



Justice From the Victim's Perspective

Citation

Herman, Judith Lewis. 2005. Justice From the Victim's Perspective. Violence Against Woman 11, no. 5: 571-602.

Published Version

doi: 10.1177/1077801205274450

Permanent link

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Judith Lewis Herman
41 Magnolia Avenue
Cambridge, MA 02138
617 354-5564
herman.j@comcast.net

Paper for Special Issue of Violence Against Women
(James Ptacek, Editor)

Final Draft, November, 2003

Supported in part by a fellowship from Radcliffe Institute for Advanced Study.

The author gives thanks to the study informants and to research assistant Chia-Jung Tsay.

INTRODUCTION

In the course of their recovery, victims of sexual and domestic violence confront the most basic questions about the meaning of justice: How can the truth be made known? How should offenders be held accountable? What is appropriate punishment? Can the harm be repaired, and if so, what would be required to repair it? How can victims and offenders go on living in the same community? Is reconciliation possible? For this category of crime, such questions are particularly complicated, because the offenses are committed mostly by people who are well known to the victims. The offenders are husbands and lovers, fathers, uncles, brothers, friends and neighbors, teachers and priests. They are often admired and respected members of their communities. Sometimes they are beloved, even by their victims.

The standard procedures of criminal and civil law are poorly designed to provide a remedy for crimes that are both so widespread and so often socially condoned. The US legal system is organized as an adversarial contest: in civil cases, between two citizens; in criminal cases, between a citizen and the state. While physical violence and intimidation are not allowed in court, aggressive argument, selective presentation of the facts, and psychological attack are permitted, with the presumption that this ritualized, hostile encounter offers the best method of arriving at the truth.

Constitutional limits on this form of conflict are designed to protect criminal defendants from the superior power of the state, but not to protect private citizens from one another. The law is technically blind to any disparities in power based on age, race, gender, social status, or wealth between accuser and accused. All citizens are presumed to enter the legal arena on an equal footing, regardless of the real advantages that one of

the parties may enjoy. The Constitution, therefore, offers strong guarantees for the rights of the accused, but no corresponding protection for the rights of victims.

Thirty-two states have passed constitutional amendments determining victims' rights. In general, however, the rights defined by these amendments are limited to procedural matters and are not enforceable. For example, the Indiana's Victims Rights Amendment (Indiana Constitution, Article I, 13b) stipulates that victims "shall have the right to be treated with fairness, dignity and respect throughout the criminal justice process; and...to be informed and present during public hearings and to confer with prosecution, to the extent that exercising these rights does not infringe upon the constitutional rights of the accused." (For a review of the status of victims' rights laws see Giannini, 2001. For a critical position on victims' rights constitutional amendments see Henderson, 1999.)

Although constitutional law may be blind to disparities of power and status between private citizens, most victims of sexual and domestic violence are not. Victims often perceive quite accurately that their abusers are acting with the tacit permission, if not active complicity, of family, friends, church or community. Moreover, any illusions a victim might have entertained about her status relative to the offender are most convincingly dispelled by the crime itself. By their nature, these crimes are displays of raw power, intended to subordinate the victim and to teach her to know her place. Unlike property crimes, they result in no obvious material gain for the perpetrator; rather their goal is to gain or maintain dominance over the victim. The perpetrator seeks to establish his dominance not only by terrorizing the victim but also, often most effectively, by shaming her. Crimes of dominance have a ritualized element designed to isolate the

victim and to degrade her in the eyes of others. The crime is intended to defile the victim, so that she will be publicly stigmatized and scorned, should the crime be disclosed. (For the role of shame in legitimating social inequality and exploitation, see Patterson, 1982; Lewis, 1976.)

It is this dishonoring of the victim that renders crimes of sexual and domestic violence so intractable and so impervious to the formal remedies of the law. For three decades now, advocates for women's and children's rights have sought to have these crimes treated like any other. But clearly they are not like other crimes. While incidence of other types of violent crimes has decreased markedly in the US over the last decade, rape and domestic violence remain stubbornly resistant to change (Tjaden & Thoennes, 1998; Klaus, 2002). And despite many legal reforms designed to make the justice system more accessible and less intimidating for victims, still most cases are never reported to the authorities. Estimates of rape reporting, based on random sample population surveys, range from 8% to 33% (Russell, 1984; Kilpatrick et al, 1987; Koss, 1987; Rennison, 2002). Victims understand only too well that what awaits them in the legal system is a theater of shame.

Here is one victim's description of her ordeal. The author is Debra Dickerson (2002), a decorated African-American Air Force officer:

"I was raped by a member of my own unit, in my own bed, on Christmas Day 1981, shortly after reporting to my first assignment at Osan Air Base in South Korea. I was 22. I pressed charges and my attacker confessed. Then the second phase of the nightmare began: the military blamed me. My fellow airmen ostracized me. Another unit member who was charged with killing his infant while drunk was surrounded by

weeping airmen during his trial. No one except a sympathetic major, who wasn't even in my chain of command, came to support me during my rapist's trial. My peers drafted a character statement attesting to my rapist's high morals and their disbelief in the guilt to which he had confessed. The unit's women led that effort. Had he falsified an expense voucher, he'd have done hard time and been discharged. For raping me, he got six months and served two. ...I was never one of the Air Force's own. My rapist was.”

Crimes of sexual and domestic violence are still effectively crimes of impunity. Dickerson is one of the very small minority (less than 5%) of rape victims whose cases are resolved by conviction of the offender and imposition of a prison sentence, however brief. She is also one of the very few who are willing to be named in public. The stigma attached to victims is still so severe that the media customarily refrain from publishing the names of those who come forward to complain. At every step of criminal proceedings, victims are powerfully reminded of their marginal and dishonored status. Small wonder that these crimes remain among the least reported, the least frequently prosecuted, and the least likely to result in conviction of the offender. High attrition rates reflect systemic resistance to enforcement of these laws. (For rates of arrest, prosecution, conviction and sentencing, comparing sexual assault with other violent felonies, see National Center for Policy Analysis, 1999. For a study of factors contributing to attrition in sexual assault cases, see Frazier & Haney, 1996. For sentencing in child sexual abuse cases, see Cheit & Goldschmidt, 1997.)

The wishes and needs of victims are often diametrically opposed to the requirements of legal proceedings. Victims need social acknowledgement and support; the court requires them to endure a public challenge to their credibility. Victims need to

establish a sense of power and control over their lives; the court requires them to submit to a complex set of rules and bureaucratic procedures which they may not understand, and over which they have no control. Victims need an opportunity to tell their stories in their own way, in a setting of their choice; the court requires them to respond to a set of yes-or-no questions that break down any personal attempt to construct a coherent and meaningful narrative. Victims often need to control or limit their exposure to specific reminders of the trauma; the court requires them to relive the experience. Victims often fear direct confrontation with their perpetrators; the court requires a face-to-face confrontation between a complaining witness and the accused. Indeed, if one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law.

Victims who participate in the justice system may also fear for their safety, because of the threat of retaliation by the perpetrator. Unfortunately, this fear is often well-founded. Perpetrators of sexual and domestic violence have intimate knowledge which makes it very easy for them to threaten or discredit their victims. To a victim who has already been terrorized and humiliated, the routine procedures of the legal system do not offer much reassurance. Though intimidation of a witness is nominally criminalized, the state offers little in the way of practical protection. Restraining orders are not consistently enforced, witness-tampering and obstruction of justice charges are rarely prosecuted, and witness-protection measures are very rarely implemented for crimes of this kind. Moreover, the accused perpetrator may use the legal system itself as an additional means to harass the victim (Murphy, 1998). In domestic violence cases, for example, it is not uncommon for perpetrators to retaliate against their victims by seeking

mutual restraining orders or petitioning for child custody, in order to compel their victims to back down (Quirion et al, 1997).

Despite these obstacles, more victims might be willing to participate in formal legal proceedings if they believed that the system offered remedies that could potentially make the ordeal worthwhile. But for many victims, even a successful legal outcome does not promise much satisfaction, because their goals are not congruent with the sanctions that the system imposes. The victim's vision of justice is nowhere represented in the conventional legal system. Indeed, a common prejudice holds that the victim's vision of justice should not be represented, because victims thirst only for revenge.

THE MYTH OF THE VENGEFUL VICTIM

In our system of criminal law, the state, not the victim, is considered the injured party, and it is the state, not the victim, that has the exclusive right to take action against the offender. This is a cornerstone of enlightenment legal theory (Beccaria, 1764). In the words of Arie Neier (1990, p. 244), a leading contemporary human rights advocate: "In a society of law, we say it is not up to the individual victims to exercise vengeance, but rather up to society to demonstrate respect for the victim, for the one who suffered, by rendering the victimizer accountable."

As the agent of criminal justice, the state codifies standard rules and procedures for establishing guilt and protecting the innocent. The state also establishes uniform, quantifiable standards of punishment to be applied fairly and rationally in proportion to the seriousness of the crime. The evolution of state-based criminal justice is commonly portrayed as a triumph over pre-modern, private or communitarian systems of redress. By taking the initiative away from victims, according to the conventional wisdom, the

state curbs the danger of vendettas and blood feuds and sets limits on arbitrary, cruel and excessive punishments.

The presumption that the state will be more dispassionate, fairer and less punitive than the victim is rarely questioned. This presumption seems to be based in a deep distrust of the victim's anger. The righteous anger of women, which violates social norms of compliant femininity, is particularly threatening (Miller, 1976). The victim's passionate indignation is commonly viewed as a disruptive force, disturbing the peace of the community which is called upon to redress the victim's wrongs. Sympathy for the victim's plight tends to dissipate quickly, while the victim's memory is long. The victim's unrequited demand for justice can easily become an embarrassment to the community. It is so much more convenient if the victim can only be persuaded to "forgive and forget."

Religious teachings traditionally exhort victims to transcend their anger through forgiveness, rather than taking action against those who have offended them, and the virtues of forgiveness have always been especially recommended to women and to members of other subordinate groups, whose justified resentment might make those in power uncomfortable. More recently, the benefits of forgiveness have been promoted not only for the victim's soul, but also for her sanity. An initiative by the Templeton Foundation, a private, Christian, non-profit organization, proposes to document the effectiveness of "forgiveness therapy" for victims of crime. Richard Enright (2001), the author of one funded study, describes a year-long program of weekly therapy for incest survivors organized around an explicit agenda of forgiveness. On the basis of very limited data, Enright claims that learning forgiveness produces more "positive results"

than any other known treatment for this population, a judgment not generally shared by experts in the field of traumatic stress (Foa, Keane & Friedman, 2000; Connor, Davidson & Lee, 2003). Frederick Luskin (1999), Director of the Templeton-funded “Forgiveness Project” at Stanford University, views the victim’s anger as a “body and mind inflammation,” a “primitive mechanism that demands discharge.” He asserts that learning to “let go” of justified resentment leads to enhanced psychological and physical health. This view of the victim as a diseased person, inflamed by toxic rage, compounds the stigmatizing effect of the original crime. As long as victim is regarded in this demeaning manner, the community vindicates the perpetrator by adding to the victim’s shame.

The general societal distrust of victims’ emotions is so reflexive and deep that it amounts to a taboo. Susan Jacoby (1983) describes the operation of this taboo in the expectation that victims of even the most atrocious crimes establish the purity of their motives before seeking redress, by making a ritual declaration that they wish only for “justice not revenge.” The operation of this taboo can also be observed in the fierce opposition to even the most modest legal reforms granting victims rights of inclusion in the criminal justice process. Reforms that permit victims to speak in their own voice have been particularly controversial. For example, many jurisdictions now allow the victim to address the court when a convicted perpetrator is sentenced (the so-called Victim Impact Statement). Critics of this practice presume that victims will inevitably demand excessively harsh punishment, and that the courts may be swayed by inappropriate sympathy for victims (Henderson, 1998; for a more positive view of victim impact statements see Erez, 1999).

Challenging the taboo on the retributive emotions, the legal philosopher Jeffrie Murphy invokes Greek myth as a narrative metaphor for the proper foundation of justice. Athena, the Goddess of Wisdom, transforms the Furies from persecuting monsters into Eumenidies (kindly ones) by including rather than banishing them. Expanding on this vision, Murphy argues that the crime victim's resentment and indignation are in fact valid feelings that deserve social recognition and respect.

“Criminal law institutionalizes feelings of anger, resentment and even hatred that we typically (and perhaps properly) direct toward wrongdoers, especially if we have been victims of those wrongdoers....Passions such as resentment can, of course, provoke irrational and dangerous conduct (which passions cannot?), but this is no more reason for condemning them in principle than it would be for condemning the sexual passions. The case for rational control and institutionalization of a passion must not...be confused with a case for the utter condemnation and extinction of that passion (1998, p. 4).”

Going further, the philosopher Bernard Williams argues that the capacity to feel indignation, both on one's own behalf and on behalf of others, is in fact the basis of an important social bond. Rather than a toxic passion that ought to be suppressed, he views indignation as a source of empathy and connection. He explains that people are capable of reacting with indignation not only when their own honor is violated, but also when they witness the dishonoring of others. These “shared sentiments,” according to Williams, “serve to bind people together in a community of feeling (1993, p. 80).”

Similarly John Braithwaite, a major theorist of restorative justice, argues that the expression of community resentment and indignation on behalf of the victim is an essential positive element of crime control. In advancing his view of restorative justice,

Braithwaite criticizes both right and left-wing positions on crime. He rejects both the punitive, “law-and-order” orientation traditionally associated with the prosecution and the permissive or rehabilitative orientation traditionally associated with the defense bar. He is particularly critical of the traditional left for its virtually exclusive focus on protecting the rights of the criminal defendant, a stance that offers no positive program for holding perpetrators accountable and therefore effectively abandons the crime issue to the right. Braithwaite proposes Restorative Justice as a third way; he advocates “vigorous moralizing about guilt, wrongdoing and responsibility, in which the harmdoer is confronted with community resentment and ultimately invited to come to terms with it (1989, p. 156).”

In the conception of sophisticated theorists like Braithwaite, restorative justice principles offer the potential for vindication of the victim that conventional justice so conspicuously lacks. In practice, however, the Restorative Justice movement has evolved out of religious or progressive concerns for the fate of criminal defendants, an abhorrence of punishment, and an idealistic longing for harmony and community consensus. Because the movement has been highly defendant-oriented at the grass roots level, it has reproduced many of the same deficiencies as the traditional justice system with respect to victims’ rights. The concerns of victims are insufficiently represented, and the interests of victims may be easily subordinated to an ideological agenda, in this instance an agenda of reconciliation rather than punishment (Daly, 2002; Stubbs, 2002). Howard Zehr, a major theorist of the movement, admits that he initially viewed victims as a nuisance:

“In my earlier work with prisoner defendants, I had not understood the perspectives of victims. Indeed, I did not want to, for they served primarily as interference in the process of finding “justice” for the offender(1990, p. 172).”

Zehr’s later work shows an evolution towards greater consideration for victims. He now asserts that “victims must be key stakeholders rather than footnotes in the justice process (2001, p. 195).” This is an important advance for a movement that originated primarily in concern for offenders. It would be unrealistic to expect, however, that a movement that has only recently recognized the legitimacy of victims’ interests could develop a clear vision of justice from the victim’s perspective. For this, one must turn to the victims themselves. The present study, based on the testimony of victims of sexual and domestic violence, was undertaken to explore the question of what justice might look like if victims were the protagonists, rather than peripheral actors, in the dialectic of criminal law.

DESCRIPTION OF THE STUDY

The study was based on in-depth interviews with a convenience sample of 22 informants, recruited through attorneys, victim witness advocates, or by word of mouth. Most interviews were tape-recorded and transcribed with the informants’ written consent; in two cases the interviews were conducted long-distance by phone and e-mail, and in two cases only handwritten notes were taken during the interview. The subjects were asked open-ended questions about their experiences of victimization, their efforts to seek redress, and their views of what would be required to set things right.

The group consisted of 18 women and 4 men, ranging in age from 22 to 60. Two were African-American, one Asian-American and two identified in part as Native American; the others were of European descent. Five were single, ten were married or in a committed partnership, and six were divorced. Though the class backgrounds of the group were quite diverse, most had attained college degrees, and 10 had advanced degrees or professional education. Two were disabled and unemployed; the rest were actively engaged in productive work.

Eleven of the informants had been sexually abused in childhood, four had witnessed their mothers and siblings being abused and beaten, five had been sexually assaulted as adolescents or adults, and five had been victims of domestic violence. Two informants were interviewed as the primary support person for a wife or sister who had been raped. Four informants had been victimized both in childhood and as adults by different offenders. For all of the informants, victimization was experienced as a formative event. They believed the traumatic impact of the crime would be with them throughout their lives, and saw recovery as an ongoing process to be measured in years. For many, the crime determined or changed a life path. Several informants had found a way to make meaning out of their experience through a career of service to other survivors. Three became attorneys, two became victim-advocates, one became a mental health worker for troubled adolescents, and two entered the clergy. For the three artists and writers in the group, the trauma was a central theme of their work.

In eleven cases a criminal complaint had been filed. Of these, four resulted in conviction and three in a prison sentence for the offender. The prison terms were imposed in one instance each of stranger rape, gang rape, and sexual abuse of a child. A

probationary sentence was imposed on a batterer who had brutally beaten and strangled his wife. Of the remaining seven cases, one is still pending, one resulted in acquittal, one was dismissed when a grand jury declined to return an indictment, one was dropped when the victim withdrew her complaint, and three did not go forward because the prosecutors declined to proceed, despite the victims' wishes.

In ten cases, a civil complaint was filed. Five were petitions for restraining orders in domestic violence cases, followed by petitions for divorce. The other five were complaints for civil damages filed in addition to criminal complaints. All five cases were adjudicated in favor of the plaintiff or settled with an award for damages, even though the criminal charges had not resulted in a conviction. (In one case the criminal charge is still pending.) The civil actions were often as fiercely contested as the criminal charges; in five cases the defendant filed a retaliatory lawsuit against the plaintiff. These were uniformly understood to be a form of harassment and intimidation. Though these suits were eventually judged to be without merit and dismissed, they took their toll financially and psychologically.

Ten informants made informal attempts to reach some kind of resolution with offenders. Of these, seven never sought intervention from any legal authority, but rather tried to manage the situation entirely through some form of private confrontation. Only one of these attempts resulted in a resolution that fully satisfied the informant. Three others sought to restore communication with an offender after a civil or criminal complaint was resolved. One informant visited her brother in prison after he began attending an offender treatment program. Two informants maintained contact by phone

or letter with the former husbands who had battered them, although they were still afraid to meet them face-to-face.

Thus, in both groups of informants, those who sought justice through the legal system, and those who sought to resolve matters informally, only a minority were able to achieve what they considered a satisfactory outcome. Those who chose to pursue legal action were somewhat more successful than those who chose informal methods, but neither path provided resolution for the majority of victims. Nevertheless, most informants felt that they had learned a great deal and gained important strengths from their experiences. None regretted the choices they had made, though they hesitated to recommend the path they had chosen to others.

THE ENCOUNTER WITH THE JUSTICE SYSTEM

For those who sought redress in the criminal justice system, the single greatest shock was the discovery of just how little they mattered. Because the crimes had had such a profound impact on their lives, the victims often naively expected their interests to be of major concern to the authorities. They had trouble understanding that the central focus of the case was on the defendant, not on themselves. Once they filed their complaints and initiative passed into the hands of the prosecution, their cases were resolved in the contest between the state and the defense attorney, while they themselves were relegated to a peripheral role as a witness, useful only as the instrument of the state's agenda, and unworthy of any particular consideration in their own right. On the basis of her experience, Mary Walsh, a survivor of domestic abuse, wrote up her advice to those choosing to pursue a criminal complaint:

“Be prepared for the fact that you will simply be a ‘cog in something turning’ and you had better learn early on not to take things personally. Third parties can’t be expected to take your case as seriously as you do. Even though you will know more about the facts of the case, since you are only a witness, you will not be consulted, and decisions will be arbitrarily made that end up being to the defendant’s advantage. For your own peace of mind, be prepared to throw any illusions about “justice” you might have had out the window (Letter, November 29, 2001).”

Many informants experienced their marginal role in the justice system as a humiliation only too reminiscent of the original crime. For this reason, the informants were extremely sensitive to the attitudes of the officials whom they encountered. Those informants (and there were several) who met with sympathetic officials were profoundly grateful. One was so impressed with the services of her victim-witness advocate that she decided to become an advocate herself. But many had vivid memories of being treated with casual indifference and disrespect. Such treatment was inevitably experienced as an official confirmation of the victim’s dishonored status and an endorsement of the perpetrator’s attitude of contempt. Julie Cloutier, a student who was drugged and raped during her first week on a college campus, described her sense of betrayal by the authorities to whom she reported the assault:

“The DA didn’t know if she was going to win, so she didn’t want to try. She was the rudest person—I couldn’t believe she was a woman---ruthless, no heart, no sensitivity. She basically told me she didn’t believe me. She was questioning how many beers I had. She said to me, “Julie, I don’t think you really know what happened.” That hurt more than the rape. I’ll never forget that line (Interview, August 20, 2002).”

Informants who sought redress through a civil complaint had more control over the conduct of their legal cases. Nevertheless, they also frequently complained of feeling powerless and marginalized in the face of the complex rules and procedures of the legal system, which they often perceived as a cynical game. Ross Cheit, a college professor and attorney as well as a survivor of childhood sexual abuse, described his dual reactions as a member of the legal profession and as a victim:

“I knew as a lawyer that you file papers, and then they deny everything. I knew that. It doesn’t mean anything to lawyers, it’s a ritual, but still it affected me. I got those papers and I felt: What do you mean they’re denying it? They know this happened! On the other hand, I could stand back and say: ‘A lawsuit is not about emotions. This is some game I’m playing here, and it’s an adversarial game,’ because I’d already done that professionally, but still it was hard to take (Interview, March 25, 2002).”

If informants objected to the idea of the legal system as a game, they objected even more to the idea that the rules could be bent for the rich and powerful. Most informants believed that money and social status had a profound influence on the outcome of their cases. They were very conscious of the resources that each side brought to the conflict, and often perceived that their side was outmatched. Informants who suspected that the offenders had gotten away with their crimes because of their wealth or social position came away deeply disillusioned. Those who did prevail in court often attributed their success to their own privileged status relative to the defendant. Even with a verdict in their favor, these informants came away with a sense of the justice system as compromised and fragile. Mary Margaret Giannini, a minister’s daughter and rape

survivor, believed that her family's standing in the community contributed in some measure to the successful prosecution of the perpetrator:

“I was really struck by how lucky I was that the legal system worked for me. I was in group counseling with others who had been raped, and I was aware that their experiences with the justice system were very different from mine. I have no sense that those involved in prosecuting the man who raped me intentionally treated me with more respect than they would any other victim. Nonetheless, I do sometimes wonder how my experience might have differed if I lacked the benefits of my education, family, community support and a name like ‘Mary Margaret.’ (Letter, November 10, 2003).”

Many informants also expressed doubts about the integrity of the legal system that went beyond the concern for undue influence of money and status. To some informants, the system seemed intrinsically designed to reward bullies. The adversarial structure of the legal contest appeared to favor those who lacked moral scruples and would fight to win at any cost. This perception is shared by no less an authority than Supreme Court Justice Sandra Day O'Connor: “It has been said that a nation's laws are an expression of its people's highest ideals. Regrettably, the conduct of lawyers in the United States has sometimes been an expression of the lowest. Increasingly, lawyers complain of a growing incivility in the profession, and of a professional environment in which hostility, selfishness, and a win-at-all-costs mentality are prevalent (2003, p. 226).”

Such an environment afforded an inherent advantage to offenders above and beyond their formal rights and protections. The strategies of domination and control which perpetrators of sexual and domestic violence practiced on their victims seemed well-suited for the legal system. Many informants described instances in which they

believed that the offender had successfully manipulated the system, with either the passive acquiescence or the active collusion of the authorities. They often reserved their greatest expressions of outrage not for the offenders, but for the authorities who enabled them to escape being held accountable.

Similar complaints were heard from those who sought resolution of their conflicts with offenders through informal means. In the majority of cases, the victims perceived that their families or the wider community allied themselves with the perpetrators, either by passively tolerating their abuses, or by actively excusing and protecting them. Some informants reported being ostracized by families who united to condemn them for disclosing the perpetrator's crimes. In the experience of this group of survivors, the informal sanctions of family and community were generally even less effective than formal legal sanctions for repairing the harms of sexual and domestic violence. Maria, a student, described her family's reaction to her disclosure of abuse by a relative:

"When I told my family about the abuse, they turned on me!" [One of my relatives] asked me to 'just let it go.' [Another relative] said that she doesn't believe that all of those things happened to me. Additionally, I was literally asked not to go to a family gathering to ensure that the issue of abuse did not come up. The women in my family were more loyal to the abuser than they were to me. That devastated me. It all goes back to the socialization, the same old adage of: 'I need a man.' Women are invisible. Let's talk about that! (Interview, June 11, 2002)."

THE QUEST FOR VALIDATION

Whether the informants sought resolution through the legal system or through informal means, their most important object was to gain validation from the community.

This required both an acknowledgment of the basic facts of the crime and an acknowledgment of harm. While almost all of the informants expressed a wish for the perpetrator to admit what he had done, the perpetrator's confession was neither necessary nor sufficient to validate the victim's claim. The validation of bystanders was of equal or greater importance. Many survivors expressed a wish that the perpetrator would confess, mainly because they believed that this was the only evidence that their families or communities would credit. For survivors who had been ostracized by their immediate families, what generally mattered most was validation from those closest to them. For others, the most meaningful validation came from representatives of the wider community or the formal legal authorities. Flora, a mother-of-two in her 30s, accused her father of incest, but met with denial from him and disbelief from her family-of-origin. She described her longing for validation:

“My ideal of a just resolution in my cases would be that my father would confess to EVERYTHING (which may possibly be abuse of others too), in a way that I and the rest of the family could believe and trust... I want to be believed, not just on the basis of my word alone but [on the basis of] of other evidence such as a full confession, or perhaps, (sadly if true), corroboration from another victim, or something that allows me to think that the full weight of the accusation against this apparently good man is not on my shoulders (letter, March 25, 2002).”

Beyond acknowledgment, what survivors sought most frequently was vindication. They wanted their communities to take a clear and unequivocal stand in condemnation of the offense. Community denunciation of the crime was of great importance to the survivors because it affirmed the solidarity of the community with the victim and

transferred the burden of disgrace from victim to offender. The survivors were keenly aware that the crimes were intended to dishonor and isolate them; they sought, therefore, the restoration of their own honor and the reestablishment of their own connections with the community. Amy Bradford, an artist and rape survivor, described her experience of vindication in a community center where both she and the perpetrator were well known:

“Even though the legal system hasn’t worked, I still have my art classes. Bill [her husband] called them up and told them what happened, and the director of the school was so sympathetic and kind. He said, ‘that person is not welcome to come back here again. We want you here, not that person. We’ll keep an eye on you.’ The first time I went back I just cried. I didn’t want to be seen as a victim. It was really hard to be there, but it was important to reclaim my space (Interview April 5, 2002).”

APOLOGY

While the informants as a group were unanimous in their desire for validation and vindication, they were roughly evenly divided on the question of apology. Some expressed a fervent wish for a sincere apology and believed that this would be the most meaningful restitution that the offender could give. Even those who felt the most vengeful thought that they could be mollified by a genuine apology. For example, Bill Bradford, an attorney and former military officer, fantasized about killing the man who raped his wife, but he was also able to imagine a very different resolution:

“I think that if I could put that rapist in a chair,---I know this will never happen--- but if he would admit it was a horrible thing, express regret, apologize to her and then do the same for me, I think that would help. Boy, I’m surprised to hear myself say that! (Interview, April 4, 2002).”

However, only five informants had actually received what they considered a genuine and satisfactory apology. Only two described a full apology that included an acknowledgment of the offence and the harm, an assumption of responsibility, without qualifications or excuses, an expression of remorse, and an offer to make amends. (For full discussion of what constitutes a genuine apology, see Tavuchis, 1991.) Three others chose to interpret ambiguous expressions of sympathy or regret in a favorable light. For example, Bettina, a social worker, described a memorable conversation with her abusive father shortly before he died:

“He said, ‘I never knew what you were going through.’ He couldn’t say a lot, but we looked into each others’ eyes, and I saw honesty in his face, depth. It was kind of a reconciliation. The other thing he said—it was strange at the time—I’d wanted him to stop drinking for so long, and he said, ‘well, I’ve stopped drinking.’ Maybe he had it on his mind (Interview, December 3, 2002).”

Other informants were skeptical about the value of apologies from perpetrators. They considered it highly unlikely that perpetrators could experience genuine remorse; as Ross Cheit put it: “Offenders are empathetically disabled. They are not capable of a meaningful apology, so they can never provide anything to victims that would be useful (Interview, March 25, 2002).”

A number of informants viewed apologies as yet another manipulative ploy enabling offenders to gain community sympathy or to disarm their victims. Mary Margaret Giannini explained her reasons for distrusting an apology that the convicted rapist offered at his sentencing hearing:

“The defendant said ‘I would give my life to take back what happened.’ I found myself staring at him as if my eyes could bore a hole through him. At the time I couldn’t even try to believe him. Later I found out that this man was petitioning to get his guilty plea overturned. Any attempt to give him a bit of credit for that apology was completely wiped out when I found out about the appeal. It knocked me off my feet (Interview, October 1, 2002).”

Even in instances where self-serving incentives for an apology were less obvious, many informants expressed deep distrust of the motives that might lead an offender to apologize. For example Caroline, a poet and an incest survivor, explained her reluctance to hear her brother’s apology:

“I would feel slimed again. I suspect he would enjoy talking about what he did. He wouldn’t really be sorry, in the sense of remorse or regret. And I would be wary of an apology, because then I would feel pressure to forgive him and have a closer relationship. I don’t want a relationship; I want to keep him at a safe distance (Interview, June 7, 2002).”

In general, this group of informants seemed to have a sophisticated and nuanced view of what would constitute a genuine apology. While they prized the ideal of reconciliation that a true apology might bring, they often viewed this ideal as realistically unattainable. Wynona Ward, an incest survivor who is also an attorney and advocate for battered women, confronted a multigenerational pattern of abuse in her extended family. After taking an instrumental role leading to her brother’s conviction for molesting a niece, she re-established a relationship with her brother and visited him regularly in

prison. Although willing to credit him for his partial acceptance of responsibility, she also recognized that his expressions of regret fell short of a full apology:

“Once he came out of denial, I visited him in prison. I was hopeful. He was coming along. He knew how to talk the talk. He cried and said ‘I did wrong, I’m sorry, and I will do what I need to do to make up for what I did.’ But it still wasn’t really his fault. It was still the victim’s fault. What was missing was empathy for the victim. That’s the last thing to come (Interview: August 28, 2001).”

Many survivors wished to hear apologies not only from their abusers, but also from the family or community members who, by complicity or inaction, enabled the abuse to take place. They were highly aware of the social ecosystem in which the perpetrators were embedded, and viewed the crime as a responsibility of a community as well as an individual. In the words of Kathy, a survivor of incest and rape:

“It’s too easy to say it’s just the perpetrator...It really has so little to do with him, because...had the community, had my family, had the people around the school system who watched my disintegration—and nobody paid attention even to see that I was out of it, coming to school drunk, and nobody said a word in this nice upper-middle-class community—they’re the ones that should be ashamed (Interview, October 29, 2001).”

The majority of this group of informants believed that the perpetrator’s enablers and accomplices ought to share some degree of responsibility for his crimes. Some considered the enablers as responsible as the perpetrator, if not more so. Daniel, a mental health worker, explained why he held the Catholic Church hierarchy morally accountable for the criminal behavior of the priest who molested him and numerous other child victims:

“He’s sick and he’s dangerous and he’s all of those things, and they knew that and they didn’t do anything about it. They kept assigning him to places where he would be with kids, and they kept not notifying people, and they kept having people who sued them sign confidentiality agreements, and the list goes on and on. They had so many opportunities to do something. Obviously, he made all of his choices too. It’s not that I want to let him off the hook. He’s accountable, and he should be some place where he’s not going to harm anybody. But they---that’s where my rage is---they should have known better (Interview, August 20, 2003).”

Two informants attempted to hold a specific organization accountable for harboring a predator. Daniel joined a class action of several hundred victims of pedophile priests in a civil suit that ultimately resulted in a landmark settlement with the Archdiocese of Boston. Ross Cheit filed suit individually against the San Francisco Boys Choir for the damages caused by their camp director, a pedophile who molested him and numerous other victims over the course of many years. The damage award that resulted provided a powerful feeling of personal vindication. However, Cheit was unable to persuade the organization to take an expanded view of its responsibility to the victims as a group. The attorneys were plainly perplexed by his concern for other victims. The remedies that the conventional legal system afforded recognized only individual harms, rather than harm to a wider community.

“I wanted them to send a letter to everyone who had been at that camp. It was absolutely the right thing to do. They said: ‘you can’t make us do that; that’s not a remedy to your claim. What do you want?’” (Interview, March 25, 2002).

ACCOUNTABILITY

Informants were asked to describe in detail what they thought should be done to hold their perpetrators accountable, and to envision what they would consider a just disposition in an ideal world. The majority of informants did not endorse conventional aims either of punishment or of rehabilitation. Contrary to general expectation, most informants were not particularly interested in seeing their perpetrators suffer; punishment for its own sake was not a high priority. The concept of punishment as a “debt to society” found little support among this group of informants. Only one informant endorsed a conventional retributive view of a prison sentence as payment for a crime.

The concept of a debt was more mixed among those informants who had initiated civil actions. For women who had been in long-term marriages with abusive partners, awards of alimony and child support were seen partly as a form of compensation for damages as well as the repayment of a personal debt. For others, an award of monetary damages seemed much more important as a public symbol of the perpetrator’s guilt rather than as private compensation. For example Amy Bradford, who initiated a civil action against the man who raped her, requested as one of the conditions of settlement that the defendant be required to make a donation of 30 dollars to the local rape crisis center. Asked how she had arrived at that figure, she explained that it represented the 30 pieces of silver for which Judas betrayed Jesus. She seemed surprised when asked why she had not requested a larger sum of money, even though she knew that the defendant was wealthy. “I wouldn’t mind if I found out he was destitute,” she said, “but it’s not part of what I fantasize about (Interview, April 5, 2002).” (The defendant paid the thirty dollars.)

Despite probing questions specifically designed to encourage free expression of vengeful and vindictive feelings, only five of the 21 informants clearly stated a wish to make their perpetrators suffer. Asked what she wanted to happen to the man who raped her, Sarah Johnson, a nurse, responded:

“I wanted him vulnerable. I wish—this may sound really loony—I wish he could feel the worst pain in the world. I wish the worst on him. I know people talk about forgiving, but I’m bitter. I will never be able to forgive him.”

A moment later, however, she added: “If he were to say, ‘Sarah, I’m sorry and I need help,’ I would say, ‘Thank you, God!’ I wouldn’t hate him so. He needs help. I’m a nurse, so I take care of people who could be just like him (Interview, August 15, 2002).”

Four informants mentioned fantasies of killing the perpetrator. Of these, two were expressing outrage on behalf of other victims rather than on their own behalf. In general, informants tended to be more harsh in their demands for punishment when advocating for loved ones who had been victimized, rather than for themselves. Bill Bradford vented his helpless rage at the man who raped his wife:

“I have intrusive images, and I try to convert them to better endings, mostly fantasies of me killing it and ripping it up into little pieces. I refuse to say its name. It makes me sick. I feel awful that I haven’t killed it already. It’s not a human being. It’s a thing. It’s an evil force (Interview, April 4, 2002).”

By contrast Amy, the victim, expressed much more ambivalence about her own vindictive feelings. “I started getting so angry. I was fantasizing about doing incredibly violent things to the rapist: stomping him, violating him, hurting and killing, impaling

him on a telephone pole, unrealistic, graphically violent fantasies, things that disturbed me to think about. I feel guilty for wishing someone ill (Interview, April 5, 2002).”

The majority of informants described similar conflicts regarding their vengeful feelings. Most regarded these feelings as alien to their self-image, and viewed them almost as an imposition from the perpetrator’s psychopathic inner world. By mastering these feelings, they drew a moral distinction between themselves and their abusers. Many were careful to examine their own motives before seeking to hold their perpetrators accountable. Grace Poore, a filmmaker and survivor of incest, explained her concerns about “outing” her uncle, a minister.

“I’m wondering, if I don’t expose him to church authorities, is that harboring him? Maybe, but I just can’t do it from a place of vindictiveness, because that would be destructive to me. Exposing him is not just about getting him fired or punishing him. It’s more about protecting the next generation. The revenge motive makes it seem like I need to lash out because I’m still bleeding, and I’m not. What’s interesting is that when it comes to other people’s perpetrators, I want them to suffer because I feel greater outrage on behalf of others who have been violated (Interview, March 7, 2002).”

If most survivors were not particularly interested in revenge or in punishment for its own sake, neither were they interested in reconciliation or forgiveness. Most informants viewed these goals as unrealistic and few expressed a wish for a restored relationship with the offender. Only five of the 22 informants mentioned either reconciliation or forgiveness as a desirable goal. Peggy, a psychotherapist specializing in the treatment of battered women, described the process that led to a limited friendship with her ex-husband who had battered her for many years:

“First of all, we started off as friends that could always talk, and we re-found that about a year after we separated. Second, this is a phone-only relationship. Third, he went to therapy, made heart-felt amends to me over and over, still cries at times about it. I can’t be 100% sure; it could be manipulation. I know how charming he is. Friends ask how can I talk to someone who tied me up and held a knife to me? I still ask myself that when the memories are strong. But I want to honor the part of myself that stayed in the marriage. To throw someone away after 18 years, what does that say about losing 18 years of my life (Letter, October 24, 2001)?”

Peggy added that she had been a grown woman when she entered the marriage had had freely chosen the relationship at the outset. Having regained her freedom, she felt that she could also choose to forgive.

Several informants explicitly rejected the idea of forgiveness. Among those who took this position were survivors who took their Christian faith very seriously and had given the matter of forgiveness a great deal of thought. Mary Margaret Giannini, who became an attorney as part of her survivor mission, considered the concept of restorative justice very interesting, but saw no way that it could apply in her own case:

“When I think of the man who raped me...reconciliation is not an issue in my mind. Reconciliation: that will most likely never happen. I don’t know that it needs to happen. He doesn’t need my forgiveness. He needs his Creator’s forgiveness. I have no control over that, thank goodness! I don’t want to be part of his recovery process. I’ve had enough work to do on my own (Interview, Oct. 1, 2002).”

Anne Marie Hunter, formerly a battered woman and now a minister who directs an organization called Safe Havens Interfaith Partnership Against Domestic Violence,

rejected the idea that victims should be encouraged to forgive their abusers. She viewed the expectation of forgiveness as an additional injustice imposed upon victims for the comfort and convenience of others. It is too easy, in her opinion, for bystanders to satisfy themselves with the illusory sense of “closure” that can be gained by pressuring victims to forgive; it is much more difficult for society to take on the task of confronting perpetrators. “Rather than moving victims to forgiveness, she stated,” “We need to be thinking about moving offenders to contrition and changed behavior. We are looking to get beyond ‘I’m sorry, Honey.’ (Interview, November 8, 2001).”

While few survivors expressed interest in reconciliation with their offenders, the majority did wish to free themselves from their oppressive burden of anger and indignation. Those who were able to grieve for their losses and restore connections with supportive people in their communities expressed relief when they were no longer constantly preoccupied with a feeling of outrage. Rather than reconciling with their offenders, most survivors aspired to attain a state of mind in which the offender and his offense no longer dominated their thoughts. If forgiveness is understood in this very limited sense of letting go of resentment and moving on with life, then all of the informants aspired to it. Peggy pointed out that this state of mind would more properly be called “acceptance, in the Zen sense (Letter, August 26, 2003).” Or, as Mary Walsh put it: “Forgiveness is giving up all hope of a better past (Letter, November 16, 2001).”

Rather than either retribution or reconciliation, the goal most frequently sought by this group of informants was exposure of the perpetrator. It was more important, in their view, to deprive the perpetrator of undeserved honor and status than to deprive him of either liberty or fortune. The informants were unanimous in their wish for family and

community to see through the perpetrator's deceptions and lies. Several informants explicitly stated their preference for exposure over conventional ideas of punishment. In the words of Flora:

“I think I ought to believe he should be jailed, because I think it of other men who abuse children. I would think it of my father if he abused someone else. I would practically want capital punishment (although I am opposed to it) if I discovered he had abused my daughters in any way. So I guess that means I want him to suffer if he hurt others, but if it was ‘just’ me, I want him to be seen for what he is by the people who matter to me (Letter, March 26, 2002).”

Public exposure of the perpetrator was the most common objective cited both by those who sought criminal sanctions and by those who filed civil complaints. Julie Cloutier, who initiated a civil action against the man who raped her after the prosecutor declined to go forward with criminal charges, explains her purpose:

“I wanted him to go to court. Money wasn't the issue. I wanted him embarrassed. He was going to have to get a lawyer and pay for a lawyer. He was going to have to tell his family. He wanted to sign a confidential agreement. I said no, of course I'm going to tell people about it (Interview, August 20, 2002).”

Informants differed in their visions of the consequences of exposure. A few wished for the extreme consequence of shunning and community ostracism. The majority simply wished to deprive the perpetrator of undeserved respect and privilege. They also wanted their standing in their families and communities elevated relative to that of the perpetrator. For those who had been abused by family members, ceremonial gatherings such as holiday celebrations, weddings and funerals were an important

barometer of the perpetrator's standing in comparison to their own. Some informants expressed the wish to be included in preference to the perpetrator. Others simply wanted to be able to face the perpetrator with dignity. Many informants expressed the wish for a confrontation in which they, and not the perpetrators, would walk with their heads held high, and the perpetrators would be the ones to look down in shame.

Besides exposure, the objective most frequently sought by this group of informants was safety both for themselves and for other potential victims. In order to ensure a reasonable degree of safety, they sought to set limits on the perpetrator's freedom of action. Informal social controls were generally preferred to the more formal, and milder sanctions were preferred to the severe, as long as the objectives of safety could be met. Exposure served as the first level of protection; civil sanctions such as restraining orders served as the next level, and arrest and criminal sanctions were reserved only for cases where all other attempts at control had failed. Though informants thought that displays of state power, such as brief arrest, did have an impressive effect, they also recognized that in the long run the duration and consistency of social sanctions were much more important than their severity. From their intimate acquaintance with the perpetrators, these informants understood that effective control of the perpetrators' exploitative behavior was an ongoing project, and that any safety measures would have to withstand both numerous direct challenges and more covert attempts at evasion.

All of the informants described a thoughtful process of risk assessment, through which they attempted to arrive at a reasonable estimate of the perpetrator's current and future dangerousness and judge the level of force required for containment. They also described an ongoing process of reassessment, so that the safety plan could be modified

to match changing circumstances. Peggy, for example, no longer felt the need for a civil restraining order against her ex-husband. She believed that he no longer posed a risk to her, to his other former wives, or to his grown daughter, because all were well aware of his potential for violence and knew how to keep a safe distance. She also gave him credit for recognizing his own dangerousness and avoiding intimate relationships. However, she stated that she would feel it her duty to warn any new partner with whom he became involved (Interview November 1, 2001).

Nine informants thought that at least one of their abusers should be in prison. In three cases, the offenders had indeed been convicted and sentenced to a prison term; in five other cases, the offender had been charged with the crime but walked free. (One case is still pending.) In each of these cases, the informants thought imprisonment was warranted because they believed that the offender was likely to abuse others in the future. The factors on which they based their judgments seemed in general quite realistic. Multiple offenses, a repetitive or compulsive pattern of behavior, a well-established established modus operandi, and gratuitous sadism were the reasons most frequently cited. In addition, the informants judged the risk of repetition to be high when the offender's behavior was tolerated or protected in the community. Sarah Johnson explained why she believed the man who raped her ought to be incarcerated:

“The detective told me he knew what happened—he'd done this to between 5 and 10 other girls. There had been complaints, but none of them would press charges. He said, ‘Sarah, you'd be helping many girls if you did.’ When I decided to press charges and he was arrested, his father called us and said, ‘How much do you want? Can't we just work this out and forget it? My dad hung up on him. His parents have always given him

everything, always bailed him out. I don't know if that kind of person can be rehabilitated. I kept thinking, what if one of those other girls went forward; maybe this would never have happened to me. That's what made me keep going. I kept thinking I'm protecting someone else (Interview, August 15, 2002)."

Informants generally understood the risk to civil liberties implicit in the idea of detention to prevent future crimes. They recognized, however, that failure to restrain predatory behavior of offenders also represents a serious infringement on the public liberty. Many informants were sensitive to the fact that men of color were especially likely to bear the brunt of abuses of state power, while women and children bore the brunt of uncontrolled private violence. In their attempt to balance the competing claims of liberty and safety, they expressed a preference for informal means of social control wherever possible. Richard Wright, an African-American man who became an anti-violence activist after witnessing and learning about domestic and sexual violence in his personal and professional lives, described his ideal for a community-based safety plan:

"I think civil restraining orders are helpful. They put everyone on notice that violence is not OK. The way it's set up encourages the victim to tell the story to someone official and validates the story, which is important. Having advocates around helps. The problem is the next step. Once you get state intervention, the system is going to say, 'screw you, we have our own agenda.' There's a lot of economic and political interest to simplify everything, to say 'just lock his ass up.' Ideally what you would want is a community response. Let the victim choose her community. You've got to have ten people. Ask them each to do one thing to help her be safer. Include the perpetrator's buddy, whomever. 'If he's going drinking, I want you to walk his ass

home.’ ‘If you hear me screaming, here’s what I want you to do.’ Having those people agree, ‘yeah, I’ve got your back.’ (Interview, April 11, 2002).”

Though Wright envisioned this model as the ideal in most circumstances, he too agreed that some offenders were simply too dangerous to remain in the community. “We have a saying in the community: some people need to be locked under the jail.”

SUMMARY: BRINGING HONOR TO VICTIMS

The vision of accountability that emerged from the testimony of these informants differed substantially from conventional views. Of the four basic aims of criminal justice: deterrence, retribution, incapacitation, and rehabilitation, this group generally endorsed only one: incapacitation. Their priority was safety, both for themselves and for others. They preferred to prevent offenders from committing future crimes, rather than to punish them for those already committed. Though they agreed unanimously that rehabilitation of offenders was a desirable goal, many doubted the prospects for rehabilitation of the particular offenders they knew. In most cases, they believed that some degree of ongoing supervision or control of the offender would be necessary to ensure future security. Though they preferred to rely on informal community sanctions or civil restraining orders where possible, they also believed that the use of state power was justified to restrict the freedom of those they considered too dangerous to live in the community. Their judgments on this matter, though inexpert, seemed to be carefully considered and at least as well-informed as professional estimates of dangerousness. (For assessment of dangerousness in criminal offenders see Goodman et al, 2000; Meloy, 2000; Monahan et al, 2001, Prentky et al, 2003.)

Justice, from the perspective of these informants, was neither restorative nor retributive in the conventional sense. Their vision of justice combined both retributive and restorative elements in the service of healing a damaged relationship, not between the victim and the offender but between the victim and his or her community. The retributive element of the survivors' vision was most apparent in their virtually unanimous wish to see the offenders exposed and disgraced. Their aims, however, were not primarily punitive. The main purpose of exposure was not to "get even" by inflicting pain. Rather, they sought vindication from the community as a rebuke to the offenders' display of contempt for their rights and dignity. The concept of vindication is well expressed in the writings of retributive theorist Jean Hampton (1988, p. 125):

"By victimizing me, the wrongdoer has declared himself elevated with respect to me, acting as a superior who is permitted to use me for his purposes. A false moral claim has been made. The retributivist demands that this false claim be corrected. Retributive punishment is the defeat of the wrongdoer at the hands of the victim....that symbolizes the correct relative value of wrongdoer and victim."

The restorative element of the survivors' vision was most apparent in their focus on the harm of the crime rather than on the abstract violation of the law, and in their preference for making things as right as possible in the future, rather than in avenging the past. Their vision was restorative, also, in their emphasis on the importance of community acknowledgement and denunciation of the crime. Their focus, however, was on their own need for re-integration with their communities, rather than the offenders' need for re-integration. They recognized the central importance of shaming the offender; but first, they needed to be relieved of their own burden of shame.

Restorative justice concepts were developed primarily with reference to non-violent property crimes, where no stigma is attached to victims. In such cases, where a public consensus uniformly supports the victim and condemns the crime, offenders can both be held accountable and be welcomed back into the community through the restorative process of “reintegrative shaming.” In crimes of sexual and domestic violence, by contrast, the person who needs to be welcomed back into the community, first and foremost, is the victim. (For discussions of shame remedies in acquaintance rape see Baker, 1999; Koss, 2000.)

Because these crimes, by design, shame and stigmatize the victim, a restorative justice model, which relies on traditional “community” standards, will inevitably fail, for the same reason that the conventional justice system fails. Community standards are the standards of patriarchy. This is as true in tribal and indigenous communities as in highly Westernized modern states. The “community” can not be counted upon to do justice to victims, since public attitudes toward these crimes are conflicted and ambivalent at best. The informants in this study are eloquent on this point; they were as likely to be shamed and humiliated in their own families, schools or churches as in the police station or the courtroom.

Adapting restorative justice principles to crimes of sexual and domestic violence would require active feminist leadership and extensive community organizing, in order to create a reliable context of public support for victims. It would also require close and active collaboration with the state authorities, in order to send a clear and consistent message that these crimes are taken seriously, and in order to ensure safety by setting limits on offenders. A number of currently existing programs could serve as models.

For example, a court-mandated treatment program for batterers, organized on feminist principles, uses ongoing group confrontation to control and denounce violence against women. The program's authors (Dobash et al, 2000) describe their vision of justice as "retributive, moving towards restorative." For additional model programs that meet these stringent criteria, see articles in this volume by Koss, Pennell.

The community support that victims so ardently desire does not presently exist. Active political organizing and advocacy are still required to create it. The vision of justice from the victim's perspective can not be represented either by a right-wing, prosecution-oriented agenda of "getting tough on crime," nor by a left-wing, defense-oriented agenda of reconciliation. It is perhaps best represented by the movement for victims' rights, a diverse, grass-roots movement in which women have played a leadership role. The wish to be honored in the procedures of justice is the passion at the heart of this movement. The slogan for National Crime Victims' Rights Week in 2002 was "Bringing Honor to Victims." This may seem like a modest goal, but for victims of sexual and domestic violence it is still profoundly radical. As many of the informants in this study discovered through hard experience, no honor, how ever well deserved, was granted to them without a fight, and no one could ever be more committed to the fight than they were themselves.

References:

- Baker, K.K (1999). Sex, rape and shame. Boston University Law Review 79: 663-716.
- Beccaria, C. (1764; translation 1996). Of Crimes and Punishments. Translated by Grigson, J. New York: Marsilio.
- Braithwaite, J. (1989). Crime, Shame, and Reintegration. Cambridge University Press.
- Cheit, R. & Goldschmidt, E.B. (1997). Child molesters in the criminal justice system: A comprehensive case-flow analysis of the Rhode Island docket (1985-1993). Criminal and Civil Confinement 23: 267-301.
- Connor, K, Davidson, J. & Lee, L. (2003). Spirituality, resilience and anger in survivors of violent trauma: A community survey. Journal of Traumatic Stress 16: 487-494.
- Daly, K (2002). Restorative justice: the real story. Punishment & Society 4(1): 55-79.
- Dickerson, D. (2002, March 18). Rallying around the rapist. New York Times, p. A33.
- Dobash, R.E., Dobash, R.P., Cavanaugh, K., & Lewis, R. (2000): Changing Violent Men. Thousand Oaks CA: Sage Publications.
- Enright, R. (2001). Forgiveness is a Choice: A Step-By-Step Process for Resolving Anger and Restoring Hope. Washington, DC, APA Life Tools.
- Erez, E (1999, July). Who's afraid of the big bad victim: Victim impact statements as victim empowerment and enhancement of justice. Criminal Law Review, 545-556.
- Foa, E. B., Keane. T. M. & Friedman, M.J. (2000). Effective Treatments for PTSD: Practice Guidelines from the International Society for Traumatic Stress Studies. New York: Guilford.
- Frazier P.A., & Haney, B. (1996). Sexual assault cases in the legal system: Police, prosecutor, and victim perspectives. Law and Human Behavior 20: 607-628.

- Giannini, M.M. (2001). The swinging pendulum of victims' rights: The enforceability of Indiana's victims' rights laws. Indiana Law Review 34:1157-1198.
- Goodman, L, Dutton, M.A. & Bennett, L.(2000). Predicting repeat abuse among arrested batterers: Use of the danger assessment scale in the criminal justice system. Journal of Interpersonal Violence 15; 63-74.
- Hampton, J. (1988). The retributive idea. In J. Murphy & J. Hampton, Forgiveness and Mercy. Cambridge University Press.
- Henderson, L. (1999): Revisiting victims' rights. Utah Law Review 1999: 383- 442.
- Henderson, L (1998). Co-opting compassion: The Federal Victim's Rights Amendment. St. Thomas Law Review 10: 579-606.
- Jacoby, S. (1983). Wild Justice: The Evolution of Revenge. New York: Harper & Row.
- Kilpatrick, D.G., Saunders, B.E., Veronen, L.G., Best, C.L., & Von, J.M. (1987). Criminal victimization: Lifetime prevalence, reporting to police, and psychological impact. Crime and Delinquency 33: 479-489.
- Klaus, P.A. (2002, September). Crime and the nation's households, 2000 (With trends 1994-2000). US Department of Justice: Bureau of Justice Statistics Bulletin, NCJ 194107.
- Koss, M.P. (1987). Hidden rape: Sexual aggression and victimization in a national sample of students of higher education. In A. W. Burgess (Ed.). Rape and Sexual Assault v. 2. New York: Garland, 3-26.
- Koss, M.P. (2000). Blame, shame, and community: Justice responses to violence against women. American Psychologist, 55, 1332-1343.

- Lewis, H. B. (1976): Psychic War in Men and Women. New York: International Universities Press.
- Luskin, F. Interview with Soarez, R (1999, April 20) Talk of the Nation, NPR.
- Meloy, J.R. (2000). Violence, Risk, and Threat Assessment: A Practical Guide for Mental Health and Criminal Justice Professionals. San Diego,CA: Specialized Training Services.
- Miller,J.B. (1976). Toward a New Psychology of Women. Boston, MA: Beacon Press.
- Monahan, J., Steadman, H., Silver, E., Appelbaum, A., Robbins, P., Mulvey, E., Roth, L., Grisso, T., & Banks, S. (2001). Rethinking Risk Assessment: The MacArthur Study of Mental Disorder and Violence. New York: Oxford University Press.
- Murphy J (1988). The retributive emotions. In J.G. Murphy & J. Hampton, Forgiveness and Mercy. Cambridge University Press.
- Murphy, W (1998). Minimizing the likelihood of discovery of victims' counseling records and other personal information in criminal justice cases. New England Law Review; 32:4.
- National Center for Policy Analysis (1999, October). Crime and Punishment in America. Washington, DC, NCPA Policy Report # 229.
- Neier, A. Quoted in Weschler, L. (1990). A Miracle, a Universe: Settling Accounts with Torturers. New York, Pantheon.
- O'Connor, S.D. (2003). The Majesty of the Law: Reflections of a Supreme Court Justice. New York: Random House
- Patterson, O. (1982). Slavery and Social Death. Cambridge, MA: Harvard University Press.

- Prentky, R.A., Janus, E., & Seto, M.C. (Eds.) (2003, July). Sexually Coercive Behavior: Understanding and Management. Annals of the New York Academy of Sciences 989.
- Quirion, P., Lennett, J., Lund, K., & Tuck, C. (1997). Protecting children exposed to domestic violence in contested custody and visitation litigation.” Boston Public Interest Law Journal 6:501.
- Rennison, C. (September, 2002). Criminal victimization 2001: Changes 2000-2001 with trends 1993-2001. US Department of Justice: Bureau of Justice Statistics Bulletin, NCJ 194610.
- Russell, D.E.H. (1984). Sexual Exploitation: Rape, Child Sexual Abuse, and Sexual Harassment. Beverly Hills, CA: Sage.
- Stubbs, J (2002). Domestic violence and women’s safety: Feminist challenges to Restorative Justice. In H. Strang & J. Braithwaite (Eds.), Restorative Justice and Family Violence. Cambridge, UK: Cambridge University Press, pp 42-61.
- Tavuchis, N. (1991). Mea Culpa: A Sociology of Apology and Reconciliation. Stanford, CA: Stanford University Press.
- Tjaden, P & Thoennes, N. (1998). Prevalence, incidence and consequences of violence against women: Findings from the National Violence against Women Survey. US Department of Justice. NCJ 172837.
- Williams, B (1993). Shame and Necessity, Berkeley, CA: University of California Press.
- Zehr, H (1990). Changing Lenses: A New Focus for Crime and Justice. Scottsdale, PA: Herald Press.
- Zehr, H (2001). Transcending: Reflections of Crime Victims. Intercourse, PA: Good Books.