

**“WHAT'S LOVE GOT TO DO WITH IT?”
AN ANALYSIS OF AN INTERVENTION APPROACH TO
DOMESTIC VIOLENCE**

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Dedicated to Angelina Julia Poli (aged 21), Taina Huriana Poli (aged 4 years 9 months) and Maria-Luisa Poli (aged 20 months) stabbed to death in Hamilton as we worked on this paper.

I. INTRODUCTION: THE GAP IN THE JUSTICE SYSTEM

It is now widely appreciated that the criminal justice system in most Western nations has poorly served those who have been victimised by members of their own families. A San Franciscan Family Violence Report stated:

The criminal justice system is one of the primary institutions to which battered women and their families turn for help and protection. By virtue of its power to enforce existing laws, it is also the institution critical to public condemnation of violence, wherever it may occur. However, the criminal justice system shares the biases of society at large, biases which hold that family matters are private. Such a bias has led to the selective non-enforcement of laws when violence occurs between family members...This stance of non-intervention indirectly condones violence and ignores the frequent escalation which all too often ends in homicide.¹

The Hamilton Abuse Intervention Pilot Project (HAIPP),² launched in July 1991, represents an attempt to reform the justice system's response to domestic violence, particularly the violence of men directed against their women partners. In this article, we outline the philosophy of intervention, describe the intervention protocols which have been developed in Hamilton, analyse their operation and assess some of the impacts the intervention approach has had on the administration of justice. In order to demonstrate the wide-reaching changes brought about by the adoption of an intervention approach in Hamilton, we look first at some of the problems identified within the justice system which HAIPP was established to rectify.

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¹ Family Violence Project, *Domestic Violence is a Crime* 1.

² The Hamilton Abuse Intervention Pilot Project is a three-year pilot programme sponsored by the Intervention Working Party of the Family Violence Prevention Coordinating Committee (FVPCC). At the onset of the programme in July 1991, the authors were contracted by FVPCC to perform periodic evaluations of the project. To date, five evaluations have been co-authored by us. They describe in detail the workings of the project and the consequences of the development of an interagency approach to domestic violence.

In our previous work, we have suggested that there is a “gap” between victims' experiences of violence and the justice system's response to that violence.³ The gap is manifested in many ways. For example, New Zealand police have historically tended to avoid arresting domestic assaulters, in effect screening them out of the criminal justice process.⁴ Prosecutions against abusers have not been particularly successful, with a high proportion of charges being withdrawn or dismissed.⁵ When abusers have been convicted of assaulting their partners, they have often received lighter sentences than men who have committed comparable assaults against strangers.⁶ In the Family Court arena, battered women have experienced difficulty in obtaining protection orders, particularly when the application does not proceed *ex parte*.⁷ Moreover, these orders often fail to provide effective protection from further abuse.⁸ Indeed, Family Court hearings and court-ordered counselling sometimes provide further points of exposure for the victim.⁹

These problems reflect the beliefs and attitudes about domestic violence held by certain police officers, judges, lawyers, counsellors and other social service personnel. In particular, they reflect a tendency to focus on the

³ Busch, R, Robertson, N, and Lapsley, H *Protection From Family Violence: A Study of Protection Orders Under the Domestic Protection Act* (1992). The authors' discussion of the justice system's approach to domestic violence is drawn largely from this previously published report. The material in the report is derived from the interviews we conducted with 21 women whose protection orders had been breached, and from our interviews with 73 key informants including 6 judges, 25 police officers, 15 women's refuge workers, 10 Family Court Counselling Coordinators and counsellors, and 8 solicitors. Justice Department statistics, police files, and 46 reported and unreported court decisions were also analysed in the report.

⁴ Church, J and Church, D *Listen to Me Please: The Legal Needs of Domestic Violence Victims* (1981) 47. Ford, G *Research Project on Domestic Disputes: Final Report* (1986) 11.

⁵ Statistics supplied in a letter dated 28 November 1992 from Philip Spier of the Policy and Research Division, Department of Justice, indicate that less than two-thirds of the prosecutions laid under section 194(b) of the Crimes Act (male assault female) result in a conviction: 20% are withdrawn and the balance are dismissed. It is not possible to provide an analysis of all the prosecutions in respect of domestic abusers because Justice Department statistics do not distinguish domestic assault from other assaults. However, the analysis of section 194(b) prosecutions provides a reasonable measure. While not all domestic assaulters are charged with male assaults female (other charges are common assault, assault with intent to injure, and threatening to kill charges may be laid), police informants have told us that nearly all prosecutions for male assaults female are related to domestic assaults.

⁶ *Supra* note 3, at 264-265.

⁷ Moore, J M *Is a Non-Molestation Order Enough? Women's Experiences of the Family Court* (unpublished MA. Thesis, Victoria University of Wellington, 1989); and *supra* note 3, at 207-236.

⁸ *Supra* note 3, at 264-269.

⁹ *Ibid*, 134 and 152-153.

relationship between the abuser and the victim rather than on the violence. How else can one explain the general tendency among certain police to avoid arresting domestic assaulters?¹⁰ In one police district we visited, it was routine for domestic abusers to be dealt with by way of diversion; the diversion programme included a referral to counselling for both the abuser and his victim.¹¹ Would any of us expect to be referred to counselling with our attacker if we were mugged by a stranger?

Judges and counsellors often see the violence as a symptom of a problem in the relationship, rather than a problem of itself. There is sometimes a quite explicit focus on the relationship. In *Lynch v the Police*,¹² Ellis J, on appeal, ordered a section 19 discharge in respect of a conviction for breach of a non-molestation order and commented:

As is so often the case in domestic disputes that end up in the Criminal Court on matters such as this, the resolution of *the real problem* is impossible. I bear in mind the fact that the District Court judge was plainly of the view that this matter did not warrant a penalty of any great substance and it is also plain to me that this incident is part of a wider dispute and that a conviction of the appellant on this charge may well militate against a final resolution of the problems that have arisen between the husband and wife and, I bear in mind, a conviction may also militate against the welfare of the children.¹³

Similarly, in *P-W v P-W*,¹⁴ Inglis DCJ refused an application for a final non-molestation order commenting that what the wife needed “is a temporary respite from the husband’s persistent overtures so that the real problems in the marriage can be addressed and if possible put right”.¹⁵

Some counsellors take a similar stance. One of the women we interviewed recalled her counsellor as being more concerned about her “failings” as a wife than her partner’s violence: “[She told me that] I was a poor wife and I should stay at home more often”.¹⁶ Another was angry that she had been referred to joint counselling to see if she and her husband “could get back together again”, despite the fact that he had just been convicted of an assault on her.¹⁷ A third reported the Family Court Coordinator as being more

¹⁰ Supra note 4.

¹¹ Supra note 3, at 171. *The Commissioner’s Policy Circular 1992/07* states that diversion may be suitable in domestic violence cases “where suitable local programmes are in place”. It states that “there is good evidence that when properly managed, diversion can be a very effective form of treatment”.

¹² Unreported, High Court, Auckland, AP 16/86, 24 February 1986.

¹³ Ibid, 2 (emphasis added).

¹⁴ Unreported, Napier Family Court, FP 041/079/90, 16 May 1990

¹⁵ Ibid, 3.

¹⁶ Supra note 3, at 255.

¹⁷ Idem.

interested in the fact that her ex-partner had attended an alcohol treatment programme than in the violence from which she was seeking protection. The coordinator said to her: "Oh he is trying. Why don't you go back to him?"¹⁸

Of course to the women concerned, the violence is a real problem. Unless the violence is addressed, they are likely to continue to be battered and/or intimidated.

Consistent with a relationship focus is what we have termed a "two-to-tango" analysis of domestic violence, the view that both parties are equally to blame for the abuser's violence. For example, one Family Court judge described his perspective about domestic violence as follows:

Except in the most unusual circumstances, it isn't helpful to apportion blame [between the parties]. I don't see it as a black and white situation, where the aggressor is totally responsible and the victim is totally exculpated from any responsibility because I don't think it's common sense or human nature for one party for no reason whatsoever to up and knock someone else on the nose. If someone is mentally disordered or - I can't really think of any other reason why someone just gets up and hits another person. I think that in the context of a relationship or marriage of two people, what goes through my mind - I will express it, but it's totally inadequate and really probably not helpful - but "it takes two to tango". The two are entwined to the degree that I don't accept that one person alone is responsible for the violence.¹⁹

Similarly, in elaborating his theory of domestic violence, one of our police informants said, "Some women have a huge capacity to create massive problems within their household. They can't keep their bloody mouths shut at the appropriate time".²⁰ As well, our analysis of the domestic violence related case-law revealed that certain judges appeared to impose what can only be described as "compassionate" sentences because of the perceived provocative behaviour of the victim.²¹

¹⁸ Ibid, 76.

¹⁹ Supra note 3, at 191.

²⁰ Ibid, 165.

²¹ See *The Queen v Panoa-Masina*, unreported, Court of Appeal, CA 309/91, 7 October 1991, in which a High Court judge imposed a sentence of 9 months periodic detention on an accused convicted of manslaughter for beating his wife to death. The accused's embarrassment at learning that his spouse had not passed on the \$50 he had given her for his nephew's birthday was characterised as a "special circumstance" by the High Court judge permitting the latter to impose a non-custodial sentence. While the Court of Appeal allowed the Crown's appeal and sentenced the accused to a prison term of 18 months, the Court concluded, "We agree with the Judge that this is a case which called for a compassionate sentence for the reasons expressed by him." (at 6-7). For a fuller discussion of the *Masina* case, see supra note 3, at 242-243. See also *Newlands and the Police* [1992] NZFLR 74. This case concerned the appellant's tenth conviction in less than two years for breach of a non-molestation order against the

The relationship focus of certain decision-makers and their “two-to-tango” analysis means that they are often reluctant to hold abusers accountable for their violence. This is evident in the attitude of a police officer who told us that men who breach non-molestation orders are “not real criminals” but simply men who are “suddenly denied access to” their home, their family, their children “by a piece of paper”.²² Similarly, a High Court judge described an appellant’s assault as having “arisen out of the instinctive reaction” by him to an argument he had had with his spouse.²³ A man who repeatedly breached his non-molestation order was described by a judge as “gravitating instinctively” towards the former matrimonial home.²⁴ In that case, the judge’s perspective is readily apparent from the remainder of the sentence, “even though his condition when he arrives there regrettably sometimes makes him an unwelcome visitor”.²⁵

Decision-makers’ sympathetic attitudes towards abusers may mean that the threat posed by abusers to intended victims is not recognised. This was graphically illustrated in a recent murder/suicide case where police officers decided to give bail to a man arrested for breach of a non-molestation order after he was found outside his ex-wife’s home carrying four rounds of .303 ammunition. When questioned, he admitted that he had intended to leave the bullets in her letterbox. He was bailed despite the fact that his former wife had a non-violence order against him and that his admission, coupled with the bullets in his possession, constituted a breach of that order in that they involved a threat to cause her bodily harm. Even though one of the arresting constables stated that he believed that the offender was attempting to “terrorise” his former spouse, that officer said that the man was not “dangerous”. He characterised him instead as “blubbing”, “pathetic”, and “harmless”. Another officer recalled the offender as insisting that he was

same complainant. In *Newlands*, Tipping J substituted a fine of \$200 without court costs for the sentence of three months periodic detention which the District Court judge had imposed. Justice Tipping commented: “Having reviewed all the evidence I am by no means satisfied that her subsequent actions were not designed to be provocative also. If she was trying to get a reaction from Newlands that would lead him into yet further trouble on the non-molestation order front she has succeeded because unfortunately he was unable to restrain himself. He certainly delivered, on the view which the learned Judge formed, a message to her in distinctly uncomplimentary terms. However, it is my view that on the evidence Mrs Walker was substantially the author of her own misfortune on this occasion. There is no doubt however that Mr Newlands did commit an assault on her and to that extent he was at fault...For the future Mrs Walker would be wise to refrain from any action which could be seen as provocative or ambivalent as to the need for a non-molestation order” (at 77-78).

²² *Supra* note 3, at 177.

²³ *Kelly v The Police*, unreported, High Court, Rotorua, AP 29/91, 15 May 1991.

²⁴ *G v G*, unreported, Wellington Family Court, FP 085/1127/83, 8 October 1986.

²⁵ *Ibid*, 3.

not a real criminal and that he only wanted to see his wife. After being bailed, the offender collected a rifle and more ammunition from his home, returned to his ex-wife's home, shot her dead and then killed himself.²⁶

Some decision-makers appear to blame victims for their reluctance to expose themselves to the risks of further violence. For example, Erber DCJ recently criticised women who declined to testify against their abusers in the criminal courts and commented that “the failure of victims of domestic violence to testify against alleged offenders could lead to a lowering of concern about domestic violence assaults”.²⁷ In the same manner, many of the police we spoke to criticised women who did not follow through with complaints.²⁸ This victim-blaming analysis fails to acknowledge the controlling nature of the violence to which battered women are subjected as well as the general lack of support services for victims in the courts.

Part of the “gap” that we have identified is attributable to a lack of interagency coordination, both between different branches of the justice system and between government departments and community groups. This can often mean that individual decision-makers accept the abuser's minimisation of his violence, interpret a specific violent incident as a unique, isolated act rather than as part of a pattern of abusive behaviour, and underestimate the cumulative effect of the abuse on the victim. In one case we investigated, a man was convicted thirteen times in a four-year period of breaching protection orders but was able to maintain the respect and sympathy of nearly all the police officers in his area.²⁹ The one police officer who described him as having mounted “a total campaign of intimidation” against his former wife stated that “he was able to convince each new police officer that he was okay”.³⁰

The danger of this lack of coordination is starkly illustrated by the recent case of a woman killed by her ex-partner as she emerged from a Family Court ordered counselling session. When it occurred, her death was described by the local police as unpredictable and unavoidable. However, our investigations suggested otherwise. At least four different agencies were involved with the parties; with minor exceptions, no information was shared between them.

²⁶ For further details, see Peggy's case study in *supra* note 3, at 145-149.

²⁷ *New Zealand Herald*, 14 January 1993, 3.

²⁸ See *supra* note 3, at 166-170.

²⁹ *Ibid*, 72-73.

³⁰ *Ibid*, 73.

Thus, the staff of a psychiatric unit which was dealing with the abuser treated him entirely as a suicide risk (he was referred there after an attempt to take his own life) and did not make contact with his wife to ascertain what violence or threats of violence he had directed against her. Neither were they aware of the protection orders which had been granted to the estranged wife. The Family Court counsellor, to whom a referral had been made under section 10 of the Family Proceedings Act 1980 at the time that the wife applied for a separation order, found out only by accident about the protection orders which had been granted subsequent to the counselling referral. She was informed about the existence of the orders when she ran into the Family Court Counselling Coordinator in a lift. The police in three different districts had had a number of contacts with both parties. These related to the husband's repeated threatening telephone calls, an assault which had occurred when he broke into the home of his parents-in-law and tried to take one of the children, and another assault on his wife at her workplace. The husband was not charged by the police with the assaults and little information about the incidents was recorded on their files. No information was recorded in a central place. Nor was it available to the Family Court, the counselling service or the psychiatric unit.

From the deceased wife's mother we learned that, when the couple's four-year-old son was told of his mother's death, his first response was "Did Daddy shoot her?" The poignancy of that comment belies both the sense of surprise and the "unavoidability" of the event that the various decision-makers expressed when the murder/suicide occurred. The deaths could only have been a surprise to people who saw only part of the pattern, viewing single acts in isolation rather than as a whole. We share the belief of the wife's mother that her daughter could well be alive today if there had been adequate interagency cooperation.³¹

Each element of the "gap" we have discussed serves to disadvantage women who have been abused. In particular, by working in isolation and without clear guidelines, decision-makers too often use their discretion in ways which endanger the victim, restrict her freedom and collude with the abuser.

II. THE ELEMENTS OF INTERVENTION PROJECTS

Intervention projects aim to "close the gap".³² At the heart of an intervention approach is a shared philosophy about the nature of violence

³¹ For the full case study, see *ibid*, 149-154.

³² We would like to thank Ellen Pence for sharing with us her experiences of the development and operation of the Duluth Abuse Intervention Project, a programme she founded in Duluth, Minnesota approximately 12 years ago. The Hamilton Abuse Intervention Pilot Project is modelled on the philosophy and practices of the Duluth

and the priorities which should guide the community's response to such violence. The elements of intervention entail the development of such a shared philosophy, the adoption of policies and practices to implement the agreed philosophy, networking between agencies to ensure a consistent systemic approach to violence, the monitoring of compliance with intervention protocols, the establishment of programmes for victims and abusers, and the systematic evaluation of the outcomes produced by the intervention model.³³

The first element of intervention, the development of a shared philosophy, involves the privileging of violence above the relationship between abuser and victim. Physical violence is recognised as one of a range of tactics by which abusers seek to maintain power and control over their partners. Other tactics of power and control utilised by abusers include emotional and verbal abuse; intimidation; isolation; treating the victim as subservient while the abuser reserves to himself the right to make all major decisions in the relationship; minimising and trivialising the violence; blaming the victim for such violence. The use of the two latter tactics is not limited to individual abusers. As discussed, such tactics are sometimes used by members of the justice system and serve to deny women's experiences of the realities of the violence they face.

Power and control tactics operating on a systemic level legitimise abusers' perspectives of violence and result in the further victimisation of those who look to the justice system for protection. It is a process that has been identified by certain researchers as "the cultural facilitation of violence".³⁴ An intervention project, on the other hand, aims to enhance victim safety and autonomy.

The key concerns of the intervention approach involve a focus on the extent of the abuser's violence, and the pattern and impact of his violence. With such a focus, violence cannot be dismissed as a symptom of "relationship problems". Rather, "relationship problems" are recognised as symptoms of the violence. It is a "given" of an intervention approach that one cannot have a good relationship with a partner who enforces his will through the use of violence.

project. In August 1993, Ellen Pence was a Visiting Scholar at the University of Waikato and this paper in part reflects the numerous lengthy discussions with her about the aims and elements of an intervention approach to domestic violence.

³³ Brygger and Edleson, "The Domestic Abuse Project: A Multisystems Intervention in Woman Battering" (1987) 2(3) *Journal of Interpersonal Violence* 326.

³⁴ See, for instance, Pence, E *The Justice System's Response to Domestic Assault Cases: A Guide for Policy Development* (1986) 1-8.

Inherent in the philosophy of intervention is the recognition that an act of physical violence is part of a continuum of power and control, rather than an isolated, uncontrollable eruption. Also implicit in the philosophy of intervention is the view that the use of violence creates imbalances of power. These premises indicate that mediation cannot be viewed as an appropriate process for resolving disputes during marital separation for relationships which have been characterised by violence.³⁵ Mediation implies equal bargaining positions of the parties. Violence vitiates such equality.

Moreover, a judicial requirement for “fresh and immediate evidence”³⁶ of physical violence prior to the granting of an *ex parte* non-molestation order belies the perspective that physical violence is only one form of an abuser's pattern of control. The intervention philosophy underscores that one need not hit someone continually to control him or her and that a narrow judicial focus on physical violence renders other forms of control invisible.

The second element of intervention is the development of an agreed set of policies and practices, often codified as intervention protocols, which provide concrete and specific ways in which agency personnel must put the safety of victims first. For instance, protocols may require the safety of victims to be the prime consideration in determining whether abusers should be granted bail. Similarly, as a result of the recognition that violence has on-going and disempowering consequences for victims, intervention protocols may mandate that police lay assault charges which arise within a domestic context rather than putting the onus on victims to initiate complaints.

The emphasis of an intervention approach is on the implementation of intervention protocols so that the justice system becomes more responsive

³⁵ The recently published *Review of the Family Court: A Report For the Principal Family Court Judge* (1993) supports this position. In that report, Boshier DCJ and the other committee members agreed “that where domestic violence is evident, joint counselling and/or mediation is not appropriate. This should only be cautiously considered if there is informed and free agreement by both parties”. The Committee went on to state: “Domestic violence, as a reflection of power, is obviously an important concept when it comes to considering how a Court process should operate when domestic violence exists. *We believe that mediation should be avoided by the judicial process as a legitimate means of dispute resolution in such circumstances*” (at 119, emphasis in original).

³⁶ In our previous work, we recommended that “There should be no requirement for ‘fresh’ or ‘immediate’ violence to have occurred as a prerequisite for issuing *ex parte* non-molestation orders. Past violence coupled with present threats is as compelling a reason for issuing protection orders as is present physical violence” (supra note 3, at 212). For a discussion of Family Court practices in terms of granting *ex parte* non-molestation orders, see *ibid*, 208-212.

and oriented towards victims. Emphasis on consistent implementation may be contrasted with a focus on the attitudes held by police officers, prosecutors, judges and probation officers about domestic violence. These attitudes are often blamed for the justice system's inadequate response to the victimisation of women.³⁷

From a victim's perspective, however, it does not much matter what attitudes police officers, for instance, hold as long as they do their job in accordance with the relevant intervention protocols. The concentration on implementation entails an implicit acknowledgment that attitudinal changes are more difficult to effect than behavioural changes and that the changing of behaviours may in fact be instrumental in the changing of attitudes.³⁸

Networking between government and community agencies is a third element of intervention. A common problem facing efforts to curtail domestic violence is that abusers generally can find a decision-maker within the justice system who will sanction their analysis of their abusive behaviour. The tendency to trivialise domestic violence and the victim-blaming analyses which constitute "the gap" have already been discussed within the police and court contexts. These problems may also arise in respect of probation officers who often do not have access to all the details of an assault or to the historical framework within which an assault has occurred. They may find it easy to accept an abuser's rationalisations (for example, "She never listens to me") and minimisations (for example, "I only pushed her" or "I didn't mean it, I just lost it") and recommend relationship counselling which fails to address the violence.³⁹ As well, Family Court counsellors typically do not have access to detailed information about violence in the relationship of parties they are working with and are unlikely to obtain it from victims if they hold only joint counselling sessions.⁴⁰

³⁷ For a discussion about police attitudes, see Kurz, "Battering and the Criminal Justice System: A Feminist View" in Buzawa, EDS and Buzawa, CG (eds) *Domestic Violence: The Changing Criminal Justice Response* (1992) 31. For a discussion about police prosecutors' attitudes, see Cahn, "Innovative Approaches to the Prosecution of Domestic Violence Crimes: An Overview", *ibid*, 162-163.

³⁸ Deaux, K and Wrightsman, L S *Social Psychology* (5th ed, 1988) 199-203.

³⁹ These are examples of the rationalisations the second author has heard over 8 years working as a probation officer and a similar period facilitating groups of domestic assaulters. For examples of how even experienced workers who have access to only the abusers' stories can easily collude with their violence, see also Pence, E and Paymar, M *Power and Control: Tactics of Men who Batter* (1986) 30.

⁴⁰ Relevant here is the applicability of the Stockholm syndrome to some battered women. The syndrome accounts for the paradoxical psychological reaction of hostages to their captors: when threatened with death by a captor who is also sometimes kind, hostages develop a fondness for their captor and an antipathy to the authorities working for their release. They may become quite protective of their captor. For a description of this phenomenon, see Graham, Rawlings and Rimini, "Survivors of Terror: Battered

Networking and the sharing of information between different agencies allow for abusers to be held fully accountable for their actions. Often such networking and information sharing may, however, be seen as conflicting with the very philosophies and processes currently adopted by the justice system for dealing with domestic violence, including notions of confidentiality and privacy. This is especially true in the Family Court arena.⁴¹ One contentious element of an intervention approach, therefore, is that confidentiality and privacy will not be privileged over concerns about victims' safety.

A second reason for networking and information sharing arises because members of various agencies all too often do not understand where their "bit" fits in terms of an overview of the system's approach to domestic violence in general or to specific cases involving an individual abuser and victim. It is essential if victims' safety is to be enhanced that decision-makers within the justice system gain a better sense of the collective impact of their work, on both a case-by-case and systemic level.

Monitoring, the fourth element of intervention, ensures that the intervention protocols are consistently implemented and that abusers receive appropriate, pre-determined consequences for their violence from the justice system. Victim advocates can track the performance of individual practitioners in the criminal justice system and monitor whether such practitioners are holding abusers accountable for their violence by following cases through the processes of arrest, prosecution, sentencing and the enforcement of sentences. The best policies will not enhance the safety and autonomy of victims unless they are implemented.

The fifth element of intervention entails providing services for women who have been battered. These services may include providing safe housing (for

Women, Hostages and the Stockholm Syndrome" in Yllo, K and Bograd, M (eds), *Feminist Perspectives on Wife Abuse* (1988) 217-233.

⁴¹ S 18(1) of the Family Proceedings Act 1980 provides that "No evidence shall be admissible in any Court or before any person acting judicially, of any information, statement, or admission disclosed or made-(a) to a counsellor exercising his functions under this Part of this Act; or (b) in the course of a mediation conference". S 18(3) states that it is a summary conviction offence punishable by a fine not exceeding \$500 for a counsellor to disclose "to any other person any information, statement or admission received by or made to the counsellor in the exercise of the counsellor's functions under this Part of the Act". The emphasis on the importance of confidentiality is underscored in *Lawson v Lawson* (1986) 4 NZFLR 380 (FC). In that case, Principal Family Court Judge Mahoney DCJ stated: "The confidentiality of counselling carried out under the Family Proceedings Act is absolute. It is so important to the integrity of our system that there can be no exceptions" (at 384).

example, women's refuges), court advocacy, and support and education groups. They may also involve supplying assistance in obtaining income support benefits, finding employment or obtaining training or education. Any service which will enhance the ability of women to live independently of their abusers falls under this heading. In an offender-oriented justice system, attention is placed on programmes for men who abuse. While the effectiveness of such abuser programmes is still a matter of debate,⁴² only rarely is the focus on providing properly resourced programmes for women aimed at reducing the chances that they will remain in or re-enter abusive relationships.

The sixth element of intervention involves rehabilitation of abusive men coupled with an invocation of penalties if men fail to attend court-mandated programmes or are uncooperative. Consistent with the philosophy of intervention, the meaning, power and criminality of violence is central to men's rehabilitation programmes. The programmes help men to understand the origins of the belief systems which give legitimacy to male domination and abuse, and the ultimately self-defeating nature of attempts to enforce their will over partners if what they seek are relationships based on mutual support and trust.

The final element of intervention is evaluation. Regular process and outcome evaluations, especially evaluation from a victim perspective, are needed to identify unanticipated problems in the implementation of intervention protocols so that policies and procedures can be refined. Inherent in this evaluation process is a definition of "success" which concentrates on whether the aims of intervention are achieved rather than on a focus limited to abuser recidivism or minimisation of financial costs.

III. THE HAMILTON INTERVENTION MODEL

In Hamilton, the elements of intervention have been implemented through the coordinated efforts of the Maori and non-Maori women's refuges, the police, the criminal courts, the Family Court and Community Corrections. Each of these organisations is represented at monthly HAIPP inter-agency meetings which identify and review problems and plan solutions in respect of the implementation of intervention protocols. A project office has been established in the city centre (easily accessible to transport) which employs

⁴² For reviews of abuser programmes, see Tolman and Bennett, "A Review of Quantitative Research on Men who Batter" (1990) *Journal of Interpersonal Violence* 87; Eisikovits and Edelson, "Intervening with Men who Batter: A Critical Review of the Literature" (1989) *Social Services Review* 384; and McLaren, K *Programmes to Reduce Domestic Violence: Draft of a Literature Review* (unpublished draft of a paper prepared by the Penal Policy Division of the Department of Justice, 1992).

paid staff to coordinate the intervention efforts of the participating agencies, provide advocacy services for women and manage a large pool of volunteers who run the men's and women's educational programmes. Over the past two years that HAIPP has been in existence, specific intervention protocols and less formal practices and policies have been implemented which now determine how government agencies and community groups deal with domestic violence in Hamilton.

1. Police

The police have a pivotal role to play in ensuring that there is a consistent community response to battering. The protocols which have been developed between HAIPP and the police pinpoint several key aspects of policing in terms of domestic violence cases.

First, there is mandatory arrest of abusers whenever there is a prima facie case made out that an assault has occurred. An arrest should occur without the police seeking a complaint from the victim, and she should not be required to give evidence in court unless there is no case to answer without her evidence. These aspects of HAIPP's intervention protocols have officially been police policy since 1987.⁴³

Secondly, there is notification of attendances at "domestics" by the police to the HAIPP Crisis line in order to ensure that victims receive immediate follow-up support from women's advocates. This should happen whether or not an arrest has been made.

Thirdly, men who commit assaults against their partners are to be charged under section 194 (b) of the Crimes Act (male assaults female) unless a more serious charge is warranted. All breaches of non-molestation orders will also be charged. This intervention protocol prohibits police from issuing warnings in lieu of charging and rules out assailants being charged with common assault under the Summary Offences Act 1981. It also prohibits police from offering diversion to offenders who admit that they have committed assaults or breached non-molestation orders.⁴⁴

Fourthly, offenders (whether charged with assault or breach of a non-molestation order) will not receive police bail but will be kept in the cells until the next court sitting after their arrest. If such arrest occurs on a

⁴³ Police Commissioner, *Commissioner Circular 1987/11* (1987). See also Police Commissioner, *Commissioner Circular 1992/07*, *supra* note 11.

⁴⁴ Contrast this with the national police diversion approach to domestic violence as set out at *supra* note 11.

weekday night, an offender will be brought into the District Court the following morning. If such an arrest occurs on Friday night or over the weekend, the offender will be held in the cells until the Monday morning sitting of the court. This policy provides for victim safety and helps restore victim autonomy by reducing the risk of intimidation.

In addition, HAIPP staff have been involved in police training to improve officers' understandings of the dynamics of abuse.

While aspects of project protocols are consistent with national police policy, the existence of HAIPP has had additional implications for Hamilton police in that they have been asked to place their performance under a greater degree of external scrutiny than is the case elsewhere in the country. In Hamilton, for instance, a victim advocate reviews the log of telephone calls to the police to determine whether the police arrest policy and other police protocols regarding charging of assaults have been implemented in every instance.

2. Women's Refuges

The work of women's refuges is fundamental to intervention projects. In conjunction with the HAIPP office, the local women's refuges (Te Whakaruruhau and Hamilton Refuge and Support Services) operate a joint Crisis line which handles after-hours calls from the police as well as calls initiated by women. The refuges operate a roster of call-out advocates who attend incidents, provide immediate support for women, discuss the victim services which are available, collect information about the assault (which is forwarded to the court advocate) and admit women to a refuge if that is necessary. Call-out advocates also participate in HAIPP's monitoring function by asking women to evaluate the services they have received from the police. Problems with policing can subsequently be raised with the relevant officers, and letters of commendation are sent when police officers have been particularly helpful and supportive to victims.

3. The District Court

An intervention project has important implications for the operation of the District Court and the prosecution of abusers. Prosecutors in cases of domestic violence have faced particular difficulties in obtaining convictions.⁴⁵ The most common difficulty is that a significant number of victims decline to give evidence or seek to have the charge(s) against their abusers withdrawn. This is understandable as abusers characteristically use

⁴⁵ *Supra* note 5.

a variety of tactics, including intimidation, to dissuade their victims from cooperating with the prosecution.

Intervention protocols aim to shield victims from such tactics by not requiring them to lay charges and having police collect sufficient evidence so that a defended prosecution will succeed without the victim being required to give evidence at trial. In addition, when a defendant is remanded on bail, judges in Hamilton will now usually impose as a condition of bail an order prohibiting the accused from associating with the victim.⁴⁶ This condition is imposed unless the victim specifically requests that the defendant be allowed to return home.

It is now the practice in Hamilton for prosecutors to decline victims' requests to have charges withdrawn. Instead, victims are advised that they should attend the court and tell the presiding judge why they do not want the abuser prosecuted. Support from the HAIPP court advocate is available to women who may be considering withdrawing from a prosecution.

Intervention policies also relate to sentencing convicted abusers. There is an informal agreement with Community Corrections that probation officers will recommend the HAIPP men's education programme as part of the sentence for all suitable convicted offenders.⁴⁷ And although the Hamilton District Court judges have felt it important not to have their sentencing discretion fettered, they have manifested their support for intervention policies in their sentencing approaches. Most convicted abusers are ordered to attend the HAIPP men's education programme, either as a condition of a sentence of supervision or as part of a parole programme following a term of imprisonment (which is a likely outcome for repeated and/or more serious assaults).⁴⁸

A key aspect of the intervention model in the District Court is the role of the HAIPP court advocate. She attempts to demystify court processes for women who have been abused and helps to ensure that they have knowledge of and input into those processes. She keeps victims informed of what is happening to their abusers as a result of court appearances. Information about victims' safety concerns and the impact of the assaults on them are provided by her to both the police prosecutor and the Community Corrections Court Servicing Team. She provides support for victims

⁴⁶ Robertson, N and Busch, R, *Hamilton Abuse Intervention Pilot Project Report No. 5: The Two Year Review* (1993) 10. See *infra* note 75 for a statistical breakdown of remand outcomes for the year August 1992 to July 1993.

⁴⁷ See *infra* for examples of "unsuitability".

⁴⁸ *Supra* note 46, at 11.

required to give evidence in defended hearings, helps them organise child-care and transportation, talks to them about their fears about appearing in court, outlines court procedures and protocol, and discusses the implications of making a stand against the abuse they have received. While the court advocate does not give formal legal advice, she does provide information to women about protection orders and other legal issues.

The court advocate also represents a crucial part of HAIPP's monitoring process. She tracks abusers through the criminal justice system, and documents departures from intervention policies by prosecutors, probation officers and judges.

4. Community Corrections

Probation officers have an influential role in the criminal justice system. They make recommendations to judges about the sentencing of offenders, monitor community-based sentences such as supervision and community care, and supervise offenders released on parole. Probation officers exercise a significant degree of discretion in terms of their sentencing recommendations and the types of programmes which they require men under supervision to attend. In the past, probation officers have been criticised for being offender-oriented, sometimes to the detriment of the victims of domestic assaults.⁴⁹

As has been already mentioned, there is an informal agreement with HAIPP that probation officers in the District Court will recommend the HAIPP men's programme for all domestic abusers, either as part of a sentence of supervision or as part of a parole programme in those instances where offenders are sentenced to imprisonment. The agreement includes a provision that exceptions to this practice should only be made where an offender is clearly unsuitable to attend the HAIPP programme. "Unsuitability" arises where an offender has a language barrier or is not living within the Waikato district or where he has a specific psychiatric condition which would severely limit his ability to benefit from the programme.

Since the advent of the project, probation officers have had access to victim statements collected by refuge call-out advocates soon after the assault has occurred. This information has been supplied by HAIPP to assist probation officers in preparing their pre-sentence reports. Probation officers have been criticised for not obtaining victims' perspectives in the preparation of these

⁴⁹ Penal Policy Review Committee, *Report to the Minister of Justice* (1981) 116-117.

pre-sentence reports.⁵⁰ The problem has been especially acute when reports have been prepared during a short stand-down period and the victim has either not been present in court or alternatively when members of the Court Servicing Team have been too pressed to have time to interview her. The victim statement is aimed at focussing probation officers' attention on the specific instance of violence in question and its consequences for the victim. It also contains a summary of any previous violence that has occurred between the parties.

Probation officers also ensure that offenders comply with the conditions of their sentences. Under HAIPP protocols, if men fail to attend HAIPP as directed, enforcement action will be initiated by the probation officer. Absences for genuine cases of illness or other legitimate reason (such as unavoidable work commitments) are accepted and usually the first absence without good reason will result only in a warning. In all other cases, offenders will be charged either with breaching the conditions of their supervision orders or else will be subject to an application to have their supervision reviewed and another sentence substituted. A term of imprisonment is most likely when offenders are re-sentenced.

5. The Family Court

In Hamilton, intervention protocols have been developed to cover aspects of the operation of the Family Court. Respondents who have had protection orders (interim or final) made against them are now directed to attend the men's education programme under the provisions of section 37A of the Domestic Protection Act.⁵¹ The section 37A direction remains in force even if an applicant who has obtained interim protection orders does not proceed with an application for final orders. Protocols have also been developed for enforcing attendance of respondents at the men's programme through the issuing of summonses and the prosecution of non-attenders. While section 37A of the Domestic Protection Act provides for such prosecutions, the prosecutions provisions have hitherto rarely been invoked.⁵²

⁵⁰ Department of Justice, *Submission to the Committee of Inquiry into Violence* (1986) 177.

⁵¹ S 37A (1) states that "the Court may, on making an order under this Act, direct the respondent to participate in counselling of a nature specified by the Court". Subss (4) and (5) lay out provisions for summoning and prosecuting respondents who fail to participate in such directed counselling. By contrast, s 37 states that "On making an order under this Act, the Court may recommend either party or both of them to participate in counselling of a nature specified by the Court". Such "recommendations" are not mandatory.

⁵² *Supra* note 3, at 260.

Applicants are recommended to attend the women's programme under section 37 of the Domestic Protection Act. As a corollary to this section 37 recommendation, the Hamilton Family Court Counselling Coordinators have instructed court-appointed counsellors to delay the onset of counselling in respect of custody and access issues (except for an initial, individual appointment) for six weeks to allow women the opportunity to attend women's education and support groups run by the project office. Participation in the women's groups is seen as a way in which women can become more empowered and able to take part in court-ordered counselling and mediation on a more equal footing with their abusers. It is hoped that by gaining some distance from the trauma of the recent violence and by sharing their experiences of custody and access arrangements, women in these HAIPP groups will be able to enter into negotiations about long-term childcare options without resorting to the placation and appeasement tactics which so frequently characterise women's behaviour towards their abusers.⁵³ They will be better positioned to evaluate realistically which arrangements are likely to work for them. It is believed by Family Court personnel that over time this deferral of counselling will result in a decrease in the number of repeat applications for revision of custody and access orders, thereby saving court time and expense.⁵⁴

6. HAIPP's Women's Programmes

The HAIPP office offers a range of services and programmes for women. One-to-one crisis support and advocacy is provided by HAIPP staff and volunteers. These services complement similar services offered by the two Hamilton women's refuges. While quite time consuming for the project, the provision of one-to-one support is a necessary aspect of restoring victim autonomy. Such support may involve listening while a woman painfully recounts the most recent incident involving violence or intimidation during a court appearance or access changeover time. On the other hand, it may involve accompanying her to the Department of Social Welfare and helping her apply for a domestic purposes benefit or helping her prepare for and then accompanying her to her lawyer's office if she is applying for protection and other orders from the Family Court. It may take up to three or four hours at the Department of Social Welfare offices for a woman to complete the procedures necessary to obtain the domestic purposes benefit and several hours of waiting at the police station before her statement concerning a domestic incident is taken.

⁵³ A cliché often used by battered women to describe their appeasement tactics is, "He said, 'Jump!' And I said, 'How high?'"

⁵⁴ See Robertson, N and Busch, R, *Hamilton Abuse Intervention Pilot Project Report no. 2: Six Month Evaluation Report* (1992) 39-40.

While victims often need one-to-one support, group work is an important part of the women's support and advocacy programme. Group activity breaks down the isolation abusers typically impose on their victims. Through meeting women who are in similar situations, participants can more easily come to understand the systematic (and sometimes systemic) nature of the violence to which they have been subjected. The result is that they are less likely to accept abusers' attempts to make them feel responsible for the violence. Over time, members of women's groups are able to understand their own stories against the backdrop of commonplace domestic violence as well as the justifications often accepted by the justice system for that violence. Participation in women's groups allows women to contextualise socially their spouse's behaviour.

Because of the guilt victims are often encouraged to feel by their abusers, it is often difficult to engage women in support and education groups. For some battered women, they have been "punished" for visiting friends and family and having interests outside the home; and they have been told who they are allowed to speak to and what they can say at social events with or without the abuser being present. Partly because of these women's understandable reluctance to participate in groups where violence is the focus of discussion, HAIPP has found it helpful to provide other types of women's groups.

The first of these is the HAIPP Orientation Group. All women whose (ex) partners attend a men's education programme are invited to attend one of these one-off groups. Some women find it easier to attend a group which can be seen as helping their partner than one which is clearly designed for them. The orientation group is an opportunity for women to be informed about the content of the men's programme, to see the control logs and videos used in teaching men about power and control, to learn about the language their partners will probably start to use as a result of their participation in the men's education groups, to find out what will happen if their partners fail to attend the programme, to discuss their personal safety issues, and to learn what other women's groups are available to them at HAIPP.

The other type of women's group is the Court Orders group. The purpose of this group is to inform women about the meaning and scope of protection orders and how to get police to action them. The group is run by the HAIPP court advocate, who, in collaboration with others, has produced a simple language guide to protection and other Family Court related orders. This guide sets out the grounds on which protection orders may be granted, the procedures involved in applying for such orders, information about what

behaviour constitutes breaches of those orders and what steps to take to get police to action those breaches. It also sets out information relating to custody and access issues.

7. HAIPP's Men's Education Groups

The men's education programme also operates out of the HAIPP office. The programme accepts referrals from Community Corrections and the Family Court. Some men are "self-referred" in that they are not court-mandated to attend the programme. "Self referral", however, is often a misnomer in that certain men are referred to HAIPP by other social services and some are "partner referrals". The latter attend HAIPP in response to ultimata from spouses that unless they do something to end their abuse, the relationships will be over. Some men apparently "self-refer" prior to court appearances. In HAIPP's first eighteen months, 5% of self-referred men were subsequently ordered by the courts to attend the men's programme.⁵⁵

Approximately 900 men have been referred to the HAIPP programme over the past two years. Of the 193 men on the programme as of 30 June 1993, 70% had been referred by Community Corrections, 6% by the Family Court and 24% were self-referred.⁵⁶ Only two women have been referred to HAIPP as a result of their violent behaviour, both from Community Corrections and both in the past two months. Because of their infinitesimal number, there is no group programme established for them, and they are dealt with on a one-to-one basis by HAIPP staff.⁵⁷

It is important to note that the HAIPP men's programme is an education programme. It is not a therapy programme, neither is it an anger management programme. While many men might benefit from therapy or anger management training, such programmes are not a priority for protecting victims and restoring their autonomy. Therapeutic approaches typically address the presumed causes of the violence rather than the effects of such violence.⁵⁸ For example, if the presumed cause of an abuser's violence is his lack of communication skills, poor self-esteem or inadequate ways of expressing anger, providing him with communication skills training, self-esteem enhancement or assertiveness training may be seen as appropriate remedies. Such approaches risk turning out more skilled and confident abusers.

⁵⁵ Supra note 46, at 27.

⁵⁶ Ibid, 25-26.

⁵⁷ Information given by the HAIPP court advocate in a discussion held 3 October 1993.

⁵⁸ Adams, D "Counselling Men Who Batter: A Profeminist Analysis of Five Treatment Models" in Yllo and Bograd (eds), supra note 40, at 176-199.

On the other hand, if the violence and the effects of the violence are the focus, then abuser rehabilitation programmes become victim-oriented. Instead of anger being seen as a cause of violence, it is recognised as one of the weapons abusers use to intimidate their partners. Poor self-esteem is recognised as a self-serving justification for using violence which is in fact directed at getting the victim to do something, to stop her from doing something or to punish her for what she has or has not done.

Consistent with the philosophy of intervention, the focus of the men's education programme is on seeing the violence as part of a pattern of tactics utilised by abusers to control their partners. In groups, men are encouraged to re-examine the notions of hierarchy implicit in their belief systems which characteristically condone the use of violence. The curriculum explores the consequences of adopting a "one-up, one-down" model of relationships. For abusers, such consequences may include the loss of their spouse's intimacy, trust, and love. Ultimately, it may result in the loss of the relationship itself and (potentially) in the loss of father-child relationships as well. By exploring the contradictions in their rationalisations and the self-defeating nature of their violence (including arrest and conviction), men are introduced to an alternative model of relationships based on equality and respect.⁵⁹

The men's groups are usually co-facilitated by a woman and a man. In part, this provides an opportunity for the co-facilitators to model an equal relationship between men and women. The women facilitators also play a monitoring role as part of the project's accountability process. They maintain close links with the women's programme so that they bring a victim-oriented perspective on violence and its effects to the men's groups.

Further steps to ensure accountability of the men's programme to victims include women's advocates making regular checks with the partners or ex-partners of men's group participants to gather feedback on the abusers' behaviour outside the group and to offer help to women who need it. Support for women whose partners are undergoing a men's education programme is vital. Both American and local research shows that women are more likely to remain in a relationship if the abuser is undertaking some form of treatment.⁶⁰ In this context, providing a programme for abusers

⁵⁹ *Supra* note 39. The curriculum used in the HAIPP men's programme was developed in Duluth, Minnesota and then adapted for New Zealand conditions (eg to provide separate men's groups for Maori and non-Maori abusers, and production of local video vignettes of abusive behaviour).

⁶⁰ Gondolf, E W "The Effect of Batterer Counselling on Shelter Outcome" (1988) 3 *Journal of Interpersonal Violence* 275; and Furness, J A *From a Woman's*

without support for women may actually increase the danger faced by women.

HAIPP men's group facilitators sometimes comment that some of the men seem to be less interested in actually changing their behaviour than in convincing their partners that they have changed.⁶¹ Our evaluation data includes instances of women reporting that their abuser has used participation in the programme to abuse them further (for example, by telling her that she has nothing to "moan" about given what other men in his group do to their spouses, or by adopting the terminology of the curriculum to accuse her of using power and control tactics to dominate him).⁶² Some women who remain with their abuser as he participates in the men's programme have been characterised as being on a virtual emotional roller-coaster as he alternates between behaving himself and relapsing into old patterns.⁶³ Given the priority, on safety and autonomy of victims, support for women can be seen as a necessary part of running programmes for men. This approach has been codified in a standard of practice developed in Pennsylvania which states that:

No intervention program for batterers should be initiated in a community unless there is a program for battered women that provides safe housing, advocacy and counselling and these services are available to the battered partners of participants in the intervention program.⁶⁴

Indeed we would argue that it is unethical to provide programmes for abusers which do not have built into them processes to ensure accountability to the partners of those abusers. Moreover, a full array of appropriate services for those women must also be provided.

Despite HAIPP's clear priority in terms of victim advocacy services, the men's education programme is frequently seen by the justice system's representatives as the most important part of the project.⁶⁵ This view is

Perspective: A Multiple Case Study Evaluation of an Education Programme for Abusers (unpublished M Soc Sc Thesis, University of Waikato, 1993) 203.

⁶¹ Supra note 46, at 29-30.

⁶² Robertson, N, Busch, R, Glover, M, and Furness, J *Hamilton Abuse Intervention Project: The First Year* (1992) 44.

⁶³ Furness, supra note 60, at 213-214.

⁶⁴ Foster and Bicehouse, "Principles of Practice" in Hart, B J (ed) *Accountability: Program Standards for Batterer Intervention Services* (1992) 5.

⁶⁵ For example, a discussion paper prepared for FVPCC by a senior police officer regarding the evaluation of HAIPP suggested 9 measures which could be considered as indicators of the success of the project. The first was "reduced levels of recidivism and therefore a reduced incidence of violence". The next 5 indicators related exclusively to abusers. Only the last 3 related to victims and each of these related to reduced need for medical services (eg, hospitalisation and specialist services such as

reflected in many of the enquiries regarding the programme received by HAIPP. Evaluations of HAIPP, moreover, have at times been criticised for not paying sufficient attention to measuring the extent of re-offending.⁶⁶ The emphasis on offenders is clearly evident in the funding arrangements between HAIPP, the Family Court, and Community Corrections which entail fee-for-service in relation to offenders. The Family Court, for instance, pays a fee for respondents directed to HAIPP under section 37A of the Domestic Protection Act. It does not fund the women's support and education programme for victim applicants who are referred under section 37.

Whether or not individual men stop their violence is obviously an important measure of HAIPP's success. However, the intervention focus on safety and autonomy of victims means that the most important evaluations of success must be victim-oriented. It must be asked whether, as a result of HAIPP's involvement with them, individual women are now living abuse-free lives. This result may occur because former victims have continued to live with abusive partners but the latter have stopped using power and control tactics. Alternatively, former victims may be living independently or may have formed other relationships which are violence-free.

In terms of the systemic problems discussed earlier in this article, the most salient issues are whether the decision-makers in the justice system in Hamilton currently respond to domestic violence in ways which enhance the safety of victims, restore their autonomy and hold abusers accountable for their violence. It is clearly this systemic focus which distinguishes intervention projects from more limited approaches which concentrate on individual abusers and/or victims in isolation. The latter approaches explicitly or implicitly deny the crucial link between the justice system's practices and paradigms about domestic violence and the ongoing abuse of victims who turn to police or courts for protection.

IV. THE IMPACT OF THE INTERVENTION PROJECT

It is not our intention in this section to provide detailed evaluation data on the impact of the project. For that, the reader is referred to the five HAIPP evaluation reports prepared to date. Instead, we briefly review some of the

psychologists). No mention was made of increased victim autonomy as an indicator of success. Only the first indicator related (indirectly) to victim safety. See Smith, D C: unpublished discussion paper prepared for the 3 December 1992 meeting of the Intervention Working Party of FVPCC.

⁶⁶ This was evident from a discussion paper prepared by Bruce Asher of the Department of Justice and tabled at the 24 March 1993 meeting of the Intervention Working Party of FVPCC.

major impacts of an intervention approach on police, women's refuges, the courts and Community Corrections.

1. Police

The impact of intervention on police workloads has been difficult to quantify, mainly because police records do not generally distinguish stranger and domestic violence.⁶⁷ However, estimates based on a sample of telephone messages suggest that the Hamilton police are now arresting more than twice the number of abusers than prior to the establishment of HAIPP.⁶⁸ This seems to reflect a combination of an increase in the number of calls concerning domestic violence and an increase in the proportion of calls resulting in arrest. On the other hand, we have been told by some officers that it is now less common for police to be repeatedly called to the same houses.⁶⁹

While we cannot quantify the level of reduction in repeat calls, this would be consistent with a more effective police response. Here we do have reasonable data.⁷⁰ When refuge call-out advocates visit women after a police-attended incident, part of their procedure involves asking the victim how satisfied she was with the police response. The overwhelming majority of victims report being satisfied with police intervention. Some problems do remain: some officers are considered to be rude, unsympathetic, or victim-blaming. But even when there are complaints about the attitudes of police officers, it is very rare for women to be dissatisfied with the outcome of police intervention.

⁶⁷ See *supra* note 5.

⁶⁸ One impact that HAIPP has had is that record-keeping is now much improved compared to prior to the project's establishment. For example, we can determine with considerable accuracy the number of abusers arrested in Hamilton each month. Establishing comparable figures for the months prior to the project's launch is more difficult. An approximation can be obtained by searching the records of telephone messages received at the Watch House. This requires making a judgment on limited information as to which calls were domestic-related. This method fails to include some arrests - eg where a complaint was made in person rather than over the telephone, or where an offender was arrested more than a day after the telephone call was made. Police advise that few arrests are made in the latter circumstances. Working from a sample of telephone messages for January to June 1991, we calculated an estimate of 16 domestic arrests per month. During the same period in 1993, an average of 42 arrests per month were recorded by HAIPP.

⁶⁹ From conversations with Hamilton police sergeants in February 1992.

⁷⁰ *Supra* note 46, at 5-6.

2. *Women's Refuges*

For all the agencies, intervention has resulted in an increase in domestic violence related work, at least in the short term. This is most evident for the two Hamilton women's refuges which have reported a four-fold increase in their workload.⁷¹ The increase is due primarily to refuges' provision of advocacy services to women who do not make direct contact with the refuges themselves but who are seen by refuge call-out advocates after police have contacted the Crisis line about them. Refuge call-out advocates work long hours under highly stressful and potentially dangerous conditions. The risk to advocates is especially evident when they respond to non-arrest calls. In those situations, the perpetrator may be lurking around the neighbourhood or may even be in the house.

The establishment of HAIPP has resulted in a change of focus for Hamilton refuges from providing services for residents of the refuge house to community support work. Three-quarters of the work done now by the two refuges involves supporting women who never become refuge residents but who require crisis counselling about the violence they have faced as well as transport to and assistance in dealing with the Department of Social Welfare, lawyers, the courts, doctors and police.⁷² Moreover, refuge workers perform their call-out advocacy role in addition to all the "traditional" activities of a refuge service, namely, running the refuge houses and providing counselling and support services for the women and children who are residents of those houses. Finally, refuge workers carry out various functions within HAIPP's education and support programmes. For instance, both refuges have members who facilitate groups in the men's and women's programmes.

3. *District Court*

Prosecuting domestic abusers has been particularly problematic. This is reflected in Justice Department statistics for the whole of New Zealand: in 1991, only 64% of the men charged with male assaults female were convicted.⁷³ During the second year of the project, on the other hand, 87% of the men charged with male assaults female were convicted in the Hamilton District Court.⁷⁴ This is a significant improvement in holding abusers accountable for their violence and appears to be the result of a combination of HAIPP-related factors. First, the non-association conditions

⁷¹ Ibid, 6.

⁷² Idem.

⁷³ Supra note 5.

⁷⁴ Supra note 46, at 10. For a comparison of outcomes of prosecutions for male assault female charges for HAIPP and national samples, see Table 3, *ibid*, 12.

generally imposed on bail⁷⁵ presumably help protect women from being intimidated and increase the chances that they will give evidence in defended cases. Moreover, the role of the court advocate appears to be crucial; during the past year, only one woman who has been supported by the court advocate has declined to give evidence in a defended hearing.⁷⁶ This can be contrasted with the experiences of the Christchurch District Court. Certain judges in that court have commented several times over the past year that women complainants were refusing to testify at defended assault hearings, thereby causing substantial problems in terms of the court's calendar.⁷⁷

While statistical analyses can provide a global view, individual cases are needed to establish exactly how well the intervention approach has been accepted by the judiciary. The cases monitored by the court advocate show that there are still times when District Court judges in Hamilton minimise the violence victims have experienced or accept an abuser's rationalisation for his behaviour. Some sentencing decisions in terms of the "special circumstances" provision of section 5 (1) of the Criminal Justice Act 1985 are illustrative of this problem.⁷⁸ For example, in one case, an accused was charged with assault with intent to injure for pushing his spouse to the floor, putting his hands around her throat, choking her and kicking her in the face. While the judge characterised the attack as "serious violence", he found that the section 5 special circumstance criterion had been fulfilled because, just prior to the assault, the accused had learned that his wife had formed a new relationship. Rather than imprisonment, the accused was sentenced to six months periodic detention and attendance at the HAIPP men's programme. While the judge stressed that he did not feel that the accused was "justified" in his assault, his willingness to characterise the new relationship as a special circumstance tended to legitimise the accused's view (expressed at

⁷⁵ Ibid, 9-10, especially table 1. For the year between August 1992 and July 1993, of the men charged with domestic violence related offences (n=344), 22% (77) were remanded in custody, 60% (207) were remanded on bail with non-association conditions and 17% (60) were remanded on bail with no non-association conditions.

⁷⁶ Ibid, 10.

⁷⁷ Reported in *New Zealand Herald*, 14 January 1993, 3; *Waikato Times*, 11 March 1993, 8. See also supra note 27.

⁷⁸ S 5(1) of the Criminal Justice Act states that "where (a) an offender is convicted of an offence punishable by imprisonment for a term of 2 years or more; and (b) the court is satisfied that, in the course of committing the offence, the offender used serious violence against, or caused serious danger to the safety of, any other person, the court shall impose a full-time custodial sentence on the offender unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced".

the trial) that his wife “deserved” what he had done to her.⁷⁹ As a minimum, the judge’s approach indicated that he understood how learning the news could result in the accused’s assaultive conduct. In fact, during separation, it is a rather “ordinary” circumstance that former partners form new relationships.

In another case, a District Court judge found that an assault which consisted of pushing the complainant into a door and repeatedly punching her to the body and to the head had missed the “serious violence” measure of section 5. Although the complainant had required medical attention and had needed a neck brace, the accused was not imprisoned but was instead sentenced to three months periodic detention and six months supervision with a condition to attend HAIPP. In that case, no victim impact report had been called for and the judge was apparently unaware of the extent of the complainant’s injuries.⁸⁰

Of more general concern, certain District Court judges (as well as lawyers and police) have expressed reservations about the protocol that requires police to charge all domestic assaults under section 194 (b) of the Crimes Act.⁸¹ Section 5(2) of the Criminal Justice Act 1985 mandates that an accused convicted twice under section 194(b) within a two year period shall be sentenced to a term of imprisonment unless “special circumstances” can be found. There is no requirement of “serious violence” in terms of these assaults, but “violence” must be used.⁸² Section 5(2) coupled with the charging protocol limits judicial discretion in terms of sentencing.

In some ways, this concern is a positive and direct result of the police arrest policy in that far more domestic violence cases, which previously would not have resulted in prosecutions under section 194(b), are now coming before the District Court. Some of these cases may involve single punches or pushing and shoving or incidents in which both spouses have been drinking

⁷⁹ *Police v Descatoires*, unreported, District Court, Hamilton, 13 May 1993 (Brown DCJ).

⁸⁰ *Police v Te Amo*, unreported, District Court, Hamilton, 19 April 1993 (Latham DCJ).

⁸¹ For instance, such a reservation was expressed by Latham DCJ in *Police v Rangitūia*, unreported, District Court, Hamilton, 21 September 1993. The accused had been charged under section 194(b) of the Crimes Act. and after a defended hearing, the judge granted him a section 19 discharge without conviction. The incident had involved the accused grabbing the complainant in a headlock. When she pulled away and ran into the road, he caught her, dragged her back and then held her in a bear hug. The judge referred to the incident as an “ex lovers’ tiff”.

⁸² In *Police v Wilson*, unreported, District Court, Hamilton, 4 August 1993, Jamieson DCJ distinguished “force” from “violence”. The assault consisted of one open hand slap across the head which had not resulted in any injury to the complainant: the judge stated that, while an assault had occurred, the incident was not a violent one.

or violent to one another. In the past, these abusers would probably have been warned or charged with common assault under the Summary Offences Act 1981.⁸³ A subsequent assault conviction would not, therefore, have brought the accused into the section 5(2) category.

The majority of cases, however, show that clear and unambiguous messages about the criminality of domestic violence are being given by the judiciary. For instance, in one case in which the offender had delivered at least twelve punches to the victim's face and head (causing bruising and swelling), defence counsel argued that the offender had used some restraint (ie. the blows were not as forceful as they might have been), that the defendant had taken out most of his frustration on the wall and that the violence was a result of the couple's communication problems and financial stress. She submitted that the violence was not "serious" and that a non-custodial sentence would be appropriate. The District Court judge rejected the lawyer's submissions, imposed a six month term of imprisonment, and ordered the offender to attend HAIPP upon his release. In passing sentence the judge observed that "nine and a half offenders out of ten have financial stress at some time or other but do not resort to violence". He considered the attack to be a "prolonged beating", stated that the head is a delicate and vulnerable part of the body and that repeated beating is liable to do serious harm. He also noted that there had been a history of violence by the offender against the victim.⁸⁴

In another case, a judge rejected a section 5 special circumstances submission despite the fact that the victim had sent a letter to the court saying that she forgave the accused. In this case, the offender was facing three charges of male assaults female. One charge involved a push which knocked the then eight-month pregnant victim unconscious. A second incident - which had occurred when the victim was changing their baby's nappies - had involved head-butting which left the victim suffering from chronic headaches. He was sentenced concurrently to nine months imprisonment on each charge. The District Court judge rejected the submission that the victim's forgiveness was a special circumstance.⁸⁵ His approach was consistent with an intervention focus on the extent and effect of the violence and contrasts with certain other reported cases from around New Zealand which have viewed forgiveness by victims of domestic

⁸³ *Supra* note 3, at 163-164, 167-168.

⁸⁴ *Police v Manihera*, unreported, District Court, Hamilton, 3 May 1993 (Jamieson DCJ). Comments of the judge found in notes taken during the sentencing by the HAIPP court advocate.

⁸⁵ *Police v Chambers*, unreported, District Court, Hamilton, 12 May 1993 (Latham DCJ).

violence in a positive light when assessing special circumstances under section 5.⁸⁶

4. Community Corrections

The increase in the number of abusers arrested in Hamilton has impacted on Community Corrections: the caseload of domestic abusers on supervision and parole has increased dramatically.⁸⁷ However, there are efficiency gains in that, because the direction to attend HAIPP is usually the main focus of the sentence, relatively little face-to-face contact with offenders is required of probation officers. Thus the officer who supervises most of the HAIPP supervision caseload is able to handle far more offenders than would be possible if he were required to carry out traditional case-work tasks.

Community Corrections officers have been consistent in enforcing attendance at the men's programme although eleven men referred to HAIPP between January 1992 and December 1992 were not compelled to complete.⁸⁸ In the majority of cases of non-attendance, enforcement action has been taken. Of the 285 men referred by Community Corrections during the first eighteen months of the HAIPP programme, 14% have had their sentences reviewed for non-compliance while 4% have been convicted of further partner assaults.⁸⁹

5. The Family Court

The first twelve to eighteen months of the HAIPP project also had substantial workload implications for the Hamilton Family Court. The Court staff had to devise procedures for the referrals of women and men to HAIPP under the provisions of sections 37 and 37A of the Domestic Protection Act including procedures for summoning and prosecuting men referred to the men's education programme who failed to attend. While these procedures are now in place, only approximately 50% of the respondents referred to HAIPP under section 37A are actually inducted into

⁸⁶ In *Thomas v Police*, unreported, High Court, Wellington, AP 222/91, 13 November 1991, Eichelbaum CJ saw the victim's forgiveness as relevant in his determination of special circumstances. In *Thomas*, the accused (who poured a kettle of boiling water over his wife causing her grievous injuries after she had spilt her coffee on him by accident) was given a sentence of six months periodic detention on appeal. The Chief Justice stated: "I think it is highly unlikely, given his background, that the offender will re-offend in a similar manner (at 2.) In *Queen v Panoa-Masina*, supra note 21, the deceased's family's forgiveness was seen as one of the special circumstances.

⁸⁷ J Davies, personal communication, October 1993. Collated Community Correction statistics cannot be used to track HAIPP-related changes in workload because those statistics do not distinguish domestic assaulters from other offenders.

⁸⁸ Supra note 46, at 15, 28.

⁸⁹ Ibid. 27-28.

the men's programme.⁹⁰ The majority of men who fall into the "no show" category cannot be located and therefore have not had HAIPP referral notices or section 37A(4) summonses served upon them. So far, no respondent has been prosecuted for failing to attend HAIPP.⁹¹

The Family Court has faced an increase in the number of defended applications for final non-molestation orders since HAIPP's establishment.⁹² Court staff attribute this increase to the fact that there are now tangible outcomes when protection orders are granted. Non-molestation orders and non-violence orders are no longer seen as "simply pieces of paper".⁹³ Specifically, the practice of referring respondents to HAIPP under section 37A after a protection order has been granted as well as the consistent implementation of police intervention protocols in respect of breaches of non-molestation orders appears to have resulted in the view that protection orders now have "clout".⁹⁴

Court personnel report that there are also more applications by respondents for discharges of protection orders and/or discharges of the section 37A HAIPP referral.⁹⁵ While few of those applications are successful, there have been instances where such orders have been discharged because there is no continuing contact between the parties or where the relationship has ended and there are no children or only adult children.⁹⁶ Moreover, if women do not contest their partners' applications, those orders will in fact be discharged. Judges see the fact that the application for discharge is not opposed as evidence that the parties may have reconciled or worked things out and consider that it would be inappropriate not to grant the discharge.⁹⁷ However, court staff express some concern that some women are too frightened to oppose the discharge applications. As well, the victim may have relocated away from Hamilton and it is difficult to serve her.⁹⁸

Interestingly, lawyers for men in defended hearings do not appear to be challenging the fact that their clients have been violent; their argument is rather that there is not an on-going need for protection.⁹⁹ Court staff underscore the difficulty of proving such an on-going need if the respondent

90 Ibid, 16.

91 Idem.

92 Ibid, 17.

93 Idem.

94 Idem.

95 Idem.

96 Ibid, 17.

97 Idem.

98 Idem.

99 Idem.

has not been violent during the six months that it takes to get a defended application for discharge of protection orders before the Family Court. They stress that it may well have been the existence of the non-molestation order which deterred further instances of violence.¹⁰⁰

Judges and court personnel are better informed about the dynamics of domestic violence since the establishment of HAIPP. Some judges have stated that five or six years ago, they did not know what they now know.¹⁰¹ There is now a focus on the violence in the relationship as well as on other relationship issues, and the power and control analysis of such violence is used. This new focus is reflected in recent protection order decisions in which the facts of the violence have been articulated more explicitly.¹⁰² In the past, such facts had often been glossed over.¹⁰³

With the nationwide and international interest in HAIPP and the establishment of "mini-HAIPPs" throughout New Zealand, the Hamilton Family Court staff has taken on the somewhat time-consuming role of sharing its experiences of the HAIPP programme with other Family Court Coordinators and overseas specialists.¹⁰⁴ For instance, a paper on HAIPP and the power and control approach to domestic violence was recently co-authored by a Hamilton Family Court Judge and the Hamilton Family Court Coordinator and presented to a national Family Court judges' conference.¹⁰⁵ The paper emphasised the effectiveness of the interagency approach to domestic violence and stressed the positive aspects of having community groups involved in interagency meetings.¹⁰⁶

V. CONCLUSION

HAIPP evaluations to date have focused on the results produced by the consistent implementation of intervention protocols. Now that the project is moving into its third year and a reasonable follow up period has elapsed, the evaluation process has begun to focus on the impact of an intervention approach for individual abusers and victims. The data collected so far is encouraging. For example, although some abusers may continue to use violence, 71% of women interviewed for the six month evaluation reported

¹⁰⁰ Ibid, 17-18.

¹⁰¹ Ibid, 20.

¹⁰² Idem.

¹⁰³ Supra note 3, at 193.

¹⁰⁴ Supra note 46, at 19.

¹⁰⁵ Twaddle, A J and Wasey, J F *Hamilton Abuse Intervention Pilot Project (HAIPP)*, unpublished paper delivered to the Family Court Judges' Conference, Wellington, April, 1993.

¹⁰⁶ Idem.

that their partners had shown clearly positive changes (the rest reported either limited changes, no change or ambiguous changes).¹⁰⁷ The majority of women interviewed as part of the twelve-month evaluation reported that they felt safer and that their partners (or ex-partners) were less controlling.¹⁰⁸ In addition, the increased number of women who telephone the police when they have been assaulted suggests that there is a perception that women are being taken more seriously by the justice system.

We have anecdotal evidence of men wanting to move out of Hamilton because it has become too "hot" for them. This suggests the power of an integrated approach to domestic violence. Such an approach, however, can only be effective if there continues to be regular and thorough monitoring of the justice system by victim advocates and on-going interagency consultation and accountability. There must also be on-going funding of HAIPP and the other intervention projects which are springing up around the country. While it may be difficult to quantify the costs of domestic violence in New Zealand today,¹⁰⁹ it is clear that such costs are substantial not only in financial terms but also in the daily misery experienced by thousands of New Zealand women and children. In Hamilton, HAIPP has clearly been significant in reducing some of that misery for some women. In addition, it has brought hope to some justice system personnel that a constructive approach to this demoralising, chronic problem is being set in place.

¹⁰⁷ *Supra* note 54, at 19.

¹⁰⁸ *Supra* note 62, at 43.

¹⁰⁹ For a discussion of the financial costs of domestic violence in New South Wales, see New South Wales Domestic Violence Committee, *Costs of Domestic Violence* (New South Wales Women's Co-ordination Unit: Sydney, 1991).