Listening to victims - Key Literature

Australia


This report focuses on possible law reform aimed at meeting victim/survivor needs in sexual assault matters, it contains relevant observations to listening to victims. Participants in the research identified a number of victim/survivor justice needs including: receiving emotional support and counselling; having a voice and being heard; being believed; having their version of events vindicated; being informed about the status of their case; being educated as to how the criminal justice system works, the reason for processes such as cross-examination, what acquittals and convictions mean, and so forth; avoiding having to constantly retell their story; being able to give evidence remotely; confronting their perpetrator in a public setting; their perpetrator being brought to justice or being convicted; and having closure and a sense of finality to their experience (p. 21). There is a useful table (p. 27) that provides a summary of the key justice needs of victim/survivors across the criminal justice process. (p. 28).


This research draws on an observation study of 18 sentencing hearings in the NSW Supreme Court, selected randomly from published court lists, between July 2007 and December 2008. The study was supplemented with digital copies of the transcripts of 16 of the 18 hearings and 22 of the 30 Victim Impact Statements (VISs) read aloud in those hearings. Although not focussed on domestic and family violence cases specifically, this study found that victims reading out VISs did raise the emotional tension in the hearings but that any potential adverse impact was managed and contained through various cooling out processes and structures. Relevant here are the cooling out processes in the courtroom that operate to defuse the expression of victim distress and/or anger and lessen the strains of the ordeal of presenting VISs. For example the author points to judge’s remarks that recognised the victims’ interests and status as victims in the particular matter by acknowledging their disappointment and taking the time to explain the legal position around VISs to them (p225, 226). She notes ‘empathic responses to the plight of the family victims were fundamental to the cooling out processes…’(p226).
Clark, Haley, ‘What is the justice system willing to offer?’ Understanding sexual assault victim/survivors’ criminal justice needs’ [2010] (85) Family Matters 1.

This article includes some relevant observations about what victims expect from the criminal justice system. The findings are drawn from interviews with 22 adult victim / survivors:

- Justice: ‘Participants emphasised that establishing justice was integral to criminal justice system responses, but the meaning of ‘justice’ differed considerably according to individual participants. For some, justice involved retribution, while others sought official acknowledgement of the crimes, and yet others felt that community safety was their primary justice goal’ (p. 30).

- Information: Victim/ survivors emphasised the value of having clear accessible information about the criminal justice system and its procedures including practical information about the various stages of the system, the key players, their role in the procedures, the potential implications for them of the legal processes, and possible outcomes. Such information was considered important as it allowed them to make informed decisions about engaging with the system, and to prepare for the criminal justice processes’ (p. 31).

- Validation: ‘Expressing belief to victims/survivors is recognised as being necessary to their healing process, and corresponds with reduced victim trauma and increased help-seeking. In terms of procedural justice for victims, being believed is a stepping stone to attaining acknowledgement, validation, victim status and support. Victims/survivors in this study expressed that being believed by system officials was essential in criminal justice responses’ (p. 32).

- Voice: Participants advocated for a forum through which they could voice their experience. For many, the most customary place for this was a courtroom. Many stipulated that they wanted their ‘day in court’. (pp. 33-34).

- Control: Many identified their lack of control over the process (p. 34).


This is a report compiled by the Sentencing Advisory Council Victoria on Intervention Orders in Victoria; it includes a consideration of the penalties awarded for breach of intervention orders. The Council compiled the report by reviewing relevant literature on family data, analysing data on sentencing and conducting new research by consulting those involved in the sentencing process (magistrates, court staff, Victoria Police, community legal centre representatives, family violence service providers, defence lawyers, workers from men’s family violence programs and a family violence victims’ support group). It found that the sanctions imposed during sentencing for breach of a family violence order were considered by most stakeholders to be far too lenient (viii) it noted that in sentencing an offender for breach of an order, the protection of the community, which encompasses ensuring the future safety and protection of the victim should be the
central purpose against which all other sentencing purposes are balanced (ix).

International


This article in written in the context of USA where there is significant debate about mandatory processes. Drawing on current literature, this paper provides a helpful overview of the key debates about mandatory policies. It draws a distinction between voice and choice, suggesting that allowing victims a voice while accepting that in certain contexts they may not have a choice is a compromise position. The author also reports on an observational study of court processes. The author comments ‘courts that provided victims with an opportunity to be heard also validated the harm of domestic violence, communicated that the wishes of victims were important, and demonstrated the worth of victims by treating them with respect’. (p121)


This paper reports on an exploratory study undertaken in the USA primarily involving low-income African American women. It provides a discussion of the literature on the reliability of victim’s assessment of their level of risk of future domestic violence. The authors identify that prediction of re-abuse or assessment of danger is a major research focus in the area of intimate partner violence. They observe that victims choose certain courses of action based on their assessments of how much danger they are in. They also note that taking these assessments into account is often a key component of counselling victims or making system-related decisions. While the authors conclude that overall, their findings document victims’ considerable strengths in accurately assessing their risk of re-abuse, they also note considerable limitations to their study and with other research currently available.


The article is predominately theoretical and draws on past literature. See from p465 in relation to the question: should consideration be given to the request of women living under the shadow of violence to impose lighter sentences? The article identifies a complex range of views based on a review of literature. For example on one view refusing to consider the apparently "irrational" request by women to lighten the sentence of their violent partners is actually a device for protecting them, preserving their dignity and creating a "protective space" for them in which the dynamic of men controlling them will not succeed. (p467). Also conceiving the phenomenon of domestic violence as one that endangers the peace
and security of society as a whole is consistent with the desire to follow an uncompromising policy that does not take into account the wishes of the individual woman (p468). On the other hand the authors note that some people argue that respecting women's requests for leniency is an empowering mechanism that is adapted to female ethical thinking. Giving voice is an act of empowerment particularly where the experience of victimization entails repression and control (p469).


This article identifies the issues associated with victims’ participation in court processes: stress placed on victims during court proceedings because of the emotions associated with the crime; victims’ apprehension regarding the legal process and its uncertain outcomes; logistical challenges and disruptions posed to victims’ daily lives, particularly in the context of prolonged court cases. Professionals noted that the emotional stress of involvement can be exacerbated when the victim and defendant are known to one another, such as with cases of domestic violence and intrafamilial sex crimes, in which victims may be particularly fearful of, or struggle with a sense of allegiance to, the defendant. (p. 174).


This paper, prepared on behalf of Women’s Aid (England) is the culmination of submissions discussing key issues affecting women experiencing domestic violence, including their experience of the criminal justice system. Conclusions with regard specifically to sentencing (p 5): Many respondents (both organisations and individual survivors) believed that perpetrators received very minimal sentences, with no support to prevent reoffending on their release. Many respondents submitted that women frequently report their abusers being given a longer sentence for assaulting strangers than them, this results in them feeling worthless and the perpetrator with the message that domestic violence is a lesser crime.


Chapter 4 and 5 consider criminal interventions in domestic violence cases including sentencing. Of relevance the authors note that many victims of domestic and family violence expressed fears of further violence once a perpetrator program had ended and felt that being referred to a program was a soft option – the program was only effective when combined with the sanction of imprisonment for further violence.

The author draws on interviews with 22 victims of violent crime. She argues that survivors’ views of justice do not fit well into either retributive or restorative models. This has implications for current efforts to use restorative models in cases of violence against women’ (p. 571). She observes that 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;
- 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 that they may not understand and over which they have no control.
- 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.
- 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 (p. 574).

The most important object for participants in interacting with the justice system was to gain validation from the community. This required an acknowledgment of the basic facts of the crime and an acknowledgement of harm. Beyond acknowledgment, what survivors sought must frequently was vindication. The wanted their communities to take a clear and unequivocal stand in condemnation of the offence (p. 585).


This report reviews research in the United States on domestic violence to determine what works best in protecting victims and stopping abuse. It review the available studies and literature about sentencing. Specifically it suggests that victim preferences should generally not be taken in to account, from p 53: ‘Although victim perceptions of the dangerousness of suspects have been found to be good predictors of subsequent revictimization], victim preferences on how the case should be disposed are not good predictors. The victims in the Quincy, Mass., study who wanted the charges dropped were as likely to be revictimized (51 percent vs. 48 percent after one year) as those who did not want the charges dropped. Similarly, studies in New York found that victim cooperation with prosecutors did not predict recidivism. In other words, when judges imposed sentences to which victims objected, these victims were no more or less likely to be revictimized than victims who wanted their abusers to be prosecuted and sentenced.’