercise of gendered social power in the relationship between the offender's obligation to answer for their behaviour and the lived experience of the victim. The metaphor of scrutiny then becomes important to enabling an understanding of the gendered social power relationships between the victim and the offender embedded in the processes and function of the court.

Constructions of Accountability

How accountability is constituted has consequences for everyone. Different constructions of accountability turn the gaze to different subjects with the expectation that they will take up the burden of responsibility to stop the violent behaviour: offender, victim, community or the court itself. The form that responsibility takes also shifts, producing obligatory responses that differentially distribute social rights and duties to subjects. The relationship between victim safety and accountability also takes different forms with each construction of accountability.

Problem solving courts are often understood as working within a therapeutic jurisprudence framework (Shelton, 2007; Stewart, 2005). Some go as far to say that problem solving courts have been blinded by therapeutic jurisprudence and that offender treatment has replaced concepts of fairness in problem solving courts' application of justice and accountability (Nolan, 2003). However Berman (2004) cautions us that while problem solving courts and therapeutic jurisprudence share common principles, it is dangerous to conflate them because while SDVCs have implemented similar processes, they are not all philosophically aligned. For example, a court in Vancouver, Washington construes accountability through therapeutic jurisprudence (Fritzler & Simon, 2000), while a specialised criminal domestic violence court in Lexington County, South Carolina focuses on procedural justice to bring about change (Gover, Brank, & MacDonald, 2007). Specialist domestic violence courts in New York engage with a punitive justice to warrant practices of monitoring and program attendance (Wolf et al., 2004). These varying philosophical frameworks directly produce and reproduce the different constructions of accountability at work in courts.

Constructions of accountability also remain historically and culturally located. Specialist domestic violence courts that adopt a problem solving approach are still located within the criminal justice system. This means the court is a specialisation within the district court but through its specialisation uses some processes differently from other criminal courts. The courts processes are an attempt to move towards a non-adversarial approach. Yet, as part of a justice system, SDVCs are still required to demonstrate that they adhere to procedural justice principles of due process and the protection of defendants' rights under the law. Specialist domestic violence courts also remain historically located with a system that has traditionally understood justice as being punitive or about punishment and the justice sector is currently under increasing pressure

to "get tougher on crime". This leads to tensions and challenges for specialist domestic violence courts in their attempt to attend to offender accountability and to ensure victim safety.

Punitive Justice

Traditionally, the western justice sector has worked with an understanding of accountability as the imposition of punishment. This construction comes from a punitive or retributive model of justice where crime is discursively constituted as individual acts that are assigned individual responsibility. The punitive model of justice relies on the assumption of a rational individual committing a criminal act by choice (Dzur & Mirchandani, 2007). Punishment is justified as retribution for harm done by the offender by committing a crime (Dzur & Mirchandani, 2007).

Punishment by the state through the legal system is practised to achieve various outcomes that fit within the four main goals of retribution: (i) *proportionate punishment* for crimes already committed; (ii) *incapacitation*, isolation of the offender to prevent re-offending; (iii) *rehabilitation*, the treatment of the offender through attendance of therapeutic programmes and (iv) *deterrence* by legal sanction to discourage future offending by the specific offender and to send a message to society as a whole that this behaviour is unacceptable (Arrigo, 2006; Hudson, 2003). Tension exists between the four goals and over time the balance between them has changed within the western justice system. Modern western justice systems, up until the 1970s, favoured rehabilitative approaches but the 1980s saw incapacitation return as the predominant mode to determine punishment for crime (Hudson, 2003).

Accountability as punishment requires the successful arrest, prosecution and sentencing of an offender since a punitive understanding of accountability holds offenders accountable through legal sanctions. Once an offence has occurred the process of scrutiny of the offender does not demand any active engagement from the offender. Sanctions applied through a guilty plea or a guilty outcome still perform the same function of accountability, regardless of the engagement of the offender. The act of being held responsible for an offence through the application of legal sanctions does not take account of whether an offender accepts responsibility for the offence, or even if an offender understands their actions as an offence. A punitive construction of accountability can hold offenders accountable without any requirement for them to accept responsibility for the offence. The occurrence of change is also understood through the deterrent effects of legal sanctions. This assumes that change comes about through the punishment

because of its ability to act as a deterrent to others and reduce re-offending (Hudson, 2003; McDermott & Garofalo, 2004). A punitive model of justice works with the notion that a strong justice system will keep victims safe by ensuring that offenders are seriously sanctioned and that punishment deters further crime (Tsai, 2000).

If the presence of legal sanction deters further offending, then securing convictions is important so that legal sanctions can be applied. Success of SDVCs in bringing about offender accountability can therefore be measured through the level of convictions that courts are achieving. From this understanding, it can be argued that the WFVC is very successful in holding offenders accountable (Coombes et al., 2007). Yet if convictions do not lead to sentences harsh enough to deter further offending, it can be argued that accountability has not been achieved. Within this understanding there is pressure by victim advocates for Judges to reduce or eliminate the use of S106s (discharge without conviction) in cases of domestic violence.

Where crime is discursively constituted as an individual act to which one may assign individual responsibility, accountability can be mitigated "by the degree of responsibility an offender had in committing the crime" (Dzur & Mirchandani, 2007, p.155). The responsibility for violence against women by male perpetrators is often questioned when defence council attempts to redistribute responsibility for an act by turning the gaze of the court onto the victim and scrutinising their behaviour prior to the offence. Courts continue to believe the denials and minimisation offered by the offender while being suspicious of the victim's accounts of the violence (Fields, 2008). Characterising domestic violence as a problem of family dynamics functions to involve and ultimately blame the victim at least in terms of provocation while the history of criminal conduct or prior criminal convictions and protection orders are ignored (Fields, 2008).

As well as providing a necessary condition for putting victims' behaviour under the gaze of the court, punitive justice is constrained in its view of the complex dynamics of domestic violence when crime is discursively constituted as *individual* acts that are discrete. While the criminal legal system is about the individual acts, specialist understandings of domestic violence, including its definition in the Domestic Violence Act (1995), challenge its construction as one-off individual physical acts of violence. These understandings constitute domestic violence as behavioural patterns of control, intimidation, manipulation, and fear, achieved through physical, psychological and sexual violence, maintained through ongoing social practices and enabled through social power relations. Accountability as understood in a punitive model cannot attend to women's

experience of the violence as interconnected and related events. The gaze of a court sees only how the legal system conceptualises the violence (Pence & McMahon, 1999). The degree of scrutiny that an offender incurs and the type of legal sanction imposed is determined by the individual criminal act for which the offender appears before the court. The charge before the court assumes a legal definition of an action which in isolation often bears little resemblance to how the victims experience the violence.

Historically, the criminalisation of domestic violence in the 1980s and the call for increased accountability for perpetrators of domestic violence can be understood as a call for the promotion of punitive sanctions for violence against women (Cook, 2006). A punitive understanding of accountability supports the changes that were made in the 1980s and 1990s by the justice sector with the introduction of mandatory arrest and no-drop policies concerning prosecution for cases of domestic violence. These policies are aimed at increasing the likelihood of the prosecution and punishment of perpetrators. Within this framework offender accountability is understood as "increasing the certainty of arrest and prosecution for domestic violence and creating harsher penalties through the criminalization of domestic violence" (McDermott & Garofalo, 2004, p.1246).

During 1990s the courts' focus on offender accountability for perpetrators of domestic violence led to imposing increasingly severe legal sanctions, based on the assumption that this would be sufficient to reduce the cases of re-offending (Tsai, 2000). This practice also assumes that acts of violence must not go unpunished otherwise there will be no change in the social acceptability of domestic violence and men will continue carry out acts of violence without any consequence (Tsai, 2000). This view is consistent with New Zealand government policy, which asserts that improving the justice sector responses to family violence signals to offenders that society considers violent and neglectful acts are unacceptable (Taskforce for Action on Violence within Families, 2006). This approach is also is understood to send a strong social message that family violence is not condoned. It responds to the call for zero tolerance of domestic violence by women advocates. Hart (1998) believes that only when zero tolerance is the standard of accountability demanded by the courts "will batterers desist in their violent and controlling tactics and will victims achieve the safety and autonomy to which they are entitled" (p.17). Te Rito has as one of its central aims to promote the message that violence in families/whānau is unacceptable (Ministry of Social Development, 2002) and the current "Family violence, it's not OK" campaign is aimed at creating a change in the social climate in New Zealand (The Families Commission, 2007).

While the message of zero tolerance meets a women's movement agenda I question whether it needs to be paired with harsh punishment. Crocker (2005) argues that discourses around harsh punishments are not about the emancipation of women, but rather about the control of crime. Ford (2003) argues that accountability as a state aim continues to be privileged over victim interests in ongoing safety on her terms. The introduction of mandatory arrest and no-drop polices are not supported by all researchers and advocates in the area of domestic violence. It is argued that these policies have been put into practice in a way that has lead to victims being disempowered, and has not enhanced their safety. (Goodman & Epstein, 2005; McDermott & Garofalo, 2004) "No-drop policies are justified to the public on grounds that prosecution protects victims, albeit not necessarily the victim who requested protection" (Ford, 2003, p.673) A victim entering the legal system can be guaranteed little protection by the justice sector (Ford, 2003). The imposition of harsher penalties and punishment for every case ignores how victims may have used the justice system in the past to keep them safe. Victims are not passive but are strategic in their use of police and other agencies (Ford, 2003). In Connecticut the introduction of a mandatory arrest law in 1996 lead to a 28% drop in police calls for assistance in domestic incidents (McDermott & Garofalo, 2004).

Family violence prevention must be integrated, coordinated and collaborative to be consistent with Te Rito which in its principles states the necessity of a holistic approach (Ministry of Social Development, 2002). This principle assumes that the court is and can be only one part of a collaborative community response if we are to hold offenders to account for their violence in a way that also attends to victim safety.

A commitment to enhancing victim safety demands that family violence interventions ensure adequate provision of safety planning, follow-up and a commitment to longer-term wellbeing of victims and children, as there is no evidence that arrest, prosecution, punishment on its own reduces violence (Stubbs, 2007). The court has a responsibility to victims of domestic violence: with its symbolic authority, the court has also to be accountable to the community and to the victims.

For some SDVCs, in particular those in New York State, the attendance of batterer intervention programmes is explicitly about punishment in as much as the restriction of freedom of movement and monitoring of a court sanction acts as a deterrent to further offending by the specific offender.

"By insisting on regular and rigorous compliance monitoring – and clear consequences for non-compliance - the justice system can improve the accountability of offenders" (Wolf, 2007, p.2). The form the judicial monitoring takes in this case is as a check-up process; monitoring compliance is understood as bringing about victim safety insofar as it is linked to the goal of reducing recidivism by that specific offender.

> (Assistant District Attorney Wanda) Lucibello says "If you don't put them jail, then you can give him a longer period of monitoring. I've heard victims say "While he's been supervised and monitored, he really hasn't been an issue to me anymore." Sometimes the monitoring that the court makes possible gives us more long term control (Wolf et al., 2004, p.19).

Monitoring is intended to mediate the failure of deterrence produced by the imposition of minimal punitive sanctions. Minimal sanctions often occur within a justice system when sentencing decisions are made through a consideration of proportionate punishment, without recognising that understanding domestic violence as individual acts and single isolated events, works to minimise the ongoing systematic effects of domestic violence on victims. Research by Ventura and Davis (2005) found that conviction had a moderate effect on recidivism in cases of domestic violence but it was dependent on the type of sanction connected to the conviction. Where the sanction received by an offender was minimal, such as a fine or suspended sentence, recidivism rates did not reduce and minimal sanctions often lead to an increased likelihood of recidivism by offenders.

Through their problem solving practices, some SDVCs have constituted offender accountability as more than punishment. There is a recognition that institutional practice matters in holding offenders to account and the adoption of a solely punitive understanding of accountability, even for the purpose of deterrence, has historically not resulted in victim safety being attended to. Some SDVCS have focussed on procedural justice to achieve the goals of offender accountability while enhancing safety for victims in the court process.

Procedural Justice

Procedural justice is the application of legal sanctions through the following of systematic legal process. A procedural justice framework differs from a punitive one with its focus on legal process rather than on the outcome of the legal action (Gover et al., 2007). Procedural justice aims to bring about a just society through a focus on fairness of process. A justice system guided by principles of fairness, equity, due process and reasonableness helps to ensure a just state of affairs (Arrigo, 2006).

The adoption of procedural justice principles within the justice sector is not realised by clear delineated boundaries from other models of justice, in practice each model is dependent on and refers to each other in their construction. Punitive justice draws on procedural justice for legitimacy. While opponents of punishment based systems show that they fail to bring about change of criminal behaviour for the majority of offenders (Freiberg, 2002), the legal system maintains legitimacy despite failure to deter because these result from a legitimate procedure (Fox, 1997). By focussing on court processes that follow agreed due process and appear fair in their application, attention is diverted from deterrence failures: in the case of domestic violence, recidivism rates are still around 80% and issues of safety for victims remain largely unaddressed.

In South Carolina an outcome evaluation of a specialised domestic violence court found a significant reduction in re-offending among offenders (Gover et al., 2007). The explanation given was the court's emphasis on procedural justice principles, arguing that the processes employed by the court in achieving specific outcomes are as important as the outcome itself, in that processes can contribute to notions of fairness. A legal process that is regarded as fair is more likely to be given legitimacy and is more likely to be respected. Procedural justice works with an understanding that even when outcomes are unfavourable to defendants, if they were reached in a fair way, defendants are still more likely to comply with the sanctions applied and are less likely to re-offend. This argument is supported by research that found that when defendants were arrested using procedurally fair methods, subsequent violence reduced (Gover et al., 2007).

Within a procedural justice framework accountability is constituted through the adherence to court processes based on principled notions of fairness. Offender accountability is understood as process, or judged as being achieved through applying a "rules-based social control system" (Fox, 1997, p.219). Accountability is judged by compliance to court directives and sanctions arrived at through due process that is deemed fair, equitable and reasonable. This approach is based on the conviction that compliance is evidence of the offender's acceptance of responsibility for their violence – acceptance that they are at fault – and an expectation this will result in reduced re-offending because the offender now understands that such behaviour is unacceptable to the law.

This model does not take account of how male perpetrators of domestic violence draw from socially available discourses of masculinity, in particular male dominance and a perceived

entitlement to explain and justify acts of violence (Boonzaier, 2008; Towns & Adams, 2000). If a man feels entitled to perpetrate violence against his wife then any legal process may be seen as an unfair intrusion of his private rights. Research by Boonzaier (2008) found that when men were arrested for their abuse they felt persecuted and unfairly accused.

Accountability as compliance positions both offenders and victims as active subjects in the court process in a way that is not required within a punitive model. The court seeks respect of the processes from offenders and victims. A justice system that is respected through the adoption of fair process is understood to increase the likelihood of compliance. Procedural justice offers opportunities for defendants and victims to have input in the process that is not available in a punitive model. The 'voice effect' is a widely supported concept within procedural justice (Arrigo, 2006; Gover et al., 2007). In 2002 with the introduction of the Victims Rights Act (2001) the New Zealand legal system recognised the need for victims to have increased involvement in the court process. The introduction of victim impact statements allows victims to give information to the court on the impact of the offence on them, and their ongoing concerns in terms of safety. Victim impact statements are taken into account when bail conditions are considered and again at sentencing. At the WFVC the voice effect for victims is realised through the use of victim impact statements *and* victim memoranda presented by community victim advocates who have speaking rights in the court.

The practice of community victims advocates presenting memoranda and having speaking rights at WFVC is contentious as it is in tension with the usual rights of defendants. Lawyers often challenge the legality of the information contained in the statements, including prior offending and risk assessment (Personal correspondence, Judge Phil Recordon 23rd June 2008). From a procedural perspective tensions arise in attempting to balance protection of victims, rights of defendants, and accountability of offenders within the context of a problem solving approach to intimate violence within ongoing family relationships (Coombes et al., 2008). The judges at Waitakere do not agree that defendant's rights are violated when using reports from Viviana to make decisions including bail applications. This position was supported in Aeau v The Police ("Kerisiano Aeau v The Police," 2007). Mr Aueu was refused bail and appealed the decision stating the judge "erred in placing too much weight upon family violence summaries provided by the police and risk assessment provided by 'Viviana' an outreach of Western Refuge Society" (p.2). The appeal was not upheld and stated that "there can be no criticism of Judge Taumanu for receiving the report from the Viviana Trust" (p.6).

Within a procedural justice model judgements of accountability are made by scrutinising offenders and whether they are actively engaged in complying with court directions. The consequence of non-compliance is greater court sanctions - in some cases a prison sentence. Where accountability through compliance is judged as not having occurred courts fall back to a punitive model to hold offenders accountable. Thus, the notion of compliance to court directives and sanctions as accountability resonates with punitive understandings, and offenders' primary accountability is to the court.

In specialist family violence courts it is common practice to mandate attendance to courses particularly drug and alcohol courses and batterer intervention programmes. The responsibility for monitoring the compliance of offenders is differentially distributed among SDVCs and can be attributed to the court, probation services or the programmes to which offenders are referred for intervention. In California, batterer intervention programmes are at the centre of their criminal justice response. However, the Attorney General's Taskforce on Criminal Justice Response to Domestic Violence (2005) concluded that it was impossible to say if the programmes were working in California because there were many offenders who did not complete them. They suggest this is because there were no credible sanctions for non-compliance. Often non-compliance just resulted in re-enrolment. This study highlights the importance of information sharing and the relationships between courts, probation and the men's programmes to ensure offender accountability is monitored within this framework. Even when compliance with court sanctions is well monitored, there remains an issue of accountability of the men's programmes or probation to the courts to ensure that compliance is going to protect victims. Offender accountability relies on communication between programmes and court but is problematic as "discrepancies exist between the perception by victim advocates and the batterers' program providers as to the reoccurrence of violence" (Helling, Undated, p.12).

In some courts, such as the WFVC, offenders' compliance with the court's directives to attend courses is monitored directly by the judiciary. Judicial monitoring requires offenders to be even more actively involved in court processes because they need to return to court to report on their progress through the programme. At the same appearance, victims' views on their safety are also sought. When accountability is constituted as compliance and the responsibility for monitoring compliance is attributed to the judiciary then offenders, the programme providers, probation

services and victims are all actively involved in communicating with the court and providing judges with information on offender compliance.

Accountability as procedural justice relies, at the very least, on the processes of arrest, plea, monitoring, conviction and sentencing to hold offenders accountable, however this accountability is on the whole to the court specifically and the criminal justice system generally. This form of accountability does not necessarily attend to the requirements of victims and their families for safety and healing because "procedurally correct application of general principles" does not guarantee fair results for all cases (Fox, 1997, p.227). "By directing attention to fair procedures rather than trying to reach a fair result, legal authorities successfully deflect calls for social justice" (Fox, 1997, p.227). Monitoring compliance with the court's instructions to attend programmes does not necessarily require offenders to change their violent behaviour and therefore does not necessarily result in improving victim safety or victim satisfaction with court proceedings. Research on victim satisfaction of SDVCs in the UK found that satisfaction was not based on the speed of proceedings or the process but on the messages being given by the court, the practices that valued victims, the seriousness with which violence was treated and the provision of ongoing support for victims (Cook et al., 2005).

The notion of fairness that is privileged in procedural justice relies on separating the individual from their historical, cultural and social context to develop a justice system that works on the "assumption of sameness" (Hudson, 2002, p.116). This results in legal systems that follow the same procedures because in the eyes of the law every person is not only equal but fundamentally the same. However a justice system that treats everyone as if they are the same does not take into account structural constraints on individual action. Not every person has the same access to resources including information, money and family support (Fox, 1999). Justice that works with the 'assumption of sameness' does not result in fair legal procedures because systematic differences in individuals' social contexts are not taken into account.

The practice of specialisation that occurs in SDVCs seeks to address the gendered character of domestic violence within a legal system that relies on regulated processes to bring about fair outcomes. Even within a SDVC, a system informed by procedural justice principles makes the assumption of 'sameness' among all individuals as in any other court. As a consequence, in terms of family violence, the over-representation of men as defendants is not addressed except as a statistic produced from scrutinising the court list each week. In general, reliance on

procedural justice to result in substantive justice assumes that the legal system is benevolent and impartial. But law is not detached from the processes that maintain social structures and in this sense it is neither impartial nor simply benevolent but a participant in maintaining social power relations (Fox, 1997). When dealing with domestic violence as a gendered issue that arises from social power dynamics, the legal system is not separate from those dynamics, and in its daily practices functions in reproducing them (Fox, 1997). Understanding justice as a social accomplishment and as part of the social processes in which power relations are rooted changes the way in which the legal system can take account of the social dynamics of which it is a part. In the case of domestic violence, the focus of some SDVCs on addressing social problems underlying violent offences represents a shift in the model of justice to take account of the problem solving potential of a more dynamic justice system.

THERAPEUTIC JUSTICE

Along with many other domestic violence courts internationally, the underlying philosophical basis of the WFVC has come from the adoption of therapeutic jurisprudence (Shelton, 2007; Stewart, 2005; Tsai, 2000). Therapeutic jurisprudence "is a perspective that regards the law as a social force that produces behaviours and consequences" (Wexler, 1999, p.1). Therapeutic jurisprudence has a focus on healing (Judge Castleton et al., 2005) and a belief in the possibility of change enabled through the court process that is not linked to punishment or theories of deterrence.

Therapeutic jurisprudence sees the merging of law, psychology and criminology, to produce law as a therapeutic agent (Arrigo, 2004). Therapeutic jurisprudence is interested in how the law can support, or at the very least not harm, the psychological well-being of all those that are part of the justice process (Hartley, 2003). While therapeutic jurisprudence is considered by some as too offender focussed (Stewart, 2005) it is regarded by others as holding some potential when dealing with family violence cases as it recognises the need for an "ethic of care" (Hartley, 2003, p.411) within the legal process and can aim to enhance the well-being of victims as well as offenders while they are participating in the criminal justice process. Therapeutic jurisprudence proposes that the legal system works in a therapeutic relationship with offenders and victims, and that the law takes on the function of a therapeutic agent. Therapeutic jurisprudence is a move away from an adversarial approach and court participants collaborate to find a more therapeutic solution for all affected by the offence (Colyer, 2007).

Therapeutic jurisprudence has some principles in common with a restorative justice approach: both talk about accountability in terms of remorse, taking responsibility and change; they share a focus on healing relationships rather than using a punitive framework of balancing "*hurt with hurt*" (Frederick & Lizdas, 2003, p.19), and they both recognise the need to address crime holistically (Frederick & Lizdas, 2003). However therapeutic jurisprudence differs from restorative justice in that the court remains primarily responsible for ensuring offender accountability in the sense that offenders' acceptance of responsibility is not sufficient for accountability but should also involve meaningful change. However Jülich (2006) found that although when victims talked about justice in ways that resonated with restorative justice, when the process was explained to them they were not convinced it was a process that would work for them. This was linked into a need for the legal system to take a more active and ongoing role in attending to relationship and power dynamics that are present in cases of abuse by people known to the victim.

Therapeutic accountability is understood as a process where accountability is achieved by offenders taking responsibility for their use of violence and demonstrating a commitment to change to stop the violence (Cook, 2006). Accountability within this model is achieved when offenders' are deemed to have taken 'active responsibility' for their violence, when they acknowledge what they have done, and accompany this with an apology or show remorse and demonstrate a willingness to do something to put it right, often through engagement in a therapeutic change programme (Cook, 2006).

Therapeutic accountability as active responsibility is more than accepting responsibility; this acceptance of responsibility needs to be accompanied by an acknowledgment of wrong doing and a change of offenders' violent behaviour. It is the possibility of change that holds promises for enhanced safety for victims "Perpetrators of violence in families/whānau are ultimately responsible for their violent actions. Family violence prevention initiatives should therefore encourage perpetrators to accept responsibility for their violent behaviour and for changing their behaviour" (Ministry of Social Development, 2002, p.12).

Specialist family violence courts taking a therapeutic approach rely on various mechanisms to mediate the process of active responsibility including the coercion of guilty pleas and intensive monitoring by the judges or probation of offenders' attendance of batterer intervention programmes. While these practices can also be undertaken within a punitive or procedural justice

approach, in a therapeutic approach coercing guilty pleas is understood as the defendant's accepting responsibility for their offending and agreeing to undertake treatment to address their social and interpersonal problems such as alcohol abuse or poor anger management (Coombes et al., 2008). Therapeutic courts work with an assumption that offender programmes provide a chance for the offender "to engage in help for changing their violent behaviour and the court provides an opportunity for them to demonstrate their commitment to ending the violence they perpetrate against their partner" (Coombes et al., 2008, p.52).

The reliance on programmes to bring about change within a therapeutic jurisprudence framework is problematic. There are questions as to whether offender programmes actually elicit any authentic engagement that results in change. Miller, Gregory and Iovani (2005) evaluated two stopping-violence programmes to establish whether offenders were accepting responsibility and therefore being held accountable. Sadly they found there was little evidence of meaningful engagement by any of the men participating. Their engagement with the programmes appeared to just be about compliance to avoid jail (Miller et al., 2005). They maintained that the men's programme did little to bring about accountability in the sense that it is understood within a therapeutic approach because offenders failed to internalise responsibility for the violence that resulted in their required attendance at the programme (Miller et al., 2005). The findings of the Miller, Gregory and Iovanni (2005) study support arguments made by those who feel the justice system is too reliant on men's programmes and that these programmes do little or anything to protect victims from further violence. S Miller, Gregory and Iovanni (2005) concluded that "criminal court systems need to be coordinated with social policy; we need interventions that aren't solely reliant on criminal justice responses" (Miller et al., 2005, p.354).

In New Zealand, the Taskforce recommending the implementation of four more specialised domestic violence courts acknowledged that there were unresolved issues related to effectiveness of programmes. They directly link offender accountability with the need for offenders to participate actively in programmes.

> As a matter of priority we [the justice sector] will address issues relating to the effectiveness of programmes. We will do this by monitoring attendance and performance of offenders at court-ordered programmes, including making sure offenders participate actively in programmes (Taskforce for Action on Violence within Families, 2006, p.21).

While the taskforce recognise the need for active participation there is no indication of how they intend to ensure this occurs. As advocated by the DAIP there is a need for accountability of all

the parts of the collaboration back to the victim, including the court and men's programmes (Pence & McMahon, 1999). A therapeutic focus can often be understood as a soft option – "just a slap on the wrist" – rather than holding offenders accountable (Kurlychek, Torbet, & Bozynski, 1999), where accountability is not understood as involving active commitment and behaviour change and there are no procedures to ensure that offenders are held accountable in this sense. There is often a perception of leniency attached to therapeutic approaches due to a lack of processes and procedures that ensure meaningful interaction with offenders (Kurlychek et al., 1999) or behaviour change that increases victims' safety.

Accountability as part of a Coordinated Community Response

If we construct accountability through remorse, taking responsibility and behavioural change, then we need to ensure that processes and procedures for holding offenders accountable are meaningful for victims. This does not mean regarding accountability as just a procedural construct. Even if the offender has done all the right things in terms of court process, entering an early guilty plea as a way of accepting responsibility and attending programmes to comply with the court's requirements, the procedures remain relatively meaningless if they result in little difference for the victims. If we move beyond accountability as being the domain of the legal sector and understand the court as working as part of a community approach to domestic violence interventions, then we shift the meaning of accountability and responsibility for scrutinising the offender's compliance with the court to a scrutiny of violent offender behaviour change where the violence stops.

Accountability through a process of monitoring emerged when talking to women whose partners had been prosecuted and sentenced at the WFVC (Coombes et al., 2008). Women were seeking a form of accountability that would "relieve them of the responsibility for managing his continuing controlling, abusive and violence behaviour" (Coombes et al., 2008, p.107). They sought a legal intervention that involved closer monitoring, and stricter policing of breaches of bail conditions (Coombes et al., 2008). In this way, women seek an intervention that allows them to live a life free of his violence and fear (Coombes et al., 2008).

The Duluth model, on which the WFVC is based, states that offender accountability occurs when the justice sector and each aspect of the community response are held accountable to the victim

for stopping the violence (Pence & McMahon, 1999). In Duluth, everybody is accountable to the victim; everything that is done is done to enhance victim safety. The DAIP has a yearly accountability audit that looks at the procedures and practices of each component of the collaboration to see if they are victim centred. The DAIP privileges the construct of holding offenders accountable to the people they have committed the crime against rather than to the criminal justice system. This construct of accountability is different from all other constructs within a traditional western legal framework. It is concerned with "how women experience violence not how the legal system abstractly defines violence" (Pence & McMahon, 1999, p.157). In this sense, offender accountability is achieved through the coordination of agencies and accountability of institutional practices to the victim.

Whenever possible, the burden of offender accountability from the initial response through to placing restrictions on their behaviour should rest with the institutional response and not the victim. In this way, intervention practices must reflect a commitment to being accountable to the victim whose life is most impacted by the individual and collective actions of both the offender and those who seek to intervene in the offence.

Working with Cook's (2006) definition of accountability, to understand how accountability is constructed differently, we need to ask *who is accountable and to whom*. Who has the right to legitimately scrutinise and who is being scrutinised? Within the Duluth model the subject with the right to scrutinise the actions of others is the victim, which means that all members of the collaboration, including the court, come under victim scrutiny as does the behaviour of the offender. The privileging of women's experiences of the violence against them means that they can legitimately demand a suitable response from the community and the court as well as the offender in stopping the violence, in the process of holding the offender to account for their actions. This approach involves a court working as part of collaboration guided by the philosophy of victim safety and challenges how courts have historically dealt with domestic violence and practiced offender accountability.

In this model of accountability the victim as the legitimate scrutiniser no longer comes under scrutiny themselves. The approach aims to eliminate victim blaming, and the positioning of good and bad victims that occurs in other models of accountability where the justice sector is able to scrutinise the victim's behaviour. However the justice sector and each aspect of the community response also come under scrutiny and are evaluated in how they are affecting victim safety,

autonomy and integrity (Pence & McMahon, 1999). The model is driven by the belief that institutional practice matters and needs to be driven by the goal of victim safety.

Accountability produced through a therapeutic approach creates a space for the possibility of the healing of victims as well as offenders which is not available in adversarial approaches. For victims of domestic violence accountability is intensely linked into a 'sense of justice' (Curtis-Fawley & Daly, 2005; Herman, 2005; Jülich, 2006). Since victims carry guilt, and processes of self blame occur in cases of domestic violence, accountability needs to be about offenders taking responsibility to start the healing process of victims by ending their victimisation (Curtis-Fawley & Daly, 2005). In this sense, accountability is about acknowledgement of the hurt and damage inflicted on the victim (Curtis-Fawley & Daly, 2005). It is important that the state's interest in offender accountability does not minimise a victim's interests in safety on her terms (Ford, 2003). Keeping victims' interests at the heart of the process it is important for offenders to be recognised for what they are and for victims to be restored, honoured, and to be free of the shame and blame of domestic violence (Herman, 2005).

Some research has shown that victims speak of a desire for public exposure of the offender, not necessarily for the purpose of punishment or rehabilitation, but rather to restore the integrity of the victim and offender's relationship within the community (Curtis-Fawley & Daly, 2005). Herman's (2005) work with victims presents an understanding of accountability that is far removed from traditional justice sector constructions. Victims talk about accountability as a process of empowerment that enables them to be restored in their community and to live free from violence. Accountability in this sense would see the removal of underserved respect or privilege for the offender, and the healing of the relationship, not between victim and offender, but between victim and community (Herman, 2005).

The criminal justice response to the goal of offender accountability, at Waitakere has as a principle, the burden of responsibility for victim safety. How accountability is understood through different models of justice underlying the criminal justice responses to domestic violence, and how that response, consistent with the principle that positions victim at the heart of the response, attends to offender accountability is addressed in the analysis of data in relation to the aims of the court.

CHAPTER FOUR

RESEARCH METHODOLOGY AND METHOD

OVERVIEW

Working with an understanding that knowledge is culturally, socially and historically produced I believe it is important as a researcher to make clear the epistemological assumptions that underpin any piece of research. The theoretical framework and methodology used in any research involves the researcher's understandings of what constitutes knowledge and how knowledge is produced. The theoretical framework employed in research guides the research design and the type of questions that can be addressed. This chapter sets out to clarify the assumptions I bring to the research and why the approach I have is appropriate for the study of violence against women and the domain of the justice sector.

CRITICAL SOCIAL PSYCHOLOGY

What is commonly known as the discursive turn occurred in the field of social psychology in the late 1970s and 1980s. It is generally understood that the discursive turn resulted from a crisis of confidence in social psychology (Morgan, 1996). Psychology's use of empiricist methods were challenged, particularly the use of laboratory-based experiments aimed at discovering the facts of human subjectivity (Shotter, 1975). It was argued that there is no universal structural form and no universal truth of human behaviour (Banister et al., 1994). Therefore methodologies that measure attributes assumed to exist inside a person were reformed. Theories were promoted that challenged traditional Western ideas of reality, truth and common sense – or 'taken for granted' knowledge (Weedon, 1987). Arguments for the need to focus on language, meaning and people's accounts of their lived experiences led to the emergence of critical social psychology and a focus on the discursive production of human subjectivity (Morgan, 1998).

The overarching theoretical framework that guides this research draws from a number of theories that all contribute to the emerging field of critical social psychology. The term critical social psychology is very broad: there are many different standpoints that fit under this umbrella and it is by no means a homogeneous field of inquiry. It includes diverse areas such as discursive

psychology, social constructionism, post–structuralism and deconstruction (Wilkinson, 1997). Although these fields are diverse, in some capacity they all challenge "conventional realist models and positivist empiricist methodologies" of mainstream psychology (Wilkinson, 1997, p.176). Instead, a critical social psychology framework contends that knowledge, or our current understandings of the world, are (in part) constructed through language and the discursive practices available to us. Critical social psychology is also heavily influenced by feminist psychology, enabling research that openly works towards the political objective of ending oppression of women (Wilkinson, 1997) for which ending violence against women is critical.

THEORETICAL FRAMEWORK

Social constructionism

Social constructionism provides a theoretical framework that attends to the ways in which knowledge is produced through social processes. The understanding of social constructionism that I draw from for my research has at its foundation the four key assumptions outlined in Gergen's (1985) early paper, that formulated the principles of a social constructionist movement in social psychology.

Social constructionism challenges conventional knowledge. It challenges the idea that knowledge gained through empiricist methodologies is objective and bias free. Social constructionism proposes that rather than a world that can be revealed by observation, what exists is constructed through the theoretical categories we use to talk about the world. Categories are a way of representing the world, rather than referring to real divisions that exist in the world. For example, it can be argued that rather than categorising individuals by gender, one could equally classify individuals by their height or whether they can roll their tongues (Burr, 2003). Psychology is predominantly based on things that do not have material distinctiveness; therefore challenging the role of language in the construction of reality is especially important.

We have commonly used categories that function to make sense of our lived experiences but they do not map directly on to a "real" world. So, for example, the categories of man and woman appear to be natural categories, but what it means to live as a man or a woman has been historically and culturally built up and tied into the categories masculinity and femininity. Although these categories change over time and between cultures they have been historically taken for granted as natural and stable.

The terms by which the world is understood are historical artefacts of social processes (Burr, 2003). Burr (2003) argues that ways of understanding are "specific to history and culture but also products of that culture and history" (p.4). Those objects professed to exist are reliant on the social and economic circumstances of the time (Burr, 2003). Social constructionism challenges imperialist western values that assume that scientific endeavour is the only way of acquiring valid knowledge, and the imposition of these values on other cultures (Burr, 2003). Social constructionism argues that western knowledge is not necessarily "any nearer the truth than other ways of knowing found in other cultures" (Burr, 2003, p.8). For example, not all cultures understand the 'self' as isolated and self-directed (Gergen, 1985). This is a culturally and historically specific notion that is produced through the political and social conditions privileging individualism in the West during the period now referred to as modernity.

The construction of the individual is critically important to this study of how domestic violence and accountability are understood. Traditionally psychology has taken the 'individual' as its object of study, but turning critical attention to the discursive construction of the individual requires different assumptions about the object of our inquiry (Rose, 1996b). Rather than investigating 'the individual' as a taken for granted, natural entity, critical inquiry suspends the taken for granted and considers how individualism endows certain rights and privileges, burdens and responsibilities on particular subjects, and how it is involved in actively producing our social and psychological realities (Davies & Harre, 1990).

Gergen (1985) proposes that the forms of understanding existing in a culture at a particular time do not depend on empirical validity. Instead, knowledge is sustained through, and relies on social processes. Knowledge is constructed through daily interactions between people. "Knowledge is seen not as something that a person has or doesn't have, but as something people do together" (Burr, 2003, p.9). The distinction of gender that is so dominant in Western culture relies heavily on discourse and rhetorical constructions of femininity and masculinity. Traditional psychology maintains the gender distinction by its continual focus on sex differences, even though empirical research has repeatedly demonstrated that differences are neither as strong nor as profound as sex similarities (Paludi, 1992). What we regard as the truth can be thought of as "our current accepted ways of understanding the world" (Burr, 2003, p.5). Available discursive practices change over time, and what is deemed morally acceptable behaviour changes with it. For example, practices of racist and sexist discrimination that were common in the 1950s are widely

assumed to be immoral and in violation of human rights more recently. How we understand human behaviour changes over time, is socially produced and inherently unstable (Gavey, 1989).

Understandings of the world and the meanings of human behaviour are crucial to social life; they are connected to everyday experiences and have implications when it comes to the study of human action. "Descriptions and explanations of the world themselves constitute forms of social action" (Gergen, 1985, p.268). The categorisation of sane and insane developed through psychiatry and all the subsequent varieties of abnormalities that have developed (depression, schizophrenia, for example) (Burr, 2003) allow certain actions to happen. For example doctor's understandings and action are bound by the medical discourses which have proved problematic for women who have been subjected to violence. While doctors interviewed in a study in Australia agreed that medication was inappropriate for women experiencing domestic violence, "tranquilizers were prescribed by 83% of A.C.T general practitioners consulted by a sample of victims" (Easteal & Easteal, 1992, p.225). In this was they reproduce the victims as abnormal, where they are "re-aggregated as symptoms of particular social or psychopathologies, alcoholism or depression for example" (Stark & Flitcraft, 1996, p.15).

Research that employs a social constructionist framework allows "for inquiry that is sensitive to meaning and action within particular historical and cultural contexts" (Misra, 1993, p.413). Language produces our understandings and experiences of the world. Language structures provide the content of our thinking and our social interactions (Burr, 2003). Our descriptions and explanations of the world function to "sustain and support certain patterns of social action to the exclusion of others" (Gergen, 1985, p.268). Research by Gavey and Towns (2005) shows how the use of gender neutral language when talking about violence against women constructs women as mutually responsible for the man's violence against her. This works to silence women from talking about the violence against them. From this perspective language is never neutral; meanings are unstable, shifting over time and dependent on social processes for their production and maintenance. For example, until the 1980s common sense understandings of marriage, husbands' rights, and wives' responsibilities led to rape in marriage being regarded as acceptable. Consequently, a married man could not be legally charged for raping his wife.

Positioning theory

Social constructionist research focuses on analysing meanings and how they enable and constrain our understandings and our actions (Banister et al., 1994). It "relocates problems away

from the pathologised, essentialist sphere of traditional psychology" (Burr, 2003, p.9). When studying the individual, social constructionism is interested in different constructions of self and other, and how these are socially produced and maintained through language. Language produces sets of meanings that produce similar constructions of objects and subjects and are referred to as discourses (Banister et al., 1994). Rejecting the concept of essentialism raises questions of agency. If we argue against the idea of an essential stable self that originates ideas and actions from within, how do we explain what we do and say? Are people completely controlled by the discourses of their cultural and historical period? To address these questions, Davies and Harre (1990) propose the idea of positioning that consists of two aspects operating at the same time.

> The human subject is simultaneously produced by discourse and manipulators of it. The positions available within discourses bring with them a 'structure of rights'; they provide the possibilities and the limitations on what we may or may not do and claim for ourselves within a particular discourse (Burr, 2003, p.113).

Positioning retains some notion of agency while theorising it as action that occurs between people rather than within the individual (Burr, 2003). Positioning is a discursive achievement and the term discursive practice refers to "all the ways in which people actively produce social and psychosocial realities" (Burr, 2003, p.46). An individual's subjectivity is therefore performed through learning and using certain discursive practices (Davies & Harre, 1990). "There are multiple and contradictory discursive practices" (Davies & Harre, 1990, p.46) that produce and reproduce subjects.

According to positioning theory, the subject positions that individuals may take up are multiple and shifting. Each position is associated with a vantage point from which the world, the self, and others are understood and involves rights, duties and obligations for those who take up the position. Actions and identities are also linked to subject positions (Davies & Harre, 1990).

Issues of power

> What characterizes the power we are analysing is that it brings into play relations between individuals (or between groups) (Foucault, 1982, p.217).

Later work by Davies (2007) with positioning theory also attends to issues of power and how these are connected to the actions and meanings that are associated with discursively produced subject positions. As well as drawing on other feminist theorists, Davies draws on the work of Foucault and a particular theory of power that is linked to discourse and subject positions.

Foucault's theory is premised on questioning how power operates. The goal is to make power relationships explicit, create a space for understanding why things are done the way they are and makes alternative practices available.

Foucault theorised that the construction of knowledge is embedded in social power relations so that knowledge and power co-exist (Coombes, Morgan, Tuffin, & Johnson, 2004; Foucault, 1982; Parker, 1990). The process of analysing power relations involves showing how supposedly neutral independent institutions like psychology and law are not neutral but produced through particular relationships of social power that draw on taken for granted assumptions about knowledge and human subjects (Rabinow, 1984). If we understand that the institution of law is not neutral then we can not separate it from the social processes that challenge or continue to foster domestic violence in our society. In its practices the justice sector legitimates or challenges different understandings of domestic violence, for example as a criminal offence or a private matter. Law produces knowledge that legitimates social processes (Coombes et al., 2004).

This research understands domestic violence as gendered and embedded in social power relations (Stark, 2006). Patriarchal social structures support male abusers in ways that are not available to women and provide social sanctions against women victims (Stark, 2006). Interactions between the justice sector, victims and offenders are not neutral encounters; they are effects of an operation of power that is associated with particular kinds of knowledge about violence, intimate relationships, women and men. From this perspective, the justice sector has a social function and implicitly exercises social control. Law is about "the allocation of power and the existence of power relationships" (Fox, 1997, p.219).

Critical Discourse Analysis

Critical discourse analysis compatible with the epistemological assumptions outlined above and well suited to address questions of the way in which understandings of domestic violence and offender accountability are intimately involved in social power relations. Discourse analysis acknowledges that the research undertaken produces a particular construction of the issues addressed by the research questions and is explicitly open to alternative interpretations. Discourse analysis is about analysing and re-presenting common sense notions of the object of inquiry rather than discovering something new. Discourse analysis is interested in analysing the discourses used to create particular constructions of events, relationships and people to

demonstrate the coherence of language and meaning and their links to institutional structures of power. It aims to make social power relations explicit so that ideologies that are masked as 'neutral' can be challenged. At the heart of discourse analysis is the recognition that discourses construct objects and subjects (Parker, 1990).

> Discourses are interrelated systems of statements which cohere around common meanings and values. These socially-culturally bound meanings are internally consistent and construct objects through their categorisations, descriptions, and metaphors of what are real, implying distinct social organisations, material practices, and senses of agency and identity (O'Neill, 1998 p.458).

Discourse analysis is not concerned with finding causal relationships between language and certain types of behaviour but rather is concerned with how discourse functions within social processes (Parker, 1990; Potter & Wetherell, 1987; Rabinow, 1984). Critical discourse analysis theorises language as active, constructive and evaluative. In asking how discourses function, the analysis aims to isolate techniques of power that produce available subject positions, privileging some and silencing others. A discourse establishes ways of recognising and articulating relationships (Parker, 1990). We are positioned in certain ways as subjects in discourse. This has implications when examining the rights a subject has to speak within a discourse and their responsibilities for action within social relationships.

Discourse analysis enables the repositioning of the subject, and can open up opportunities for empowerment (Willig, 1999). For example previous analyses of talk by judges have identified discourses that minimise the resistance to partner abuse that women victims of domestic violence enact. By silencing resistance, women are positioned as passive or helpless. Challenging this practice opens up the space to make visible the day to day practical strategies employed by victims of domestic violence in keeping themselves and their children safe and resisting the violence against them (Coates & Wade, 2007).

Discourse analysis is a methodology that can contribute towards knowledge that aims to bring about social justice. It is able to identify discursive practices that are embedded in social power relations and legitimate exploitation and oppression (Willig, 1999). This process opens up the possibility of constructing alternative discourses that are empowering and socially just. Discourse analysis can be understood as an intervention into sites of knowledge production that legitimates resistance to injustices (Parker, 1990). The purpose of studying language and in particular analysing discourses is to make explicit how discourses support institutions and reproduce power relations (Parker, 1990). Critical discourse analysis can bring about an understanding of "the way

things were, and is able to describe, educate and change the way discourse is used" (Parker, 1990, p.210).

Discourse analysis privileges language in bringing about social change interventions and attends to social and material structures of institutional power (Willig, 1999). In relation to this project, identifying the ways in which victims, offenders, domestic violence and accountability are understood at the WFVC will open up space for critical reflection on the way in which these understandings support or resist the aims of the court and facilitate or impede their effective achievement.

THE RESEARCH METHOD

This research was undertaken as part of community collaboration and the project was developed through relationships with the key stakeholders including the Judiciary, Viviana and WAVES. Over five months prior to beginning the research, the project leaders and I met with stakeholders to discuss the research process and desired outcomes for the WFVC. During this time we identified the different dimensions of the WFVC areas of influence, and developed research proposals for four separate but interrelated studies to provide evaluative evidence of the court's effectiveness in responding to family violence. This research project involves speaking with "court professionals" and is one component that was identified in the overall research design, and the first research to be undertaken as part of the whole evaluation programme.[5]

Research aims and design

This project aims to identify and analyse the ways in which court participants understand domestic violence and the court's aim of holding offenders accountable for their violence. The goal of the research is to identify the different vantage points from which participants seek to meet the aims of the court and how their diverse understandings support or resist the implementation of practices that enable the effectiveness of a coordinated response to family violence within the Waitakere district.

Since the project is concerned with identifying and analysing understandings from different vantage points, critical discourse analysis (CDA) was chosen as the appropriate methodology. CDA samples texts generated through a variety of research techniques depending on the specific

[5] An earlier version of this method section has been presented as Appendix A in the Morgan, Coombes and McGray, 2007

aims of the project. For this research, texts were generated through interviews and focus group discussions with court professionals and community service providers working with the court so as to focus appropriately on their vantage points and understandings.

Data generation, collection and analysis were designed with ethical considerations paramount. Massey University Human Ethics Committee approved the ethical protocol for the study (MUHEC Southern B 06/04) and the ethical considerations of informed consent, confidentiality, protection of data and persons are discussed below.

Participants recruited

Guidelines in qualitative research suggest that optimum sample sizes for complex, unstructured data is around 15–20 participants. A larger sample size is unlikely to provide any advantage because of a phenomenon known as saturation. Saturation refers to the point at which collecting new data does not add new information to the analysis and it is generally agreed that this occurs once a sample size exceeds fifteen (Guest, Bunce, & Johnson, 2006).

30 people representing all the key stakeholders; Waitakere Judiciary, Waitakere Anti Violence Services (WAVES), the Community Victim Support Network, (Viviana, Tika Maranga, Victim Support), The New Zealand Police, Community Probation Services, ManAlive, court staff (including victim advisors) and defence counsel were invited to participant in the research. The list of potential participants was compiled with the assistance of Judge Phil Recordon, Helen Jones (WAVES coordinator) and Glenda Ryan (Viviana, Chief Executive Officer).

Each potential participant was sent a letter, from me as the researcher, providing information on the purpose of the research and their rights if they decided to participate (Appendix A). The researcher only initiated additional contact with participants if they indicated an interest to take part in the research or contacted the researcher with additional questions. All participants where required to be over the age of 18 and did not include persons whose capacity to give informed consent may be compromised. All participants were proficient in English. Consent to participate was given to the researcher in writing (Appendix B).

Of the 30 people initially contacted I received replies from 26 people indicating a willingness to participate. This represents a response rate of over 85%, which far exceeds acceptable response rate standards (60% would be regarded as excellent, and 30% as acceptable). Therefore the

sample size was more than sufficient for the purpose of the qualitative research that was being undertaken. Of the 26 people who initially responded, 23 people took part in the study and there were at least two participants from every professional, state or community group contacted. Two people who responded did not complete interviews due to work commitments; appointments were arranged but were cancelled by the participants on the day. One person did not respond to requests to arrange an interview time. As the researcher, I was also passed a business card at court while the research was in progress, and was told that the person had expressed an interest in participating. I emailed the person a copy of the research information sheet but received no reply.

Data generation

Two types of qualitative data collection strategies were used with court participants: individual one-to-one interviews and focus groups. Both interviews and focus groups have the potential for generating complex accounts and stories of experiences and therefore provide appropriately rich and detailed texts for analysis. Interviews are conducted more privately in that the participant meets only with an interviewer. Focus groups enable participants to meet together with the interviewer. Collecting data through both interviews and focus groups enables the researcher to be flexible with regards to the needs of particular participants. It also provides two different, socially salient data collection modes: a conversation between two people, and a group discussion, which increases the potential for collecting rich and complex data. The interviews and focus groups took place over a two-month period between June and July 2006. All participants had the option to participate in interviews and/or focus groups.

Interviews and focus groups were organised around open-ended questions intended to explore the participants' experience of working with the protocols of the WFVC and how they understand the difference between the WFVC and the normal running of the Waitakere District Court. The interviews and focus groups used conversational interviewing to maximise the potential for participants to respond to questions from their own point of view, and to allow for the inclusion of as much detail as they were willing to provide. In total three focus groups and 16 interviews were held. 11 people participated in only a one-to-one interview; seven people only took part in focus groups; five participants took the opportunity to do both.

Interviews were conducted privately in a place that was convenient and safe for the participant and researcher. Focus groups were conducted with four to five participants, who had agreed to

keep the conversation confidential, and in a setting that was convenient and safe for the participants and researcher. To avoid any incapacity, discomfort (physical, psychological, social), or other risk of harm to individual participants as a result of participation in focus groups, facilitation strategies were put in place so that every person involved was ensured a fair hearing and was not intimidated or dominated.

Interview schedules

Interviews and focus groups were run as a conversation around how the WFVC works in terms of the experiences of people who are involved in a professional capacity. The following prompts were used when required, but participants were also encouraged to pursue matters of their own interest.

- What is your role with the WFVC?
- What do you think is the purpose of the WFVC?
- Is the WFVC working based on your understanding of its purpose?
- What do you see as the benefits the WFVC, i.e. what is the WFVC doing well?
- What are the problems with the way the WFVC is currently working, i.e. what could the WFVC be doing better?

All interviews were audio-taped and focus groups audio-taped and videotaped. Tapes were transcribed so as to include the content of all contributions to the conversation, including those of the interviewer. Guided by the understanding that the rights of participants supersede those of the researcher, all transcripts from the interviews were returned to participants to allow them to make corrections to their contributions, delete any parts they did not want included and to make any additional comments. All 23 participants returned the transcripts with signed release forms authorising their use to illustrate the analysis in subsequent reports.

As well as the research method detailed above, this research ensured the confidentiality and privacy of the participants and minimised any risk of potential harm to participants and researcher through incorporating the following elements. No information that could identify participants has been given to any person outside the research team. The identity of the judges at Waitakere is available as public information. Their names were not removed when participants have referred to them, but like other participants they have been assigned unique identifiers for reporting their contributions to the discussions. Tapes and transcripts are in a locked draw in the researchers' workplace. Computer files holding any identifiable data are stored on a computer with a

password only known the researcher. All backups are stored in the locked draw at one of the researchers' homes. Consent Forms are stored separately in a locked filing cabinet in another office in the School of Psychology, Massey University, Palmerston North.

Coding: Interpretive Phenomenological Analysis

Critical discourse analysis begins with a process of coding the rich and complex data gathered in interviews and focus groups. The first stage of coding the data was undertaken to provide a preliminary report on the court's successes and challenges to the stakeholders. This project involved Interpretive Phenomenological Analysis (IPA) which was chosen because it emphasises knowledge as understanding, is able to take account of the specificity of diverse experiences; provides strategies for analysing everyday understandings; and honours the integrity of experience from the point of view of research participants (Smith, 1996). IPA allows for the coding of court professionals' talk into themes (Smith & Osborn, 2003) that highlight where common agreement exists and also identifying areas where there are conflicts among stakeholders.

IPA was selected as the most appropriate method for the preliminary analysis of the present study because the central aim of IPA is to discover what an object or event is like from the participant's perspective by inviting them to tell the stories of their own experience, in their own words (Chapman & Smith, 2002). The meanings that individuals ascribe to events are the central concern for researchers using IPA. IPA does not attempt to test any predetermined hypotheses. Instead, questions are broadly framed to provide the researcher with the flexibility to explore areas of interest in detail (Smith & Osborn, 2004).

The focus of the preliminary analysis was the identification of insider knowledge of the court's processes and practices and court participants' understandings of its effectiveness in meeting its aims. Effective coordinated community responses involving interagency collaborations rely on a shared vision and a common understanding of the dynamics of domestic violence (Robertson et al., 2007). A shared understanding reduces the danger of conflicting agendas in domestic violence interventions that can undermine efforts to protect victims and hold offenders accountable (Robertson et al., 2007). The Duluth model's founding principle is the need for all organisations to share a common philosophical vision that guides all aspects of practice (Pence & McMahon, 1999). The WFVC, which is founded on the Duluth model, state their "practice

proceeds on the expectation that there will be common agreement between all interested groups" (Waitakere District Court, 2005, p.5). IPA allowed the research team to provide court participants with information about the extent of agreement among them, taking account of their diverse interests in the operation of the court.

IPA uses thematic textual analysis as its primary analytic strategy (Parker, 2005). This involves coding transcriptions of the interviews and focus groups alongside any salient reflections of the interviewer related to interpreting transcripts. Coding following the IPA framework allowed for the emergence of interactions, experiences, points, and patterns of complex stakeholder issues, which aided the analysis and evaluation process.

I conducted the initial analysis of data for both the preliminary report (Morgan et al., 2007) and as an initial coding of the data for subsequent critical discourse analysis of participants' talk about domestic violence and accountability.

Identifying themes

IPA involves intense analysis of each transcript in an attempt to understand the complex meanings of the respondents' stories and accounts. In order to organise and represent the meanings that were interpreted, I engaged in the following process:

Initial notes were made as transcripts were analysed individually, line by line. The left-hand margin was used to note anything that was significant or interesting, including poignant background information, descriptive labels, similarities and differences, and preliminary interpretations.

The right-hand margin was used to note emerging themes by making connections among the codes. In essence, the initial notes in the right-hand margin became succinct phrases representing the interpretation of the text, and using the participants' own words as far as possible. As the connections between codes became more systematic, the emerging themes were recorded. Quotes from transcripts were then organised thematically. Each quote identified the participant by a two-letter initial, and provided the line number of the beginning of the quote from the relevant transcript. Wherever quotes are included in this report, they are presented in this format.

The content of the emergent themes were organised into groups by identifying relationships and making connections that resulted in clusters of themes. These clusters were checked against the transcripts for validity, and a set of quotes were identified as providing evidence of the theme. Finally, a master table of themes for the clusters was compiled, giving each cluster of themes a name that represented the overarching or superordinate theme, and listing the relevant subordinate themes beneath them. The thematic structure of the results is shown in Table 1 on the following pages.

Table 1: Master Table of Themes

(A): Development of the Court

- **The Victims Rights Act 2002**
- **Legality of the Process**
  - *Fairness (Natural Justice)*
- **Victim Statements from CVAs**
- **Set up of the day**
- **Monitoring**
- **Funding/Resources**
- **Training**
- **Stakeholder (community and government) Collaboration**
- **Information Sharing**
  - *Police and CVA*
  - *VAs and CVAs*
- **The Family Violence Focus Group**
- **Developing the protocols**

(B): Roles within the WFVC

- **Police**
- **Police Prosecutors**
- **The Judiciary**
- **Community Victims Advocates (CVAs)**
  - *Accountability of CVA*
- **Court Victim Advisors (VAs)**

(B): Roles within the WFVC

Service Providers

Salvation Army

CADS

ManAlive

Defence Lawyers

Defence Lawyers and the Protocol

Community Probation

Defendants/Offenders

Complainants/Victims

(C): Relationships between the different Roles

Police and Defence Lawyers

Defence Lawyers and CVAs

Extravagating

Template

Differing views

Judges and Defendants

Coercion/Pressure

Encouraging

Therapeutic

Role as parents

Repair/healing

More damage

Judges and Victims/Families

Victims and CVAs and VAs

Neutrality

Advocacy

Judges and CVAs

Speaking rights

Table 1: Master Table of Themes

(D): Aims of the Court

To overcome systemic delays in Court process and to minimise damage to families by delay

Efficiency

Speed

Tension with a therapeutic approach

Timeframes – 2, 4, 6

To concentrate specialist services within the Court process

Specialisation of Judges, Defence Lawyers and Police Prosecution

Community Services in Court

To protect the victims of family violence consistent with the rights of defendants

Safety of Victims

Sharing information

Rights of offenders

To promote a holistic approach in the Court response to family violence

To hold offenders accountable for their actions

Accountability to the Courts – conviction and punishment

Getting off easy

106s and Current Sentencing Options

Accountability to the victims – the violence stops

Accountability and Change

Presumption of guilt

(E): Understandings of Family Violence

Alcohol

Cycle of Abuse

Gendered

Low end versus high End

Minimisation /Exaggeration/ Underreporting

One Offs

Poor/ Maori/ Lower Socio Economic

She asked for it?

Criminal or Private Matter

Possibility of Change

Analysis: Critical Discourse Analysis

Coding using IPA allowed for the sorting and categorising of transcripts sensitive to the meanings given to events by participants (Chapman & Smith, 2002). However IPA does not attend to the productive character of language (Parker, 2005). Using the themes identified from the IPA coding process I undertook a second analysis phase for this project in which I used critical discourse analysis to identify how the participants drew on language to construct domestic violence and offender accountability "at the level of discourses" (Parker, 2005, p.99).

As this research is only one part of an ongoing research project I did not analyse all the themes that were identified using critical discourse analysis. The first three superordinate themes were analysed and reported in the preliminary report to the Waitakere Family Violence Court (Morgan et al., 2007). For this research I have focussed on the subordinate theme of accountability and superordinate theme, understandings of family violence, to show how different understandings of family violence inform the meanings of accountability within the WFVC.

Where IPA allowed for the coding of court professionals' talk into themes highlighting common agreement and conflicts of meaning among stakeholders, a critical discourse analysis allows this research to also identify how the different understandings are constructed through language and the implications this has in terms of the multiple subject positions and social power relationships that exist within the court. Questions guiding the analysis included; has a therapeutic approach adopted by WFVC taken up to offender accountability in a way that is more victim centred and meaningful for victim? and how do participants' constructions of domestic violence and accountability resist or reproduce the problems of the traditional criminal justice system that have already been identified by feminist researchers?

The analysis process involved carefully reading each text within the two themes to identify constructions of domestic violence and accountability that were similar to each other. Similar constructions were grouped together and read closely to identify the discursive resources used to build up these accounts. Having identified these resources within similar constructions my attention turned to the differences between the types of constructions to make explicit the discourses drawn on by respondents in their talk to construct their versions of the subjects and objects that constituted domestic violence and accountability. In the following two chapters I

report my analysis of the two constructions, domestic violence and accountability, that were identified to make explicit the discursive practices informing the court's interventions

CHAPTER FIVE

ANALYSIS: DISCURSIVE CONSTRUCTIONS OF DOMESTIC VIOLENCE

OVERVIEW

The Waitakere District Court Family Violence Court Protocol (2005) forms the basis of how the WFVC operates. The protocol recognises the need for specialisation when working in the area of family violence and has as one its aims the concentration of specialist services within the court process (Waitakere District Court, 2005). Specialisation acknowledges the complex nature of family violence and recognises the importance of staff working in the area having specialist knowledge of the specific, dynamic and intimate psycho-social context in which family violence occurs. Specialisation is necessary to enhance the quality of information available for decision making by court staff, judges, prosecutors and victim advocates (Cook, 2006; Morgan et al., 2007). The practice of the court also "proceeds on the expectation that there will be common agreement between all interested groups" (Waitakere District Court, 2005, p.6). This is consistent with the Te Rito Family Violence Prevention Strategy (MSD, 2005) that recognises the need for specialised knowledge and competencies so that responses to family violence are effective.

To address the question of whether the court is successful in its response to domestic violence intervention, it is necessary to analyse how family violence is understood from the multiple vantage points through the collaboration at the WFVC. This chapter addresses two questions; how family violence is represented from various vantage points and what discourses do the court participants draw on to construct their own understanding of family violence that produce the specialisation and competencies concentrated in the intervention of WFVC? By considering the various discourses that are engaged by court participants in their understanding of family violence it is possible to address the question of how *consistently* they constitute the issues that they are attempting to address through court processes and practices.

Normative Social Systems

Domestic violence as a social phenomenon is commonly understood as stemming from cultural norms and established practices in society (Bograd, 1990; Dobash & Dobash, 1992; Yllo, 1993). O'Neil (1998) refers to such understandings as formed through social systems discourse: a set of discursive statements that form "family" or "domestic" violence as normal practices based on culturally acceptable values. According to this discourse, violence against women is implicated in other social practices and beliefs through which violence is conditionally acceptable (Anderson & Umberson, 2001; Dobash, Dobash, Cavanagh, & Lewis, 1998; O'Neill, 1998; Towns & Adams, 2000). Social systems discourse accounts for variations in the social acceptability of violence against others in different contexts: the violence of armies against each other during wartime is socially acceptable, while sexual violence against children is heavily sanctioned.

Programmes of action developed by the Taskforce for Action on Violence within Families aim to send a message that family violence is not acceptable behaviour within our culture. For example, the current media campaign in New Zealand, "Family violence: It's not ok!" and White Ribbon Day, the International Day for the Elimination of Violence Against Women, that is promoted by the Families Commission, draw on this discourse. We must, as a community let perpetrators of family violence know that their behaviour is not acceptable, and at the same time offer them the possibility to change. As a community we must act to eliminate social tolerance of violence in the home. This discourse works to produce an understanding that violence is more likely to occur if it is deemed acceptable, and for violence to stop it must be socially unaccepted, or at least not go unchallenged.

> *I think what it does well is that it conveys the message to the defendant that this is not acceptable behaviour (GG, 53).*

The criminalisation of domestic violence also aims to convey the message that it is not acceptable within our society.

Feminist theories of domestic violence also work within this social systems discourse but focus on the "the patriarchal ideology and structure of society in which individuals and relationships are embedded" (Yllo, 1993, p.47). Domestic violence within a feminist framework constitutes violence as inherently linked to gender and power (Gavey & Towns, 2005; New Zealand Women's Refuge,

2008; Pence & McMahon, 1999; Stubbs, 1994; Yllo, 1993). A gendered understanding is necessary if we are to attend to the predominantly gendered nature of domestic violence.

> *And that's where men are…I say men because it's the majority...and I'm not being gender biased but that's the reality (WO, 458).*

> *In family violence I see myself as trying to encourage men, predominantly, because statistically it is mainly men, although of course as we know not exclusively (RRH, 49).*

> *We were getting a large number of pleas of guilty and complainants, usually women, were in larger numbers and were prepared to give evidence (PB, 27).*

Understanding domestic violence through a gender analysis of patriarchal social systems enables the gaze to be on the selective use of violence by men. The social acceptance of men's violence towards intimate partners is linked to an understanding of entitlement that is produced through a patriarchal social system.

> *It's whom they choose to hit and it's a feeling that they're entitled to hit, that should be challenged (WO, 447).*

Feminist understandings of domestic violence constitute physical violence as part of a range of strategies of power and control that also include economic abuse, isolation, intimation, sexual abuse, coercion and threats (Pence & Paymar, 1990). These understandings inform the Duluth model of domestic violence intervention which is the model on which the WFVC collaborative interagency response is based. Within feminist social systems discourse the use of dominance, controlling behaviours and emotional abuse are regarded as risk factors for violence. In the international 'violence against women' survey project an increased occurrence of these factors was found to result in an increase in violence by intimate partners (Johnson, Ollus, & Nevala, 2008).

> *…because it's not alright for anybody to yell, to intimidate or to manipulate, because that's abuse too, it's all control (DM, 136).*

> *One of the most difficult groups that I ever had to work with were women who on a benefit they're entitled to, who had formed a relationship with an abuser often never had access to their own money. It was taken from them, had no control over when he came and went, and were often blackmailed by their abuser. In terms of you know "If you throw me out, I'll dob you in"… so they would be the last person to call the police (WO, 561).*

While some respondents' talk drew on a feminist social systems discourse to produce their understandings of domestic violence, in many cases gender was absent from participants' talk.

Gender neutral talk is not surprising if we take into account that legal systems traditionally adopt gender neutral principles. The absence of gender in talk works to de-gender the problem of violence against women. Participants frequently spoke of defendants and offenders in gender neutral terms:

> *And this was we would deny people a chance to enter a plea of not guilty straight away by not asking them to plead (PB, 43).*

> *...once someone has recognised that they have a problem (BB, 212).*

> *Is it more effective than sentencing someone to supervision? (MB, 314).*

> *I don't get elated when someone is sent off to jail because I think it is a horrible thing to do to people (MH, 66).*

The use of gender neutral language acts to reframe the problem as "human violence" and works to counter, or silence feminist constructions of domestic violence which emphasise the role of gender and power in abusive relationships, including the fact that the overwhelming majority of victims are women (New Zealand Family Violence Clearinghouse, 2007a). In the following examples, the absence of gender specific terms in the participants' constructions produce a version of family violence in which the violence is attributed to "people" generally and appears without any connection to gendered relationships of power.

> *Now some real targeting of people, if there is a need for anger management getting them into a programme. Not that it works for everyone but at least there is a lot more emphasis put on it to try and make home safer and therefore hopefully the children will not continue the cycle that they have witnessed in the home (BR, 55).*

> *So there are always going to be some tensions between holding offenders accountable as one of the aims here is, punishing them if you like for violence, particularly serious violence, and repairing families. If you send someone to prison for six months or two years then that has an obvious consequence for the family, maybe positive in the sense that it removes a violent member of the family from that family. But it may at the same time have negative consequences, because despite the violence, there are often positive features of a violent person's involvement in their family when they're not being violent (YB, 113).*

De-gendering the problem of domestic violence shifts the focus of responsibility for the violence from men and the cultural and structural features that support violence against women. Understandings of domestic violence that do not account for gender "fail to take into account of different positions of men and women within and outside the family which are characterized by unequal power relations" (Boyd, 1989, p.152).

The de-gendering of the violence is also produced through the representation of mutual responsibility, where women are constituted as being as violent as men, or contributing to the violence within their relationship. This works to draw attention away from patriarchal social support for violence against women and locate responsibility within individuals – whether men or women, perpetrators or victims.

> *I have heard cases, this is just anecdotal of the police being called by men, and as soon as they find out it's a man they have got to go to, or is the alleged victim, the police tend to laugh it off or brush it aside. I guess it's minor, as by far the most offending is by men against women not the other way round, but I don't think it's a perception that helps (DJ, 245).*

> *...that courts are reluctant to throw the defendant in jail they are more likely to send him off to get help or give him – him or her, it's her too, it's getting more her, - a chance to fix the problems (GR, 14).*

> *Strengthening women or strengthening victims: they can be women or men (RH, 237).*

> *You will never get a non-violent culture where there's only one side stopping the violence (DM, 128).*

As a consequence of de-gendering violence against women as 'mutual violence', the problem of family violence becomes constructed as a problem of individuals who are on different 'sides' or who are stereotyped in particular ways, making it more likely that those responding to family violence will not take their experiences seriously. "Women's use of violence should be taken seriously but it should not be used as a strategy to obscure male violence" (Berns, 2001, p.273). When social systems discourse obscures gendered power relations it becomes possible to constitute men and women as individuals who are disconnected from their social context, in conflict with each other, or subjected to unfair misperceptions: the ideal of zero tolerance is compromised by individualising the problem of violence

Two forms of social systems discourse constructing family violence in the context of the WFVC were present in respondents' talk. While the elimination of violence is understood as needing zero social tolerance of any form of violence within families, gender neutral talk of respondents functions to obscure the analysis of social power in relation to violence. It is possible for different forms of social systems discourse to work together so that patriarchal traditions of social support for men's violence against women are challenged. However, when operating in the context of the

criminal justice system which insists on gender neutrality under the law, it creates forms of social power that work to silence a social systems discourse that constructs gender as a critically important dimension of the problem.

THE CYCLE OF VIOLENCE - LEARNED BEHAVIOUR

Recently, domestic violence has been quite commonly constructed as part of an "intergenerational cycle of violence", boys who witness violence by their fathers in the family home are more likely to be perpetrators of violence against their own partners (Johnson et al., 2008). This construction constitutes violence not as something that is inherent or caused by an individual's psychological problem, such as poor impulse control, but learned through experiencing violence or witnessing violence directed against others as a child. It draws on the social learning theory of modelling behaviour that we encounter as children (Bandura, 1977). In respondents' talk domestic violence was also constructed as part of an 'intergenerational cycle of violence'.

> *It's a huge problem family violence because its cycle of violence that's handed from generation to generation and even though you are doing this in court, how is it going to be stopped? How are we going to re-educate? Where does it stop? (GG, 199).*

> *The view on where male violence comes from, generally speaking, we get it from our fathers. I work with a number of men who have got huge issues around the way that they were fathered. And that plays out in their adult relationships (DM, 149).*

> *Not that it works for everyone but at least there is a lot more emphasis put on it to try and make home safer and therefore hopefully the children will not continue the cycle that they have witnessed in the home (BR, 56).*

The implication of this construction is that to eliminate family violence we need to stop the cycle of violence; it brings attention to the effects of violence on children and the need for children to grow in non-violent homes.

> *Its trying to minimise family violence to prevent re-offending in the current clients and prevent offending in future clients by ensuring that families become more peaceful and non violent so that the cycle isn't repeated (RH, 235).*

Understanding violence as learned behaviour opens up a space of understanding in which the behaviour might be changed: if violence is learnt then it can be unlearned (Lewis et al., 2001; Morgan, 2004). Therapeutic interventions into family violence offer the possibility to re-educate

violent offenders, although participants questioned how easy is it to change behaviour that developed in childhood.

> *It's really teaching people with limited emotional intelligence for whatever reason, like they have been abused, they have come up in an abusive home, re-educating them where abuse has stopped them growing (GG, 62).*

> *Will a 16 week programme, going along once a week on Thursday night for 3 hours, is that going to undo all of that learned behaviour? (WO, 369).*

Empirical research supports this construction in boys who witness abuse at home or are abused themselves: they are more likely to use violence than boys who do not. Results from the International Violence Against Women Study (IVAWS) found "that men who witnesses their fathers using violence against the mothers were at least three times as likely to be violent toward their own partner compared with men form violence-free homes" (Johnson et al., 2008, p.121). However, this research does little to account for gender differences in perpetrating violence since it is boys who are much more likely to be perpetrators of violence as adults, not girls who also witness abuse or are themselves abused.

Framed within a learned behaviour discourse, empirical research supporting the intergenerational cycle of violence suggests that gender is a crucial dimension of learning violent behaviour. Learned behaviour discourse is often co-articulated with a patriarchal social systems discourse. While the home is one place children learn how to behave, children are also receiving information in terms of acceptable behaviour in the wider society and also learn that it is appropriate to control your wife or woman partner and enforce this control through violence.

> *Maybe I'm a little bit cynical but when you've got 35 years of learned behaviour, you've got all the power and control and you don't really want to give that up... (WO, 368).*

Men's intervention programmes within the Duluth model are informed by the co-articulation of these two discourses. "As emphasized in batterer's intervention programmes, boys who witnessed domestic violence and grew up to be batterers learned more than just violence; rather, they learned—and thus can unlearn—lessons about the respective roles of men and women that contribute to their abusive behaviour as adults" (Minnesota Advocates for Human Rights, 2003).

Programmes that are justified by the co-articulation of learned behaviour and social systems discourse construct "violence as intentional behaviour chosen by men as a tactic or resource to dominate, control and punish women" (Lewis et al., 2001, p.121). Pro feminist programmes

challenge men to take responsibility for their violence. Violence remains the central focus (Lewis et al., 2001), not the relationship or strategies of control that are taught in relation to anger management. Understandings of domestic violence that are constructed through discourses of learned behaviour co-articulate easily with gendered social systems discourse and produce interventions which are both hopeful, in the sense that they are premised on the possibility of change, and support zero tolerance by challenging social support for men's entitlement to control their women partners.

Discourses of Control

Loss of control

Domestic violence as 'loss of control' draws on an understanding of violence as an issue of managing anger. Violent acts are understood as being "driven by impulsive forces from within, such as anger or stress" (O'Neill, 1998 p.464). Violence within this discourse is understood as other than the release of inner tension, such as anger or stress (O'Neill, 1998) and is not instrumental in achieving any other aim. Expressive tension discourse does not constitute understandings of violence as being part of an ongoing systematic pattern of power and control. In the following examples, participants account for violence in terms of the expression of inner tension, whether in support of this construction, or to challenge it.

> *...we don't tell our guys to do that [not talk about things], because that leads to frustration bottling up and then abuse (DM, 213).*

> *And where you get abuse, you're going to get escalations and you're going to get violence (DM, 138).*

> *But then you get these reports from the victim's advisor, while tempers are still hot, and they might exaggerate greatly the problems in the relationship (HD, 157).*

When violence is constructed as an expression of inner tension, accounts commonly combine notions of 'hot tempers' or 'escalation' with talk about alcohol or drugs. The use of alcohol or drugs reduces a man's ability to control their anger, as if the alcohol causes them to lose control (O'Neill, 1998). For example,

> *It does provide for a forum where triggers to violence, alcohol, drug abuse, isolation, financial troubles and those sorts of things... can be aired and people can take themselves off to appropriate places to seek assistance (HD, 193).*

The discursive construction of domestic violence as 'loss of control' informs many men's programmes that aim to teach men how to have a non violent future. The practice of mandating attendance to men's non violence programmes is fundamental to specialist domestic violence courts and is common practice at the WFVC court. Over 50% of offenders who go through the WFVC process attend such a programme (Coombes et al., 2007). Mandating attendance of a men's programme is a process in which the court collaborates with community organisations to provide the therapeutic component to the court process. At Waitakere the main provider of programmes is Man Alive through their "living without violence" programme. The following description of their course shows how the idea of managing anger is dominant in its focus.

> Man Alive runs life-changing Living Without Violence courses that will help you understand why you get angry and how to deal with your feelings before they explode into anger. That way, you'll feel in control and you won't harm others. You'll feel good about yourself (Man Alive, 2008)

Domestic violence understood as unmanaged anger informs courses that teach men to control their impulsive forces from within, the assumption being that if a man can learn to control his anger then he will no longer need to express inner tension through violence (O'Neill, 1998). Anger management courses informed by an understanding of violence linked to anger management set out to teach men strategies to be more in control of *themselves*. It can be argued that this discourse is reproducing the gendered power relationships because the interventions focus on how much control the man has or has not (Morgan & O'Neill, 2001). A focus on teaching men strategies of control stands in direct contrast to practices that are informed by gendered social systems discourse where social support for men's controlling behaviour is challenged: teaching men how to control their anger supports them using control tactics against their partner by emphasising the importance of control without addressing the ways in which it can, and is, used against others (Morgan, 2004).

Findings from research on anger management programmes have found in some cases that the act of teaching batterers how to control their anger has just changed the form of the abuse that takes place (Morgan, 2004). The batterers learn not hit the women but instead increase the psychological abuse in the relationship (Morgan, 2004). For example they may not hit their partner but sleep with a gun under their pillow. The fear and intimation that make up a large part of the dynamics of family violence often continues or escalates (Robertson, 1999).

This construction of violence against women through expressive tension discourse also does not account for choices that are made by batterers in terms of when they use violence. The discourse of "loss of control" is frequently contradicted by batterers' behaviour. Rather than being 'out of control', recklessly targeting anybody when they get angry, batterers' violence is directed at specific people at particular times and places. For example batterers choose not to hit their bosses no matter how angry or 'out of control' they may feel (Klein, Campbell, Soler, & Ghez, 1997). These constructions obscure the functional outcome of the violence and the ongoing systematic nature of family violence. It emphasises random acts of violence as discrete events of emotional expression.

Being in control

When violence constructed discursively as 'in control' we understand violence as an instrumental power strategy (O'Neill, 1998). Violence is used as a means to an end, a strategy that perpetrators employ to get what they want (Anderson & Umberson, 2001; O'Neill, 1998).

> *They're not out of control; they're using violence to control. It's not about being out of control. If they were out of control they'd hit anybody that made them angry (WO, 447).*

Constructed in this way, violence has a desired functional outcome of maintaining control and positions perpetrators as making the choice to be violent.

> *Anger's an emotion that we can all experience, but when you choose to be violent that's a choice and there's an action in that and you have to take responsibility for your choice and for the action that you carry out (WO, 447).*

This construction of domestic violence draws from a liberal humanist discourse (O'Neill, 1998), which construes a perpetrator as a rational subject and privileges of ideas of freedom, control and choice. A liberal humanist discourse also forms the basis of legal understandings of perpetrators as rational decision makers (Hudson, 2002).

Discourses of rational control work to produce the kinds of subjects that are required in punitive, punishment models of justice. Rational subjects who choose to be violent shouldn't be rewarded by being sent on courses: there needs to be punitive consequences. Punishment to deter violence appeals to rational subjects who will chose to avoid behaviour that is harmful to them. It draws from the concepts of humans as rational units, aware and in control of what they are doing.

Violence happens because, rationally, the payoffs, such as 'getting away with it', out-weigh the risks involved.

Since liberal humanist discourse relies on a rational subject choosing to behave violently in order to control their partner's behaviour, it does not fit well with a therapeutic discourse which implies that the perpetrator, or his relationship with his family, is unhealthy or damaged and in need of help or healing. A rational subject who is in control of his behaviour requires greater disincentive to commit acts of violence. This constitution of an individual subject isolates them from their social context, excludes social systems discourse and, at the same time, places the responsibility for the violence with the person who chose to control another through violence. Attributions of responsibility are more diffuse in other discourses and may function to serve as excuses or justifications for the violence that the perpetrator commits. At the same time, diffuse attributions of responsibility can obligate victims, families and communities with the need to prevent violence against women. This can lead, for example, to the expectation that women will take responsibility for the violence, and that communities will take responsibility for imposing social sanctions against domestic violence. The police are charged with responsibility for implementing mandatory arrests, and the criminal justice system implements no drop prosecution policies.

Victim's choices

To explain domestic violence, one respondent's talk turned the gaze to victims as rational subjects who make choices. They drew on the construction of the victim rather than the offender as being in control, and choosing to be in an abusive relationship,

> *There's a whole lot of responsibility that she carries around, and the choices that she's made, that have her remain in the relationship when she's being abused, and all that (DM, 185).*

This construction of domestic violence shifts responsibility for stopping the abuse on to the victim, specifically by obligating her to leave the relationship. The offender becomes a passive player in the victim's desire to be in an abusive relationship. For the violence to stop, the victim is obligated to relocate her home and her family, if necessary, to leave. The perpetrator is not obligated to change his behaviour. The victim carries the burden of responsibility for the violence against her, highlighted in the commonly asked question "why doesn't she leave?" rather than "why does he abuse her" or "what can be done to stop the violence" (Barnett, 2000; Coombes et al., 2008).

When you get the victim approach, they're not held accountable for their choices, they just select different partners- same stuff. And it's something Poll 400's has confirmed for us. We've seen the same woman come through the system all the time with different partners (DM, 189).

In this instance not only do women stay in an abusive relationship but they seek them out and move from one abusive relationship to another. This account explains the pattern through the victim's rational choices to be abused, and functions to make the victim responsible for the abusive relationship.

The more I work in family violence the more I detest the whole victim thing, because the victim is like nothing's their fault, it is all the other person's fault (DM, 183).

The notion that victims are necessarily blaming their partners for violence against them sets up an opposition between two discrete, rational subjects who chose to commit and tolerate acts of violence. Attributing blame to victims genders the relationship between these subjects in such a way that when violence is tolerated by women, then they bear at least as much responsibility for stopping it as the men who perpetrate it.

Research by Goldner et al (1990) explains domestic violence in terms of being in control and out of control at the same time. This interpretation of 'out of control' draws on gender theory and the construction of masculinity as relational and requires the constant creating and recreating of ourselves (Yllo, 1993). In this sense no subject 'controls' the discursive positions available in discourse. Goldner et al (1990) talk of terror and extreme fear when he is not different enough from his partner, and his violence, therefore stems from his attempt to reassert sexual difference and masculine gender domination. In this account being 'in control' is gendered masculine (Anderson & Umberson, 2001).

Domestic Violence as a Pathology

The representation of domestic violence as a problem experienced by an individual or a family draws on a medical or pathological discourse where domestic violence is explained through the existence of a physical or psychological disorder (O'Neill, 1998). An act of violence by a person occurs when there is something wrong with that person or when the relationships in the family need repairing, or healing. In these accounts being violent does not represent a normal state of affairs (O'Neill, 1998). This discourse understands the offender as sick or disordered, or the relationship as sick. For the violence to stop there needs to be a process that restores the

individual or relationship to normal. Offenders and/or victims and/or families require treatment or therapy to attend to the issues or problems they are facing.

Alcohol and drugs

One version of this discourse that was common in the talk of court professionals was that offenders often suffer from an alcohol and/or drug problem. Alcohol or other drug dependency is understood as an illness which is the cause of violent behaviour. This understanding of the causation of domestic violence informs the court practice of mandating drug and alcohol treatment so the offender can recover and the violence will stop.

> *Most, but not all of it, seems to be related to alcohol. Despite the great hoo ha against P, which is involved in some very violent crimes and lots of burglaries and dishonesty offences, alcohol seems to be the catalyst for most domestic violence (DJ, 32).*

> *We think we are dealing with anger and violence, but I think if we go a step behind that, we are dealing with drug and/or alcohol issues, so if we can address that, we will be making huge in-roads with the other issues (RRH, 225).*

The assumption in this talk is that treating an offender's alcohol or drug problem will reduce or eliminate the occurrence of his violent behaviour because alcohol or drugs are the cause, or the trigger for the violence.

> *...there are some repeat customers but the court targets alcohol abuse and violence and they target them by requiring the offending to attend an alcohol programme (TB 124).*

> *I am happy with what they say, they challenge them, they [the judges] say you have an alcohol problem and you have a drug problem (GR, 75).*

> *It's pretty obvious from the majority of our people who come before the court that alcohol is a huge issue and more so than drugs, more so than P, often as a combination, alcohol is very often a factor in violence. Not always but I would say eight out of ten cases (BB, 289).*

Talking about offenders as having an alcohol problem, rather than choosing to be violent, acts to give the men the benefit of the doubt rather than vilify them as violent criminals (Crocker, 2005). This construction of the offender works to make a therapeutic rather than punitive intervention by the court the more useful approach.

> *The repeat offenders seem to be the alcohol users rather than the violent people, that is to be expected because while they are still drinking they are not changing (TB, 385).*

Attributing domestic violence to the misuse of alcohol and/or drugs lacks explanatory power; it does not explain why perpetrators only attack their intimate partners even though they drink in many social situations. It does not address a normative majority of people who drink without becoming violent towards strangers or family members. Nor does it address the empirical findings that of the many perpetrators who are violent under the influence of alcohol, a large proportion are violent when sober as well (Martin, Nada-Raja, Langley, Feehan, & McGee, 1998).

Empirical research demonstrates a strong correlation between family violence and alcohol and drug abuse (Galvani, 2006) but there remains no evidence of a causal link between alcohol and violence (Gelles & Cavanaugh, 1993; Johnson et al., 2008; Kantor & Straus, 1987; Leonard, 2001) Women victims of domestic violence report that alcohol on its own does not account for the violent and abusive behaviour they experienced (Galvani, 2006). Studies have shown that the severity of violence tends to escalate when people are under the influence of alcohol (Fals-Stewart, 2003; Thompson & Kingree, 2006). Gauldi (2006) concludes it is perhaps more useful to understand alcohol and domestic violence as a coupling of two social issues that presents increased risk for victim safety, rather than alcohol and drugs as the main cause of domestic violence. Alcohol and drug treatment can have beneficial effects but it remains important that treatment programmes are not understood as being able to fix the problem in isolation, and their use should not exclude other requirements within a criminal justice response (Leonard, 2001).

Lemle and Mishkind (1989) argue that heavy drinking and the occurrence of domestic violence are correlated because they are both linked to concepts of masculinity and work to produce perceptions of toughness, power and control. When comparing men who had assaulted their wives and heavy male drinkers, Dutton & Strachan (1987) found that both groups were distinguished by their need for power. They concluded that the relationship between alcohol or other drug misuse and domestic violence does not reside in the perpetrator's illness but in the beliefs and attitudes that support the perpetrator's entitlement to violence.

Attributing domestic violence to the consumption of alcohol and/or drugs minimises the intentional use of violence and the systematic and ongoing character of domestic violence as it is understood through social systems discourses. It constructs domestic violence as a series of discrete incidences of physical or verbal abuse that can be characterised in terms of whether the perpetrator was drunk or sober at the time. Understanding alcohol as the cause, or trigger of

domestic violence also acts to reduce perpetrators' responsibility for their violence by positioning abusive men "as being victims of an aetiology that is beyond their control" (O'Neill, 1998, p.463).

The sick relationship

Remaining within a discourse of pathology, another construction of domestic violence that was evident in participant's talk involved a sick relationship. In this construction domestic violence is relational and understood as occurring as part of a two way process: the relationship "devolves into violence". Domestic violence occurs when two particular people get together and the unhealthy dynamics of their particular relationship leads to violence.

> *For me it's always about client satisfaction and we don't have many yet but I can see in the future we will - clients that have resolved some of their relationship issues and have managed to overcome whatever their reason for being in court is (MH, 59).*

> *It often involves continuing relationships, it may often involve - as interested parties if nothing else - children. It involves the ongoing close proximity, usually or very often, between the people and it's recognised that whatever issues there are in the relationship that have devolved into some kind of violence they really need to be resolved rather smartly so that people can get on, rather than can often be the case in the criminal justice they can drag out (HD, 9).*

According to these accounts, domestic violence is a result of 'reciprocal interactions' within the family system. Victims of violence are constructed as partly or mutually complicit in the abuse through talk of dysfunctional relationships.

> *...as it tends to be a bit one sided, in my view sometimes it takes two to tango. And there are all sorts of things that aren't getting addressed in the relationship, it's all just focused on the accused who has done something at a particular snapshot in time, rather than examining the whole background of everybody (HD, 247).*

> *There are certainly two sides to every story but sometimes one side is more culpable than it first appeared, pushing all the buttons (RH, 229).*

Domestic violence is understood as part of a mutual process, both parties are abusers and victims at the same time and they both contribute to the violent character of their relationship. This practice of relational violence obscures the gendering of domestic violence as it assumes that the violence is experienced the same way by both parties (Fields, 2008) and ignores that women are overwhelming more likely to be victims (New Zealand Family Violence Clearinghouse, 2007a).

Attributing domestic violence to a dysfunctional relationship continues to minimise the violence committed by an offender and acts to diminish his responsibility for the violence. It means the blame can be shifted onto, or at least shared with, the victim. A practical implication of this understanding is the inclusion of couple counselling in community stopping violence interventions.

> *...to teach couples better ways of communication so they are not communicating with their fists and the people are not then hurt...(TB, 115).*

> *If some canny counsellor could get some of these people together and examine all the issues in the relationship not just one party... (HD, 247).*

The idea of violence produced through relationship dysfunction is not entertained in cases of stranger violence but is often used as a defence in domestic violence cases. For example, in cases where women partners have been killed, charges against the perpetrator have been reduced to manslaughter because the victim provoked his violence. For example, he may believe his wife is having an affair and is "taunting" him with it. The victim's behaviour is scrutinised and interpreted as part of the problem. This diminishes the perpetrator's responsibility for the act of violence against his victim.

Healing the family

The protocols of the WFVC state that "the philosophy of healing the family is a paramount consideration" (Waitakere District Court, 2005, p.6) in the proceedings of the court, and its processes endeavour to reduce damage to families.

> *Essentially this whole court is based on the philosophy of healing the family. The difficulty with that concept and practice is that the healed family takes time (MB, 25).*

In its aims, the court also promotes a holistic approach in responding to family violence. A holistic approach aims to hold offenders accountable in a way that addresses the needs of victims and their families for safety and healing.

The concept of healing draws on medical discourse and the assumption that within pathological families, healing or repairing is necessary because there the victim and offender suffer problems in the context of the family.

> *It is set out pretty well in the protocols the fact we are really a family orientated system and we are looking at not just the offender but also the victim and the victim's family and anyone else involved (BB, 162).*

The court is trying to achieve an end to recidivist offending - effectively that's the ultimate goal. And that goal is effectively achieved by healing the problems within the family, so that's what it's about (MB, 45).

...so that it aims for a repair of the family problem if possible (PB, 115).

The practice of talking about healing the family and focussing on the problems of the family may mean that the "violent behaviour of offenders and the safety needs of weaker family members are disregarded" (Fields, 2008, p.95). Victim and offender responsibilities are obscured in the umbrella term of family.

...it may have been a one off thing that has happened in the family and section 9 counselling could address that (CFG, 933).

Victims become absent in talk of families, leaving no space for victims' understandings of their experience or their resources for attending to their safety needs,

Also we are probably helping the court to move towards a resolution about what is best for the defendant and what is best for the family, and its more to heal the family than tearing it apart (GR, 12).

...and the court system is really only part of what is geared towards trying help the offender and the offender's family (BB, 235).

A focus on healing the family privileges the family unit in the process. It values ongoing relationships that both assumes and values togetherness and in which the family is constructed as the predominant social relationship fundamental to the healthily functioning of both individuals and communities (Hochfeld, 2007). The desire to maintain the "idealised construction of family life" (Stubbs, 1994, p.7) can have dangerous consequences for victims of violence. Research by Busch (1994) found that abuse, and in some cases even extreme physical violence, was trivialised or even ignored by judges who exhibit a greater concern for the need to maintain or reconstitute families.

Constituting the maintenance or reconstitution of the family as a primary goal of criminal justice intervention ignores that families are one of society's most violent social institutions, with particularly women and children at far greatest risk of being a victim of violence by a member of their own family than by the hands of a stranger (Gelles, 1993).

You've got ambivalent complainants who want the violence to stop but they don't want to lose the relationship and sometimes they trade one for the other so they'll tolerate a certain level of violence or risk of violence, so that they can have the violent person in the home providing the benefits that are seen to be available for

them, the other members of the family. There's a very complex set of dynamics going on. (YB, 123)

The interpretation of healing the family as maintaining or reconstituting an abusive relationship can leave women unsupported. They often want to leave but all the support is set up around getting them to stay together and fixing the family problems. Women are culturally understood as having the role of holding families together (Piispa, 2002), they continue to be the main care givers of families so the burden of responsibility for the healing and restoring of the family rests with them. This version of 'healing the family' does not present separation from violent partners as a viable supported option.

There's a real aim towards healing families and getting them back together so it is quite different from the normal court prosecution (WW, 11).

...but I guess if the family unit is still together after that then hopefully you would get some lessening of it (DJ, 38).

Talk of togetherness, of reconciling, does not attend to some of the circumstances accounting for women staying in violent relationships from their point of view. Healing families comes with an assumption that keeping the family unit together is ultimately the best outcome for the victim. It also is working with the assumption that most women want to stay in their relationship and this is evidenced by the fact they return.

Well I think what we have in the protocol sums it up, and it is this; we know that 95% of the women, whom we engage with as victims, want the relationship to continue. They want the violence to stop but they very often have a commitment to an ongoing relationship with the offender (WO, 235).

I mean the whole role is the philosophy of healing the families and you know that's more, that's quite altruistic you know, for me its about the acknowledgement that a lot of these women want to stay with their relationships (SW, 53).

The act of returning to a violent relationship is not unequivocally an indication that victims want to stay. Women's Refuge in New Zealand reports that although only 25% of women leave their relationships when abuse starts, at least 75% of women have left within 5 years (New Zealand Women's Refuge, 2008). Women often return to violent relationships because of lack of support and resources available to them (Barnett, 2000; Piispa, 2002). They will return if threats are made against the children. They are prepared to put themselves back in an abusive relationship if that increases the perceived safety of their children (Coombes et al., 2008; Jordan, 2004). Not leaving is sometimes the safest thing for a woman to do in the short to medium term as the act of leaving does not stop the violence and the time of separation from a violent relationship is when

women are at the greatest risk of death (Barnett, 2000; Ford, 2003; Piispa, 2002). If a woman is forced to stay in a violent relationship they may continue to seek help and try and change the situation and their partner's behaviour. This help seeking often takes the form of contacting official agencies including calling the police (Piispa, 2002).

The co-articulation of learned behaviour and social systems discourse supports the WFVC goal of promoting zero tolerance in ensuring violence remains the central focus not the relationship or strategies of control. These discourses function to keep responsibility for the violence with the offender. However the de-gendering of violence functions to limit constructions that attend the gendered social practices and through which violence is conditionally acceptable and reduce understandings of domestic violence to individual characteristics of victims and offenders (Romkens, 2001).

Discourses of pathology that were engaged by court participants in their understanding of family violence consistently diffuse the responsibility for the violence to the victim and act to support ongoing abusive and violent relationships between victims and offenders. Constructions of domestic violence that draw on a pathology discourse are problematic as they ignore the social, cultural and historical background that violence occurs. The focus becomes the couple's relationship or the batterer's behaviour in terms of individual pathology or deviance. Understandings of domestic violence that draw on a discourse of pathology serve to reduce the responsibility of abusive men for their violent behaviour (Frederick & Lizdas, 2003, O'Neill, 1998 #84). Interventions based on these understandings run the risk of colluding with batterers by deflecting attention from the issue of violence or implicitly justifying the violence.

A focus on healing the family by constituting the family or relationship as dysfunctional is problematic because while it provides opportunities for strengthening and healing victims, it also provides opportunities for victim blaming, as violence becomes associated with a reciprocal dysfunctional process. Discursive practices that diffuse responsibility onto victims may take family and community context into account but they also compromise the court's potential to hold offenders accountable for their violence.

CHAPTER SIX

ANALYSIS: THE COURT PROCESS AND DISCURSIVE CONSTRUCTIONS OF ACCOUNTABILITY

OVERVIEW

The WFVC was established on therapeutic principles, and in line with therapeutic jurisprudence has a focus on healing (Morgan et al., 2007) along with a commitment to the possibility of change enabled through the court process that is not linked to punishment or theories of deterrence. Therapeutic jurisprudence "is a perspective that regards the law as a social force that produces behaviours and consequences" (Wexler, 1999, p.1). The WFVC functions as a therapeutic agent, and through a therapeutic relationship with offenders and victims it sets out to reduce harm for victims and improve safe outcomes for both parties.

> *... it requires a willingness on the part of judges to allow for some therapeutic processes to occur while cases are going through court (YB, 169).*

To address the question of whether the court is successful in its response to domestic violence intervention, it is necessary to analyse how accountability is understood from the multiple vantage points through the collaboration at the WFVC. The court processes provide the context in which different constructions of accountability are produced. Contested constructions of accountability operate as a site of negotiation in WFVC practices. These practices are aimed at reducing harm to victims; dealing with matters in a timely fashion; and protecting the rights of defendants while promoting resolutions focused on healing the family. My analysis takes the form of a journey through the court process. Understanding how accountability is constituted at the WFVC depends on the processes that bring accountability into play. By considering the various constructions that are engaged by court participants in their understanding of accountability it is possible to identify discursive tensions between defendants' rights and victim safety in relation to particular practices.

The following analysis is organised around principles that inform the aims of the WFVC protocol: zero tolerance for violence, active responsibility, therapy not punishment, and practices such as

coercion of guilty pleas, plea bargaining, withholding opportunities for change, identifying problems and monitoring.

Zero Tolerance

As a court that adopts a therapeutic approach the WFVC still has a starting point that is retributive, in as much as the violence perpetrated is not excused by the court. The WFVC sets out to convey the message that domestic violence is not acceptable, and defendants from the outset are challenged to take responsibility for the harm and suffering they are causing to the victims, children and the wider community. This aim is consistent with the Duluth model of interagency responses with victim safety at their centre (Coombes et al., 2008).

> *I think what it does well [the court] is that it conveys the message to the defendant that this is not acceptable behaviour. That they have to think of their partner, or their wife, or their children before themselves and it's not all about them. It's about taking responsibility as parents and as a human being. I think that message; the judge would repeat him or herself just about for every defendant and often (GG, 53).*

> *They should be challenged about their responsibility for choosing to do that [hit their partner]. And that's really the crux of it, isn't it (WO, 461).*

> *Bringing domestic violence out into the open, sending a message very loudly and clearly to the west Auckland community that it shouldn't be tolerated and that it won't be tolerated (TB, 165).*

> *I guess too having a dedicated family violence day it really drives home to the guys that this issue is being taken seriously by the system (DM, 35).*

The practice of constituting violence as unacceptable brings the violence into view and it is its visibility to the court that enables violent behaviour to be taken seriously. In this way, the court intervenes in the social relationship to enable an opportunity for the offender to also recognise their violent behaviour is 'not acceptable' and provides an opportunity for them to take responsibility for changing their behaviour through active participation in therapeutic programmes. Zero tolerance enables offender accountability for change and enhances victim safety.

Active Responsibility

In the context of the court, therapeutic discourse positions offenders as individually responsible for changing their violent behaviour. Change requires a willingness by the individual to take

responsibility for their behaviour. The act of acknowledging violence committed by the offender, positions the offender as taking responsibility.

> *I have heard the normal criminal court dealing with family violence cases referred to as the "perjury and amnesia" court because obviously people perjure themselves, they change their version of what happened or they conveniently forget what happened. We are really trying to do the opposite there so it's more like the "front up" court and the "acknowledgement" court (RRH, 60).*

Offender accountability within a therapeutic discourse starts with offenders taking responsibility because without accepting responsibility for their violent behaviour there is no possibility of change and healing. Taking or accepting responsibility for violence against a family member is evidenced by a guilty plea and, in most cases, guilty pleas must be entered at an early stage in the legal process for them to be warranted as responsible.

> *So when you're talking about an offender being accountable for their actions, I like to see these guys being prosecuted and the ideal situation is if they accept what they've done to plead guilty at an early stage, to me that's the ultimate (WW, 173).*

While the basic form that accepting responsibility takes is informed by a legal framework, in as much as accepting responsibility is done through an offender's admission of guilt to the court, it is the admission of guilt rather than a guilty outcome that signifies partial accomplishment of offender accountability for changing their violent behaviour.

Therapeutic accountability, like restorative accountability, creates a space where offenders can take responsibility for their actions, rather than relying on a punitive approach where they are "held responsible in proportion to their culpability" (Braithwaite, 2006, p.40). In a punitive approach the attainment of a guilty outcome does not require acknowledgement of wrongdoing or acceptance of responsibility for violence by the offender. "Taking responsibility" rather than being "held responsible" works to constitute the act of pleading guilty as evidence of willingness to change. If guilty outcomes are evidence of accountability then the state only requires passive responsibility from the offender, and responsibility for an act ceases when the punishment handed down is completed. Active responsibility constitutes accountability as ongoing and values the journey the offender undertakes to change his behaviour. Only when an offender has changed his behaviour has the offender has been held to account for the violence.

The shift from passive to active responsibility requires defendants to actively engage in court process as agents of their own self definition with control over their choices about responsibility and change.

I certainly think it [therapeutic approach] allows for a more effective response overall than a straight line kind of response, which is more often adopted with other forms of criminal offending where you simply establish facts, assess the range of penalties and impose them. It doesn't usually call for much response from the defendant; if they show interest in rehabilitative options then those can be directed. If they don't then they simply get a sentence that the court decides is appropriate for the offence. Off they go. So this is a rather more wide-ranging response to a particular kind of criminal behaviour (YB, 130).

In constructions of accountability focused on offender change the court practices offer offenders the opportunity to make things better for them and their families. Pleading guilty is understood as offenders choosing to take up this opportunity. The court processes, and the judges, coerce guilty pleas for the good of the offender and his family. Pleading guilty is the first step towards the possibility of change

Coercion of guilty pleas through credit

At the WFVC defendants are not allowed to plead not guilty at their first hearing. This is to give them time to be told about the WFVC court process and to fully consider the consequences of entering a not guilty plea for them, and their families. The Waitakere Family Violence Protocol (2005) states:

Pleas of guilty at first appearance are encouraged, and attract the maximum sentencing credit. Not guilty pleas will not be entered (to discourage the belief that not guilty pleas are necessary to get discovery or time to take instructions).

The offer of a sentencing credit to those who take responsibility is part of an accepted coercive practice that occurs in therapeutic courts. Coercion assumes the defendant makes an individual choice as an active agent and will rationally choose sentences in their favour and opportunities offered for their own good.

Taking responsibility is culturally understood as morally good and draws on a liberal humanist discourse of personal responsibility (O'Neill, 1998). This leads to the construction of the "morally good guilty subject" who has chosen to take responsibility for the violence and ideally has also shown remorse.

Very often I have clients who are deeply remorseful about what has occurred, and they realise that they have gone right over the top and they want to change and they go and do so and they express their remorse to the court and they prove it by doing various things off their own back and come back to court and so on (HD, 285).

...that first point where he knows he has done something wrong but he is trying to justify it, and we actually get on to the point where we can say to both parties how can we make this better for both of you. And she has the opportunity to have input in what she wants to see happen, he has the opportunity to express remorse if he wants, and to agree that he wants to do something, therefore an opportunity for an intervention that is healing for both of them, and its far better than the old adversarial system where you even proved innocence or guilt and there is a penalty, and the penalty might be a fine or community service, but how does that actually achieve an improvement in their relationship (WO, 252).

Operating with a "morally good guilty subject" that is remorseful, pleading guilty is acknowledged by the court in the form of credit. This requires a moral subject who recognises right and wrong and who agrees with normative moral values. This fails to account for the selective use of violence by men that links to an understanding of an entitlement to violence that is normative: that is, produced through a patriarchal social system (Adams, Towns, & Gavey, 1995).

I think the number one rule is that all judges offer significant credit to defendants who are prepared to acknowledge responsibility for charges that are properly laid, by giving them meaningful credit for their guilty plea, particularly if it's entered at an early stage rather than down the track, and for any completed courses (RRH, 236).

With regard to victim safety, giving credit for early guilty pleas because they evidence active responsibility may inadvertently reward remorse and reinforce the "widely documented cycle of violence, where violent men express sadness and remorse after they have assaulted their spouse" (Crocker, 2005, p.220). If offenders are held accountable through coercing guilty pleas for credit, then the court risks sending the message that the cycle involving patterns of violent behaviour and cycles of remorse and reconciliation are normative.

Within a therapeutic discourse, guilty pleas are encouraged because the court process is designed to prioritise healing for the family and the first step in preventing further violence is the offender's active responsibility for change. Changing violent behaviour is understood as preventing further harm to the family, and early guilty pleas at least mean that victims and families avoid the harm often perpetrated during the defended hearing process. This is in part because of poor outcomes in terms of convictions but it is also informed by aims of protecting victims from legal processes which can re-victimise them and also opens them to further intimidation from the offender.

Encouraging people not to see the court as some sort of game where they can for example come along and do a knee jerk 'not guilty' plea and just hope and expect that the complainant isn't going to front up and that the process will be impotent and I think we have been impotent in the past (RRH, 56).

The other side of that is, the not good side, is when a guy won't accept what he's done and just digs his toes in and says 'nope didn't do it' and then it just gets quite untidy for the victim and we end up going off to a defended hearing (WW, 176).

If an offender does not initially plead guilty a judge will often stand the case down. The therapeutic jurisprudence process therefore will enable space for offenders to come to a decision to take responsibility.

And with that in mind she [the judge] will stand matters down to allow further discussion if she thinks its going to resolve, she will work hard to resolve an issue rather than just accept a not guilty on face value (TB, 247).

Opponents of therapeutic jurisprudence fear that treatment has replaced fairness in the application of justice and accountability (Nolan, 2002). To counter perceived unfairness of the coercion of guilty pleas, respondents draw on a procedural discourse and constructions of fair process to justify the use of credit.

To balance that the court are not being as punitive as they may otherwise be and may otherwise if it wasn't - if people are not prepared to take responsibility (TB, 168).

So Judge Johnson would give a section 106 sentencing more leeway than the current judiciary does. And that alleviated, I suppose some of the unfairness or objections lawyers might make about this process (HD, 101).

The fact is that we are not donging them, if they are completing courses, if they are doing what is agreed early on then the indication that is given, which is usually a community based sentence or conviction and discharge or come up for sentencing if called upon or in some isolated cases 106 discharges. Then they realise we are doing our part of the bargain... (BB, 436).

In my view, if the defendants take responsibility for charges that are rightfully theirs and complete comprehensive course counselling, then maybe they will get a community based sentence (RRH, 350).

If an offender does plead 'not guilty' the case will go to a defended hearing. Defended hearings sit outside the therapeutic approach adopted by the WFVC. Anyone appearing at a defended hearing has pleaded 'not guilty', and the WFVC interprets these as offenders not accepting responsibility for any wrongdoing and not being willing to change.

Plea bargaining and responsibility

The coercion of guilty pleas can include the practice of plea bargaining. The practice of plea bargaining works against the aim of protecting victims from further harm as it does not validate victim's experience of violence and undermines zero tolerance by minimising the violence to

lower the charge. Pleading guilty to a reduced charge arguably does not constitute an offender taking responsibility for the seriousness of acts of family violence. The practice of plea bargaining is navigated by its "better to get conviction that not" which returns to the notion of accountability as an outcome of a process in which the defendant is passive, and not required to take ongoing responsibility for their violence. However it is also informed by the understanding that defended hearings can be harmful to the victim. So while this may be understood as compromising accountability for change by accepting passive accountability to the court (conviction rates), it is also based on an understanding of systemic domestic violence and acts to protect the victim from the process of a defended hearing.

> *One of the areas of dispute is the area of negotiation of a guilty plea, and there are many judges, and I respect what they say, who will just not plea bargain on the basis that they will reduce something from, for example male assault female to crimes act assault because they want to see a male/female assault on the record. The argument against that which we use is of course is that it is better to get a conviction than none at all. Better to get a guilty plea and some acknowledgement of responsibility than to go through the process of having a defended hearing (BB, 141).*

> *If they are guilty, then they accept responsibility to try to reconstruct the family or the relationship or reconstruct their own lives, even if the relationship has been severed at that point. And you're giving more certainty to the victims that their side has been heard (RH, 165).*

Here respondents' talk presents coercion of guilty pleas as providing victims with more certainty that some form of action will be taken against the offender, protecting them from systemic violence and taking violence against them seriously: victims know they have been heard and guilty pleas function to validate their victims. The coercion of guilty plea to lesser charges does provide opportunities for the defendant to be held accountable, in terms of gaining a conviction and providing an opportunity for them to engage in change programmes. However, "if the victim's views are not taken into account then the strategy may alienate her from the rest of the court proceedings making it more difficult for the court to be well informed about her safety" (Coombes et al., 2008, p.45)

The coercion of guilty pleas by suspending or reducing charges is in conflict with the court's aim of sending a message of zero tolerance. The practice of charges being reduced or dropped to encourage guilty pleas is controversial and can be seen to be continuing the practice of minimising domestic violence (Robertson et al., 2007). The offender is only required to accept

responsibility for one isolated event and not required to acknowledge the often on going nature of the violence.

There was also tension between giving offenders credit for guilty pleas by indicating sentences of S106 discharge without conviction, and keeping a conviction on court record as a form of accountability. The same person demonstrates this tension by arguing for and against S106s drawing on both therapeutic and punitive discourses of accountability to construct the tension. As a punitive outcome, a conviction holds the offender accountable to the court, yet as a therapeutic outcome the offender's active responsibility throughout the legal process doesn't further harm victims and families.

> *But you know you're not going to get the conviction rate and I speak absolutely for myself when I say I don't believe that anybody who comes to Family Violence Court, unless there are absolutely exceptional circumstances, should get a discharge without conviction. Because the next time they come back to court, and they will, the next time they come back to court, it'll look like they've not been an offender and she's got no record of having been a victim before. And that's what happens, so I personally have crossed swords in judge's chambers over this because I don't believe (WO, 349).*

> *As I said, we want a win-win situation and many people will argue that criminalising men's behaviour does not achieve the best outcome. I agree with that and there're cases where it's relevant and it's timely, when it's a first offence and it's a minor offence and the impact of that conviction is going to have far more damage than what the original incident did. In those circumstances any Lawyer could argue the reasons for a section 106 discharge without conviction (WO, 375).*

The coercion of guilty pleas through 'credit' offered by judges' works to produce a guilty (legal) subject but also can undermine responsibility when used to avoid punishment. When accountability is understood through the notion of guilt, the offender is held accountable to the court, but not for enhancing victim safety. Respondents' talk demonstrates a tension for those working in the court when credit is understood as about the system and not the victim, especially when guilt is understood as a legal outcome rather than the first step in the process of change.

A guilty plea on its own does little to demonstrate the offender's active responsibility for his violent behaviour. Tensions in understandings challenge the assumption that a guilty plea constitutes the acceptance of responsibility, because with the offer of 'credit' it can also be understood as a way to 'get away with it'. Relying on guilty pleas as the evidence of responsibility and willingness to change can result in a legal practice which is meaningless for the victim and family.

THERAPY NOT PUNISHMENT

The therapeutic approach that has been adopted by the Waitakere Family Violence Court is in tension with a traditional punitive legal discourse that constructs accountability through punishment. One of the ways this tension was negotiated by participants was in constructing a punitive approach as failing to deter future violence. When a punitive approach is understood as unable to prevent violence, it does not support the goals of the WFVC in reducing violence in the community or improving victim safety. This positions a therapeutic approach as a more useful response to domestic violence.

> *It may be that managing cases in a therapeutic way, where dealing out less punishment in the conventional sense might strike some people as being a down side of the Family Violence Court because criminals aren't getting punished the way they ought to be. But in the absence of evidence, which suggests that punishing people is a very effective social tool, there is not much point in punishing people for the sake of punishing them (YB, 383).*

A therapeutic approach was articulated as resisting ideas of how the court should function. In this construction, the WFVC is challenging the traditional or 'purist' way of dealing with domestic violence.

> *There was also a judge's seminar going around the country on family violence and while it wasn't zero tolerance it wasn't far away from it and it really mirrored the attitude of most of the judiciary. While recognising if you can get early guilty pleas and acknowledgement of guilt and do something to help make sure people, try to ensure people don't come back to court and don't re-offend and don't hit their partners, current partners or future partners, then it's a good thing. But most judges have different attitudes with the way to deal with it and like a lot of the lawyers have a more sort of purist way of dealing with it which they consider a purist way, which is to deal with them under the sentencing act and let the punishment fit the crime basically (BB, 112).*

The opportunity for change offered by a therapeutic approach is set in opposition to a more traditional punitive approach where a person is given a sentence, say of community service. Such sentences do not open opportunities for behavioural change, but may harm the family even more in the process because it deprives them financially.

> *The purpose is to try and create a real change. My view is if you give a guy PD or whatever, he's not going to learn any more skills. If you give a guy PD that's one day a week he's not working, and that impacts upon his family. At least if the guy's prepared to engage here, he's going to learn some new skills, so he's less likely to reappear on the same sort of charge. That's where I see the benefits of family violence day (DM, 24).*

The court exists within a traditional legal framework which is punitive in practice, and although the court has adopted a therapeutic process, a punitive approach was constructed as necessary when dealing with a defendant who 'chooses' not to change. When a defendant is not prepared to take up the offer of help given to him by the court, a therapeutic approach becomes unproductive and respondents' talk appeals to (calls up) a punitive approach. If offenders choose not to do anything about changing behaviours, then the discourse of punishment is invoked.

> *So I might be a little bit black and white about justice issues pretty much I don't get elated when someone is sent off to jail because I think it is a horrible thing to do to people but I acknowledge that they earned it as such and they have probably not put their hand out to take the help offered which is what family violence day is structured to do, so that's like you can't get everyone educated and on board immediately and may be that will change. Maybe the percentile will go up and more people will heal. My nature is that I want to see people heal (MH, 64).*

While prison as punishment does not meet the needs of the WFVC court because it is not focused on healing, this sentence is understood as necessary because the offenders that receive it are unwilling to change and have demonstrated no remorse.

> *There will always be perhaps 5% who you are not going to change but that percentage maybe higher - but I think it its really only about that, but that's not based any statistics but just on how I see people. I can only think of ten people of all the time I've been handling family violence here, that includes one case I had over on the North Shore about 6 or 7 months ago, where the men involved, and I think everyone of them was a man, where those men were basically almost past redemption. They weren't interested in changing behaviours they didn't feel any remorse and they would be doing their time within the prison system and then coming out and being as such a menace as they were before they went in to prison, if that's where they were going (BB, 179).*

> *He [the judge] is also good when some of them, trying to get to the end of the trail where they have been harassing the victim, harassing the victim, not guilty and he has about 15 defended hearings, some of them are good and finally put them away (GG, 96).*

A punitive discourse relies on the construction of a rational subject. Respondents' talk constitutes the lack of change as the defendant's choice, which functions to make a punitive approach deserved.

The talk assumes that the court achieves procedural fairness, in as much as everyone is offered the same chances, the process isn't biased and the idea of deserved punishment doesn't refer back to the violence committed, but instead to the court process. Offenders 'choose' punishment

by not complying with the court throughout the court process. This prioritises the court as the body to which the offender should be held accountable.

Withholding Opportunities for Change

Not all defendants are given the opportunity to undertake therapeutic programmes for behaviour change. The judges take into account the severity of the violence and the defendants' previous record, as well as their assessment of the offenders' willingness to change before deciding on a course of action. In the court participants' talk, the use of both therapeutic and punitive approaches within a therapeutic approach was negotiated by positioning offenders within different categories, as 'serious violent offenders' or 'low risk/level offenders' depending on the type of offence they committed. Those categorised as serious violent offenders were not given therapeutic opportunities.

> *So there are always going to be some tensions between holding offenders accountable as one of the aims here is, punishing them if you like for violence, particularly serious violence, and repairing families. If you send someone to prison for six months or two years then that has an obvious consequence for the family, maybe positive in the sense that it removes a violent member of the family from that family. But it may at the same time have negative consequences, because despite the violence, there are often positive features of a violent person's involvement in their family when they're not being violent. So you've got all of those things to weigh (YB, 114).*

> *...they are trying to achieve...early resolution of the criminal prosecution with therapeutic justice overtones so that it is, except in worse cases of violence which you can't avoid punishing, so that it aims for a repair of the family problem if possible (PB, 112).*

The representation of domestic violence as fitting into a range of seriousness draws on constructions of violence that reduce ongoing patterns of psychological, sexual and physical violence to single discrete incidents that can be assigned a level of seriousness. This approach is problematic as it misses the ongoing nature of the abuse and the fear, intimidation, isolation and control that accompany the physical abuse (Stark, 2006). When viewed through this lens the individual acts on their own are often understood as 'low level' offences (Stark, 2006). This practice means that in terms of seriousness, domestic violence continues to be minimised.

> *So when we are asked to be involved it's usually for people facing very serious charges of violence, injury with intent and assault with a weapon rather than perhaps common assault or violence against female perhaps the lower end of violence (TB, 92).*

A traditional western legal system based on a punitive approach has adopted what is commonly referred to as the "just deserts" approach which requires a grading of seriousness of crime, which allows for the level of punishment to fit the crime (Hudson, 2003). Within a punitive justice system that has adopted a graduation of punishment, perpetrators of domestic violence continue to receive, what is considered by many, lenient sentences (Robertson et al., 2007) because their behaviour is treated as a discrete event.

> *For example, let's say it's an isolated event, factually at the low end, and perhaps there will be an impact with the conviction. I had a defendant yesterday where there was clear proof he was automatically going to lose his job and it was a low end case, and it was clearly a case where the complainant didn't want him to have a conviction and it was an ongoing relationship (RRH, 317).*

The graduation of violence within a legal system privileges physical violence, despite the Domestic Violence Act (1995) specifically including a range of behaviours, and allows that even if a specific act seems minor in isolation, within the pattern of behaviour it becomes significant as an act of violence against the victim. Even in this context, however, an act of physical violence can be treated more seriously because injuries to the victim provide physical evidence which is easier to verify and more closely resembles the usual criminal justice system criteria for evidence.

> *...I'm talking only about the lowest level of these things, as these things go, serious violence I don't have a problem with any of... it needs to be examined rather thoroughly. For the lower level where there are no serious injuries involved, where its arguments that have got out of hand or something... (HD, 88).*

In this construction the idea that there are no serious injuries determines the behaviour as 'lower level'. Constructions of the seriousness a crime and the appropriate level of punishment an offender is to receive depends on socially acceptable moral boundaries that change over time (Hudson, 2003). Even the acts that are deemed as crimes shift over time. As retributive punishment is based on the idea of accountability placing moral responsibility on an offender, the retribution appropriate as an offenders 'just deserts' will also change as society's tolerance for certain behaviour also changes.

In the case of domestic violence, social tolerance for the behaviour was high in the past. Violence against family members, especially women partners, was understood as a private matter. Over time, with the call for criminalisation of domestic violence, there has been a shift in public perspective and it is now understood more generally by respondents as behaviour that is not accepted. While this understanding was shared by most respondents, understandings of

domestic violence as a 'private matter' that should be dealt with away from the justice system remain.

> *I'd also like to see, in with respect again to the lower level matters that there'd be some other avenue other than criminal court for these to be addressed in.... Sometimes I think it's undignified for all concerned, couples, families, and people in domestic relationships, to be before the criminal court (HD, 246).*

> *... they don't want to go there and also how that affects the families because of the fact that you have got people that maybe being sent off to anger management programmes who don't really have anger issues it may have been a one off thing that has happened in the family and section 9 counselling could address that but it is "no you are going to go and do Man Alive and that's the way it is" (CFG, 848).*

Keeping domestic violence out of the criminal justice system and dealt with behind closed doors, perhaps through mediation or couples counselling, suggests that perpetrators do not need to be held accountable for their violence through the criminal justice system. This construction continues the tradition of supporting violence against women in relationships because there is no social sanction for treating the offences as serious enough to warrant criminal justice intervention.

THERAPEUTIC CHANGE

Within the therapeutic approach, change begins within the individual, and the act of pleading guilty, constituted as taking responsibility, has implications beyond the plea for the offence charged; it is also about also accepting responsibility for what happens next. Active responsibility is constituted as demonstrating an "obligation to do some right thing" (Braithwaite, 2006, p.36), a responsibility to put things right. A guilty plea enables the start of a healing process which is fundamental to the principles and aims of the court. When accountability is constituted through the ongoing practice of therapeutic jurisprudence we are reminded that that the guilty plea is understood as only the first part of a therapeutic process, the plea allows the court to embark on the next part of the process. The act of pleading guilty is understood as a positive movement towards 'creating real change'. The change required goes beyond remorse and a guilty outcome. Remorse and taking responsibility need to be enacted in ways that take account of the offenders' families.

> *So at the end of the day we are looking for a change in the way that people in domestic relationships relate, and specifically a reduction in the amount of violence (YB, 387).*

Ultimately the therapeutic process is about enabling change that will reduce the amount of violence in our communities. Accountability, in this construction, is not only a matter of the defendant being held responsible for their behaviour by the court, or even taking active responsibility by pleading guilty: it is an ongoing process that holds the defendant accountable for changing their behaviour so that the victim is safe from any further violence.

Identifying the problem

The WFVC is a problem solving court and in its efforts to help bring about change for offenders the court attempts identify the issues or problems an offender is dealing with. In effect, problem solving courts draw on social welfare accounts of individuals suffering from specific problems, such as alcohol or other drug abuse, that are derived from social issues. Rather than dealing with these problems through traditional social welfare interventions based on state and social responsibility for the wellbeing of citizens, they are constructed within problem solving courts as risk factors for individual offenders to manage and change (Rose, 1996a).

Problem solving courts were set up to deal with complex social problems of those before the court that traditional courts were failing to attend to. Domestic violence as an effect of an underlying problem was the dominant account employed by court participants to represent the casual explanation of domestic violence.

> *I think it is the approach that we take which is not a punitive one but one where we are trying to, once someone has recognised that they have a problem, or at least pleaded guilty and said well I am prepared to consider I have a problem then the way of putting things off and putting things off to allow them to complete anger management courses and address their alcohol and drug issues I think that is probably the best thing from the court (BB, 212).*

A therapeutic rather than punitive approach is made tenable through the representation of offenders as 'someone with a problem' rather than, for example, a serious and violent offender. As a consequence of this account a therapeutic discourse works to reposition the offender as suffering because they are unable to solve their underlying problem, and thus they are requiring help. While this account enables opportunities for change to be offered to the offender through mandating attendance of programmes, it also works to mitigate responsibility and accountability for the offence as it "positions abusing men as being victims of an aetiology that is beyond their control and thus serves to reduce their responsibility for their violent behaviour" (O'Neill, 1998, p.463).

> *The repeat offenders seem to be the alcohol users rather than the violent people, that is to be expected because while they are still drinking they are not changing (TB, 385).*

When the court is presented with a suffering subject, calls for zero tolerance or harsher penalties are set aside to enable an approach that focuses on helping the offender rather than punishing them. This practice draws on cultural understandings that when some one is suffering we have an obligation to help in some way. By attributing violence to an underlying problem, pathology discourse is engaged to position the offender, rather than the victim, as suffering, and relocates the offender's accountability for change away from violence and control, and towards addressing an individual issue.

> *I really believe in the collaborative nature of that court and that we are all working together to encourage people to address issues if there are issues there to be addressed and to do something meaningful in terms of positive outcomes really (RRH, 27).*

Language including 'encourage' and 'persuading' indicates a subject position being taken up by court professionals that differs from more traditional adversarial courts, one in which they construct themselves as caring agents. By constructing offenders vulnerable to a problem, therapeutic discourse positions judges and other court professionals as obligated to support and encourage offenders.

> *In family violence I see myself as trying to encourage men, encouraging them to acknowledge something if there is something to acknowledge and to get credit for doing that and get credit for doing something meaningful in terms of courses and so on; to encourage them to see the benefits for themselves in doing that (RRH, 49).*

On pleading guilty the identification of an underlying problem functions to draw attention away from the violence perpetrated by the offender. Its impact on victims is masked through talk that portrays the violence as the outcome of a 'problem', 'something to acknowledge' or an 'issue to address'. This constructs accountability for change as focused on the offender addressing 'their problem' rather than attending to victim safety directly.

Monitoring

At the WFVC once a guilty plea is entered by offenders who are understood to have a 'problem', the judge decides on appropriate programmes for the offender to attend. In most circumstances they are encouraged to attend a programme at Man Alive and go for at least an assessment at Community Alcohol and Other Drug Services (CADS). Their attendance is encouraged and offenders are told it will be taken into account when sentencing is passed. For offenders who are

offered a therapeutic approach, sentencing does not occur immediately after a guilty plea; instead they enter the monitoring process.

The process of monitoring draws on the symbolic authority of the judges and their encouragement and persuasion of offenders to comply and attend court mandated programmes. The act of 'persuading' is constituted as a process of helping the men overcome their initial reluctance to attend programmes, since it is understood that they may possibly experience some shame and guilt that would mean they needed encouraging or persuasion.

> *As time has passed, to me anyway, it has become apparent the most useful way of persuading people to do what you want them to do as far as drug and alcohol rehab is concerned and also Man Alive with anger management is really to keep it in the court process and keep them coming back, before the same judge, if possible (BB, 88).*

The court relies on the use of community based programmes to facilitate change, in particular anger management programmes even though there is little evidence that these programmes work, in terms of long term changes in violent behaviour.

> *So if they rely on a community programme to operate in the way they like to change their behaviour before they make a decision in terms of sentencing, then they will use a court process to monitor it through that (CFG, 301).*

Monitoring before sentence is understood as the most effective way to ensure men attend court mandated programmes. A respondent reflects on a time when a visiting judge came to WFVC for a short period and did not follow the procedures sent out in the protocol: he was sentencing early in the process and not monitoring attendance at programmes. It resulted in men not attending, and even if the men were sent to probation they were less likely to continue with programme attendance because the threat of court action was gone or had been reduced. The process of monitoring in this instance is constituted as a way of ensuring offender accountability to the court for their attendance at required programmes, by keeping the threat of court present rather just 'slapping them on the wrist and sending them home'.

> *He [Judge] went against some of the philosophies that had already been put in place [at WFVC] like if someone is attending the anger management group under their own stream, not to just convict them on the day, but remand them off to ensure they complete it and then like slap them on the wrist and send them home. But he was slapping them on the wrist and sending them home after three or four attendances and we were finding out people stopped going after that because the threat of court had gone away (BR, 92).*

The practice is not same day sentencing and one of the reasons that it's not is we've got into this routine of monitoring attendance at anger management and CADS and any other counselling that people are doing. Now why is that? I mean I think that's a fundamental question that we have to ask. Why is it that the court is monitoring attendance at these programmes…I think in practice we find monitoring their attendance is actually more effective than sentencing with supervision (MB, 293).

The monitoring process is presented through respondents talk as keeping men engaged so that change can occur. The 'need for the threat of court' brings into view that the court remains the authority and the relationship between offender and judge remains embedded in power, especially the punitive power of the court to impose punishment. At anytime the judge can revoke an offender's bail or change the sentence indication depending on an offender's perceived behaviour. The court respondents talk of 'encouragement' and 'persuasion', but understood this way, these terms mask coercion and function to present a situation where offenders are encouraged to make choices and negotiate with the court. Offering 'encouragement' and/or 'persuading' offenders is different from ordering them to attend courses with the force of the criminal justice system available to ensure compliance. The 'gentler approach' functions to create an impression that the offender is attending programmes based on his decision to do so; he has been encouraged but not forced to do it, which maintains an offender's agency within the process. This construct is in tension with the offender who fails to attend courses despite the 'threat of court'.

If people on 'their own steam' won't attend courses, then they are sometimes given community based sentences and probation takes over the role of monitoring. Non attendance from that point on becomes a breach of community service which is a criminal offence that the judge can act on. The judge is positioned as the rightful authority to scrutinise the offender's behaviour, in this case non-attendance, and probation are positioned as those who ensure accountability occurs. However, accountability in this case has been constituted as prosecution for non attendance, understood as not being accountable for the violence, but again for compliance with the court. In this construction accountability is achieved through maintaining offender compliance and punishing for non compliance.

There are some people who should be put through probation at times because we keep them accountable to doing the programme and if they fail to do the programme we take them back to court, and then they have to explain it to the judge. If there is nothing through probation some of them who fail to complete the programs are prosecuted but not all of them. They should all be prosecuted but not all of them are (BR, 197).

The shift of accountability to focus on compliance with programmes is concerning because it leads to a practice that can be meaningless to the victim. Accountability becomes meaningful to the court in terms of fulfilling legal requirements, such as a guilty plea and successful attendance and completion of courses.

> *Lots of good things happening, lots of people acknowledging, lots of people there for monitoring, lots of people doing really useful courses and so on (RRH, 34).*

It is important that adhering to court process doesn't become the measure of success at holding offenders accountable because attendance does not necessarily require the behaviour change that is the purpose of the therapeutic intervention. If no change occurs then accepting responsibility by being remorseful and compliant while part of the court process becomes meaningless for victim safety. The court rewards the offender for compliance but does not punish for failure to change. In this situation, a therapeutic approach comes to be understood as 'the soft option'. When respondents' talk problematised the therapeutic practices of the WFVC as being 'soft' they drew on contemporary cultural discourse on 'getting tough' with crime. In these accounts accountability is constructed as (harsher) punishment.

> *Yes, but I could imagine there'd be some judges that would not like the idea and might find it a bit too soft (WW, 213).*

> *I am not happy with where they get too many chances they have been told about anger management and they play this game where they come back and say I haven't got the money and then they play another game where they say I've been in a car accident and they play this game for about 5 months and some of them get away with it and in the end the judge is just so sick of them they sentence them to community work or whatever but some of them play the system like they do (GG, 77).*

> *...here in Waitakere overall they get an easy ride as far as I can see, but in family violence, since the family violence protocol has come out, the segregation of family violence from everything else I think there... its good because they are trying to get the parties to work together, and in that sense its good but I still think from a penalty point of view everyone seems to be getting more of an easy ride than they were before (CFG, 829).*

> *It [the family violence court] will work as long as it's not seen as a soft option. As long as lawyers don't get into the practice of assuming if they send their client or provide their client with an opportunity to go to anger management or stopping violence programmes that entitles them to a discharge without conviction. And I have in the past, the last couple of years, have raised concerns time to time about that becoming an accepted practice amongst lawyers because I think there is a danger if you set it up as an accepted practice that it becomes an easy bus ticket, and far from accepting responsibility it's enabling and colluding with the abusers to*

carry on doing it because they walk away saying "that was easy" and there is no encouragement for them to change their behaviour. So I say that it rests hugely on the shoulders of judges to continue to be vigilant and to convey to those offenders the seriousness of the situation (WO, 274).

But I also feel the person going to ManAlive has to want to go there and get something out of it else it's just going to be a complete waste of funds. . Not to just go there because it's a way to get out of it (CFG, 937).

The construction of offenders as 'playing the system' to avoid the punitive consequences of prosecution in the criminal justice system enables the court to be construed as 'offender friendly' and providing offenders with too many chances. From this point of view, the court's practices risk undermining the principle of zero tolerance and the court's responsibility to take domestic violence seriously. At the same time, this construction risks re-instating the value of a punitive approach which is understood as failing to deter future offences. In neither case is victim safety clearly linked to they way in which the court holds the offender accountable for their violence.

For monitoring change interventions to be practiced with the protection of victims as a clear goal, there is a responsibility for the court to ensure that offenders are monitored for meaningful change in their violent behaviour. If offenders are remorseful and actively responsible as a first step in a change process, but do not follow through with meaningful change, then the court is at risk of colluding with the abuser and the victim is no safer, often she is in a worse situation because the court is not attending to her needs for protection.

It's so the criminal justice system can respond appropriately and with a degree of flexibility to work for the betterment of the people who are the victims of family violence and the perpetrators of family violence, (remembering of course a lot of the perpetrators have been victims of family violence). So it's really looking at the cycle of violence and what we can do to affect real and meaningful change in that area, while still holding offenders accountable but perhaps being creative in terms of the ways we do that so we get some positive outcomes (RRH, 135).

but common sense dictates really that if you can get acknowledgement through guilty pleas early on and then work on the basis the parties want the offender to improve whether its through learning behaviours as far as anger is concerned or get off the alcohol and drugs or at least control the alcohol and drugs so that's got to be a good thing (BB, 100).

While working within a therapeutic process, some participants' talk reminds us it is important to keep a victim focus. In these accounts, participants draw attention to the need for the court process to be meaningful to victims, and the need for it to attend to the real risks that victims face.

I think we have almost been a party to making the court process meaningless in many cases possibly even worse than that, possibly even exposing victims to risk by not engaging in the real issues (RRH, 59).

According to this account, the 'real issues' are related to victims' risk of harm and the court process needs to focus on accountability as requiring change that is meaningful to the victim, not just meaningful to the court in terms of compliance with mandated requirements.

But also there were other cases where, I think there were three guys that I sent to prison. Possibly because the charges were so serious that was appropriate. Also because they maybe hadn't made efforts or where they were, one in particular, part way through ManAlive and that would be unusual for us to pull the plug on that, but I did because there had been really bad further offending and sometimes you get to the stage where you think ok that's good he's doing that but its not seeming to be, its not meaningful for the victim because he is still coming around and he is still bashing her up (RRH, 36).

Goodman and Epstein (2005) argue that the courts are too "heavily reliant on men's programmes and monitoring and remain very perpetrator focussed and that is sacrificing victim safety and security" (p479). The completion of a program does not necessarily mean that the offender will stop being abusive to his partner and in some cases, men who attend men's programmes increase the frequency and/or severity of their violence against their partners. Some men diminish or stop their physical violence while increasing emotional abuse or other threatening behaviour (Morgan, 2004).

When accountability is constituted as requiring compliance with court recommendations for programme attendance then the responsibility for victim safety remains with the victims. Victims are expected to be ever vigilant, and it is up to them to act and do something if/when the violence continues. Victims have the responsibility for monitoring the offenders change in behaviour and reporting repeat offences to a justice system that has not held offenders accountable for stopping the violence (Coombes et al., 2008). As this model remains within a legal framework and it continues to be the justice sector responsibility to hold the offenders accountable, there is no shift for victims in how they are positioned within the system. A space to accommodate how victims experience the violence and the provision of ongoing protection continues to be missing from this understanding of offender accountability.

Victims and Accountability

> *Strengthening women or strengthening victims: they can be women or men. Strengthen victims to do the right thing, whether it be continue with the relationship or not, but to have the strength and the knowledge and the information so that they can make an informed choice about that (RH, 208).*

In the literature concerned with domestic violence, the justice system and SDVCs, the construction of accountability is multiple, and rarely draws on the understanding of accountability that the Duluth model proposes. Although victim safety is a primary focus of SDVCs, this hasn't been woven into all the WFVC's processes as it has been in Duluth. Accountability to the victims can be obscured in a justice system that has taken crime as a violation against the state, and victims have little role to play apart from being a witness as part of the prosecution.

Traditionally courts work with constructions of accountability that are consistent with a punitive model that positions the justice system as responsible for punishment on behalf of the state. This understanding works with an underlying assumption that accountability will bring about victim safety without explicitly focussing on victims. In a traditional legal system the individual offender in isolation is accountable for their behaviour and accountability is to the court; the court has little responsibility for the victim and is not held accountable for victim protection. In New Zealand the Victim Rights Act (2002) legislated the obligation of the court to take account of the victim's experiences and the impact of the crime on the victim's wellbeing. The WFVC has a commitment to victim protection and a goal of eliminating violence so that victims are kept safe. Recent research indicates that domestic violence advocacy is more helpful in keeping women safe from intimate partner abuse than the criminal and civil justice systems by themselves (Coombes et al., 2008; Goodman & Epstein, 2005). Victim advocacy provides for extensive support services to victims rather than the limited victim advice that is provided for through the Victim Rights Act (2002). The incorporation of victim advocacy within the WFVC is the key court practice that accounts for victim safety (Coombes et al., 2008).

Previous research has found that women who have been abused understand accountability as one component of justice, along with social recognition of the violence, safety and healing (Ptacek, 2005). Where accountability is constituted only in terms of offenders' compliance with the court, it fails to attend to a more holistic understanding of accountability as connected to constructions of justice from victims' points of view. Domestic violence involves stigma for victims

and if accountability is understood as being about respect and relationship to community as well as protection from harm, victims' safety is more comprehensively taken into account (Herman, 2005).

CHAPTER SEVEN

DISCUSSION

Introduction

This research project undertook to analyse understandings of offender accountability for domestic violence within the criminal justice system, and how offender accountability has been taken up in a therapeutic court by the court professionals at the WFVC. Examining different constructions of offender accountability allows me to attend to the meanings of accountability and their relationship with the practice and processes of the court. Government and community professionals participating in the courts processes understand accountability differently through various vantage points. The analysis enables us to understand the "success of the court", through its aims and principles that depend on practices for a holistic approach in responding to the ongoing systematic character of domestic violence. The analysis addresses the question of how the court provides an opportunity for change through a therapeutic approach towards healing and strengthening families within.

A holistic approach

The WFVC has come about from the desire of many community members to do something different and better serve victims of domestic violence. With a commitment to a holistic approach the WFVC has chosen to step out from the traditional role of the current western legal system that attempts to separate social processes from their historical and cultural contexts. The WFVC is an attempt to bring about positive change for families of Waitakere and reduce the occurrence of family violence. In relation to the practices of the WFVC, the aim of promoting a holistic approach is consistent with the court's problem-solving approach to the degree that holism incorporates an understanding of the offence as embedded within a specific social context.

Provision of advocacy

Reflexive examination of how the WFVC attends to the ongoing systemic effects of violence in domestic violence cases has lead to many procedural changes in the court's practices. Specialist domestic violence courts generally modified in response to the inadequacies of the traditional justice system: It's failure to attend to domestic violence in terms of ensuring ongoing victim safety. As collaboration, the WFVC facilitates the concentration specialised services within the

court. The presence of Viviana within the court offers many benefits to victims in protecting them from the dangers of the court process and allows for a contact point that can put in place strategies for their ongoing safety.

Zero tolerance

The WFVC sets out to convey the message that domestic violence is not acceptable. Arrest and prosecution are practices that respond to calls for domestic violence to be taken seriously. The legal intervention itself enables accountability to be constituted as prosecution for an offence. Within a punitive discourse prosecution leads to punishment and within a therapeutic discourse it opens up the possibility of coercing change through the offender's attendance at intervention programmes. Arrest and prosecution allows opportunity to place controls on behaviour, and relieve victims from the burden of responsibility of stopping the violence.

Calls for zero tolerance of domestic violence have lead to an increase in legal interventions such as New Zealand's mandatory arrest policy and in the WFVC practice of no drop prosecutions. In these practices of zero tolerance, offenders are held accountable and take responsibility for violence through legal procedures such as pleading guilty, and attendance of programmes. The focus on offender opportunities and as well as their rights within the criminal justice system renders victim safety invisible. At WFVC this is mediated by the protocol that enables independent victims' services to be provided through the court. While victim safety is taken into account through the provision of speaking rights to advocates, it is not necessarily related to offender accountability, nor the courts' accountability to the victim and her community for her protection. Therapeutic jurisprudence *can* provide an opportunity for the participants in the legal system to have a role in actively enhancing victim safety. Partnerships developed between victims and prosecutors, advocates and the police can provide a victim with legal support and the alliance can be a resource for victims to draw on to protect them from ongoing and escalating violence. Healing families must be a goal that does not override the needs of victims; the preservation of the family unit can not be held higher than the needs for safety of victims and children. Healing is premised on ending the offender's violence and abusive control against his partner and may not always mean repairing a couple's relationship. Opening up these opportunities requires a court process that is integrated into a coordinated response that is focussed on stopping offenders' use of violence.

Specialisation and shared understandings

Court professionals of the WFVC share an understanding that domestic violence is unacceptable. However legal practices that ignore the social power relations that maintain domestic violence in effect work against this message. Questioning accountability through analysing its various constructions has shown how the court has been successful in increasing prosecutions and promoting the idea of zero tolerance for family violence yet the legal system itself is difficult to modify on the basis of a shared understanding of the complexities of family violence. Various ways in which court participants construct domestic violence mitigate the law's ability to effectively protect women by minimising violence, pathologising relationships or blaming victims. Without a shared understanding of the ongoing, controlling character of domestic violence the court's response to the complexities of violence is limited. Justice remains elusive unless it includes recognition of the social relationships that sanction violence among all those involved in the court, and encompass safety, accountability and healing.

Mitigating success

The discourses present in respondents talk of accountability coupled with the different constructions of domestic violence evidence the way in which discursive positioning of victims produce them as responsible for their own safety. Understandings of domestic violence that implicate 'her', 'his' or 'their' 'pathology' as the 'problem' effectively position the victim as responsible for stopping the violence. When domestic violence is understood as 'his pathology' the court is justified in mandating community based therapeutic change programmes through which he is to be held accountable. By providing offenders and victims with access to change processes embedded in their communities, the court successfully incorporates the principles of Te Rito that acknowledges communities' rights and responsibilities to be involved in family violence prevention initiatives and for solutions to be developed locally.

Programmes for offenders are provided by government and community organisations. To direct offenders to interventions, the court is dependent on specialised interagency participation. The protocols for the court and the modifications to court process are successful in concentrating specialisation in the court because they enable independent advocacy for women. Victim advocates bring specialist understandings of the ongoing effects for women whose right to live free of violence has been violated by their partner. Through concentrating specialist services in the court community advocates are able to share the burden of responsibility for the safety of the

victims with their clients. However, diverse understandings domestic violence and accountability mitigated the success of the court in protecting victims.

Procedural Accountability

Accountability constructed through therapeutic discourses drew on specific understandings of domestic violence that act to reduce offenders' responsibility for their violence, in particular discourses of pathology which construct the offender, victim or relationship as 'sick'. These discourses limit the court's engagement with victims as those best able to assess the experience of the violence against them or the meaningfulness of their partner's change. To ensure that therapeutic accountability involving offender responsibility, remorse and change is meaningful to the victims the court needs to take victims' understandings and needs into account. If the court's processes of holding offenders accountable are meaningless to victims, then accountability is reduced to issues of procedural justice that do not have social justice at their heart.

Constructing accountability as compliance with the court's processes obscures the violence that lead to the offender being in court in the first place. Coupled with discourses of pathology, these constructions may provide men with excuses for their violence and again shifts responsibility for the violence away from the offender. When accountability is understood as compliance it mirrors accountability as punishment in that holding offenders accountability is assessed as successful when the programme or sentence is successfully completed. A previous study with victims whose partners had attended community stopping violence programmes suggested that they need accountability from the programme that the men were mandated to attend. For these women, continuing violence during and after completions of programmes for change was often not acknowledged (Morgan, 2004).

Gender neutrality

Court systems are able to provide external validation of victims' rights to live without violence or they are able to be complicit in ongoing abuse against victims. Even where a therapeutic intervention through modified legal process attempts to address the needs of victims of family violence the discursive power of the legal system delimits the extent to which the court can actively assume responsibility for supporting victims. The legal system remains gender neutral and understands violence in terms of individual characteristics which constrain the court's attempts to address the domestic violence as a gendered problem produced through social power relations. When the criminal justice system does not take account of the gendered dynamics of

violence against women, it becomes part of the social processes that maintain the gendered social power relationships that contribute to domestic violence.

Victim safety and social justice

In the 1970s and 1980s the women's movement appealed to the legal system and to legislators in order to bring about social justice in relation to granting women the right to live free from violence. If understood through a punitive model of justice, however, the main intention of legal and policy changes made in the 1980's and 1990's obscures the primary focus to enhance victim safety and instead maintains attention to the punishment of perpetrators. The practices at the WFVC are in line with the aims of the Domestic Violence Act (1995) that states family violence is unacceptable and victims are entitled to effective legal protection that is easy, simple and speedy. But this research has shown that it fails to realise a construction of accountability that is about enabling victim protection. Social justice demands that women and children are safe and legal justice as it is currently understood doesn't necessarily address social justice. If our accounts of domestic violence are consistently minimising offenders' responsibility and obscuring victim resistance, what are offenders accountable for and to whom are they held accountable?

Among participants in the court process at the WFVC, accountability is not necessarily understood in ways that serve the purpose of the safety of the victims, yet victims are the heart of policy, legislation, and the principles of the WFVC protocols. A collaborative response to domestic violence against women and children requires community responsibility for batterer change and the safety of victims. The WFVC is based on the Duluth model of interagency collaboration in which the goal of victim safety guides all institutional policies and practices and victims' experiences are primary. Duluth promotes the need for effective responses that include approaches that systematically address violence as a social problem rather than individual dysfunction. Multiple constructions of domestic violence produced by participants drew predominantly on individual explanations of the violence, out of control or in control, problems with their relationship, or an individual's problem with alcohol and other drugs. These ways of speaking about domestic violence and understanding the social problems that enable domestic violence against women fit well with the traditional criminal justice approach of isolating individuals from their social context and holding them accountable to the court. Modifying this approach through a therapeutic model of justice also fits well with isolating individuals from social systems and may reproduce the importance of court procedure for holding offenders accountable.

At Duluth the model of social justice that privileges victims' standpoints, acknowledges the importance of gender, and validates victims' experience of ongoing intimidation, fear and control, is understood as holding the whole legal intervention accountable to the victim (Pence & McMahon, 1999). To ensure that the interagency collaboration works together for victim safety, the Duluth collaboration hold yearly audits where each agency is scrutinised to ensure polices and practices are grounded in a victim's perspective, and best practices for her ongoing safety. In these audits, the scrutinisers are the victims and they have the right to question offender and institutional practices of legal intervention.

The strength of the WFVC is that it was established as a community collaboration, which provides the resources to be able to reflect on current practice, respond flexibly to changing legislative and social circumstances, and to negotiate their integrated responses (Morgan et al., 2007). The collaboration provides an opportunity for the partners to address their common focus on accountability, and work towards gaining consensus on the meaning of accountability throughout the WFVC processes. The maintenance of the WAVES led WFVC focus group is a crucial process through which reaching such agreement becomes possible. There is an ongoing need for the focus group to meet regularly, and for continuous evaluation so that the practices of the court continue to evolve. Evaluation of both practices and processes are required to understanding what is working and for whom at each stage, and so that the model on which the court depends is kept alive for court participants. The philosophy that the WFVC is based on is recognised internationally as current best practice. The WFVC is a dynamic evolving process of coordinated responses to family violence offences. Through opening boundaries within the whole collaborative system to the ongoing programme of evaluation, the collaboration is continuing to receive feedback that can be used to further improve practices. The feedback that the court participants receive as a result of the current research project will also contribute to the ongoing evolution of the Waitakere Family Violence Courts response to domestic violence.

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APPENDIX A

INFORMATION SHEET

Massey University
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An Evaluation of the Waitakere Family Violence Court Protocols

INFORMATION SHEET

Researcher's Introduction

My name is Sarah McGray and I would like to invite you to participate in my research project. I will be examining the effectiveness of the Waitakere Family Violence Court to facilitate legal intervention into family violence. I am conducting the research as part of my Master of Arts degree through Massey University. The contact details for me and for my research supervisor are as follow. Please feel free to contact either of us if you have any questions or concerns regarding the research.

Researcher:

Sarah McGray, C/- School of Psychology, Massey University, Palmerston North
Mobile phone: 021 801990
e-mail: S.Mcgray@massey.ac.nz

Supervisor:

Dr Leigh Coombes, School of Psychology, Massey University, Palmerston North
Phone: (06) 350 5799 ext 2058
e-mail: L.Coombes@massey.ac.nz

Before deciding whether you wish to be involved, please read this letter carefully to ensure you fully understand the nature of the research project and your rights should you choose to participate.

What is this study about?

The aim of the study is to explore an aspect of how the Waitakere Family Violence Court works. The project will be part of a larger, ongoing evaluation of the Waitakere Family Violence Court. The intention is to understand the workings of the organisation and the issues that arise from the point of view of the staff of the court. To participate in this research, you need to be 18 or over and involved with the Waitakere Family Violence Court in a professional capacity.

What would you have to do?

If you agree to participate you would need to be available for an interview and/or focus group to share your experiences of the processes in place at the Waitakere Family Violence Court. It is anticipated that there will be three focus groups of six people each. The focus groups and interviews will use the same set of questions. These questions will be open ended and mainly concerned with your experiences of the processes of the Family Violence Court.

The interviews and focus groups will be audio- and video-taped by the researcher. Pseudonyms will be used so that no identifying information appears on the transcripts. Audio and video tapes will be destroyed after transcription. At the completion of the research each participant will be sent a summary of the research findings. Changes to transcripts of the focus groups cannot be made but additional comments can be added. Transcripts from interviews can be changed to clarify or remove comments and additional comments can be added.

How much time will be involved?

Each interview will take approximately 1 hour and focus groups will take up to 2 hours. Interviews and focus groups will be conducted privately at the Waitakere Family Court or a place convenient to the participants in the Waitakere city area. Interviews and focus groups will be at a time that is convenient and safe for the participant and researcher.

What can you expect?

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

- Withdraw from the study up until 1 month after the interview;
- Decline to answer any particular question;
- Ask for the audio tape to be turned off at any time during the interview;
- Leave the focus group at anytime without explanation;
- Ask any questions about the study at any time during participation;
- Provide information on the understanding that your name will not be used;
- Be given a summary of the findings of the study once it has been completed.

Thank you for reading this information sheet.

This project has been reviewed and approved by the Massey University Human Ethics Committee: Southern B, Application 06/04. If you have any concerns about the conduct of this research, please contact Dr Karl Pajo, Chair, Massey University Human Ethics Committee: Southern B, telephone 06 350 5799 x 2383, email humanethicsouthb@massey.ac.nz

Yes, I would like Sarah McGray or Leigh Coombes to contact me regarding my participation in the research or to answer some questions regarding the research. I can be contacted in the following way:

Name _____

Telephone _____

Email _____

Please note: supplying the researcher with the above details does not in any way oblige you to participate in this research.

APPENDIX B

CONSENT FORMS

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PARTICIPANT CONSENT FORM – *FOCUS GROUPS*

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

I have read the Information Sheet for this study and have had the details of the study 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 know that I am free to refuse to answer any questions and can withdraw from the study at any stage.

I agree to provide information to the researcher on the understanding that it is completely confidential and that this information I supply will not be used for any purpose other than this research. I also agree to the researchers video-taping and audio-taping the focus group, and know that I have the right to leave the focus group at anytime without explanation.

I understand that the researchers may use brief direct quotations from the focus group(s) in their reports of the study provided these do not identify me in any way. I also agree not to disclose anything discussed in the focus group(s).

I agree to participate in this study under the conditions set out in the Information Sheet.

Signature: ..... **Date:** .....

Full Name - Printed .....

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PARTICIPANT CONSENT FORM – *INTERVIEWS*

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

I have read the Information Sheet for this study and have had the details of the study 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 know that I am free to refuse to answer any questions, can withdraw any information I supply at any time, and can withdraw from the study at any stage.

I agree to provide information to the researcher on the understanding that it is completely confidential and that this information I supply will not be used for any purpose other than this research. I also agree to the researchers 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 researchers may use brief direct quotations from the interview(s) in their reports of the study provided these do not identify me in any way.

I agree to participate in this study under the conditions set out in the Information Sheet.

Signature: ..... **Date:** .....

Full Name - Printed .....

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An Evaluation of the Waitakere Family Violence Court Protocols

FOCUS GROUP - CONFIDENTIALITY AGREEMENT

I ..... (Full Name - Printed)

agree to keep confidential all information concerning the project - **An Evaluation of the Waitakere Family Violence Court Protocols** (Title of Project).

I will not retain or copy any information involving the project.

Signature: ..... **Date:** .....