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PAPER SUMMARIES

(Note: The full text of the speech by The Hon Richard McGarvie and a transcript of the other speakers is available in the AIJA Library)

JUDICIAL LEADERSHIP AND EQUALITY

His Excellency, The Hon Richard McGarvie AC, Governor of Victoria

The central claim of this paper is that judicial independence must not be used as an excuse for isolation or lack of awareness of social issues; judicial independence exists not so that judges can ignore the world around them but so that they may view it from a vantage point of security and openness. Thus "social context" education is not a threat to independence but a way to preserve it.

The judicial oath is a solemn undertaking to act ethically as a judge. Justice is of its nature fair and equally applied, and the ethical undertaking can only be satisfied if justice is administered so as to inspire confidence in judges, and more importantly, the law and the democracy which results from it. Thus judges must view justice not through their own eyes but through the eyes of the people it affects.

While all judges assess and treat people through the lens of their own experiences and backgrounds, difficulties arise from the unjustified attribution of differences or undesirable qualities to people by the process of stereotyping. As no party should view the judiciary as inherently remote or without understanding, judges must be able to empathise. Also, judges must understand the realities of Aboriginal heritage, poverty, unemployment, pregnancy, illiteracy, sexual abuse and discrimination. This is a difficult task and as such judges must take active steps to learn better how to do so; continuing training and increased awareness of these issues through forums such as the Eureka conference can only benefit the judiciary and help maintain, or earn, the respect and confidence of the community.

THE CHALLENGE TO ACHIEVE EQUALITY AND JUSTICE IN AUSTRALIA

The Hon Justice Deirdre O'Connor, President, Industrial Relations Commission of Australia

O'Connor J claims in this paper that the issue of gender equality is not a marginal social agenda, it is fundamental to the judicial oath of office. Unless the judiciary know or can recognise in future the multitude of stereotypes and assumptions about women in Australia today they will not be able to remove those biases from their decision-making processes. Unless judges are prepared to develop a consciousness of issues such as these, failure to do equal justice remains almost certain, and an ensuing loss of confidence in the judiciary is likely.

While there have been marked changes in social attitudes towards women in the past decade, this change in attitude has not yet resulted in the elimination of many of the problems women face within society. The legal system is perceived by women as failing to treat them equally, and this perception is harmful to the continued stability of the legal system and reflects a failure on the

part of the judiciary to not only do justice, but to be seen to do it. As they constitute the apex of the legal system, the judiciary can change the operation of the legal system thus redressing the inequality women face, and influence the attitudes of those who operate it.

THINKING ABOUT GENDER AND THE LAW

Prof. Kathleen Mahoney, Faculty of Law, University of Calgary

Mahoney argues that gender bias subverts the tenets of judicial independence - intellectual neutrality, the capacity for fair reflection, the composition of the judiciary and public confidence in the courts. As both the meaning and potential of objective inquiry have been subverted by centuries of systemic societal gender bias, the biased choices made within the legal system are invisible to those who make them, and inaccessible to those seeking to criticise them. *Stare decisis* demonstrates the danger of this (largely unconscious) gender bias within the legal system: mistaken notions about women's reality have become legal doctrine, forming part of the systemic nature of gender bias within society. Mahoney argues that judicial accountability requires the judiciary to actively work towards eliminating gender bias in the legal system, and that judicial education is the most workable way to achieve this end. Judicial education programmes, Mahoney suggests, provide a forum in which the effects of the social construction of gender, the power imbalance between the sexes, and the methods by which the legal system (inadvertently) reinforces such domination, can be explored.

The primary manifestation of the power imbalance between the sexes within the legal system is what Mahoney calls the male "right not to know": the right men exercise not to inquire into the central role gender subordination plays in women's lives.

If one is never required to test the hypothesis of male privilege, one never has to confront the possibility that the conceptual apparatus that one has previously relied upon for knowledge about the world may be faulty.

Judicial decisions which minimise the consequences of rape or deny its occurrence are examples of that unknowing; they dismiss women's experience of rape as both a serious assault on bodily integrity, as well as symptomatic of a wider social context in which women and children are constantly at risk from male violence. This denial of the wider context within which women live allows for the individualisation of the legal claims women make, rendering them insignificant. Individual sanctions are seen to end the matter, but are in fact totally inadequate to meeting the real challenge, which is attacking the systemic nature of the abuse.

Recent Supreme Court of Canada cases provide the substance for Mahoney's assertion that judicial recognition of the significance of gender can overcome systemic bias. She discusses four decisions: pregnancy discrimination (holding that as only women get pregnant, restrictive statutory categories applicable only to pregnant persons do discriminate on the basis of sex), self-defence (reconstructed so as to allow women who kill spouses in the context of ongoing domestic violence access to the defence), pornography (restrictions allowable as tending to dehumanise and degrade women and children) and rape (overturning a previous decision where a woman was held not necessarily to have suffered grave and serious harm from a rape). In each of these cases, bias was overcome by the rejection of a male norm and consideration of the centrality of gender in women's lives.

THINKING ABOUT EQUALITY

Prof Jenny Morgan, Faculty of Law, University of Melbourne

This paper considers the problems and potential of three different approaches to equality, starting with the formal equality model. This model requires simply that men and women be treated exactly the same in all circumstances; for example, women must be given the vote. Despite its positive outcomes however, this model is problematic, as it can reinforce historical inequality by refusing to take notice of it. Given the position of women in terms of earning capacity and social status in Australia, the application of gender neutral laws may not have an equal or neutral effect on women. An example here could be the position of women acting as director's in family companies where often they have no power over or even knowledge of, company activities. The formal equality model uses male standards as the measure of equality, and is virtually inoperable when there are no similar male experiences to which women can claim identical treatment (leading to abstractions such as pregnancy being equated with disability).

The difference model treats women's differences from men with special recognition. This approach is also problematic in that it assumes that such differences justify different treatment, which is often synonymous for less favourable treatment for women. This model was used to grant maternity leave, but also justifies discriminatory employment practices like those preventing women from working with lead. Morgan argues that the practice of finding difference detracts from the real issue in discrimination cases which is systemic inequality. That is, that it is not difference itself, but reliance on difference as justification for prejudice, which causes inequality and disadvantage to women.

The third model, the subordination/domination approach, offers a contextual analysis of equality. Considering the imbalance of power between men and women, this approach requires an analysis of the reasons for specific laws and practices. It is less concerned with formal rights or differences than with the effect on women's lives of their lesser social power, thus unlike the previous models, it is able to focus on ways to end inequalities. Such an approach would show that different reproductive capacities should not in themselves lead to women's lesser social status. Thus on closer examination, it would become apparent that job design does not allow for child care responsibilities, the effect of which is to deny women appropriate work opportunities, in turn leading to subordination in the workplace.

Morgan discusses the recent challenge to women's health services under the *Sex Discrimination Act*. The EO tribunal, despite finding that men and women have different health needs, was compelled under a formal equality model to hold that it was impermissible to provide specialist services to redress those needs. Morgan argues that using the subordination approach - if we understand discrimination to mean not merely different treatment but rather maintaining or imposing a disadvantage - we would come to a different result. While women's health centres do treat men and women differently, Morgan argues that this does not disadvantage men, while removing the clinics would perpetuate disadvantage to women.

THINKING ABOUT DIVERSITY

Ms. Marie Andrews, Faculty of Law, University of Melbourne

This paper focuses on the intersection between race, gender, sexuality and equality in the courtroom. Primarily anecdotal, the paper focuses on several recent incidents to argue that the law at present can not cope with the reality of Aboriginal women who are disproportionately represented in domestic violence, spousal murders, rapes and police harassment in Australia as compared to non-Aboriginal women:

How does the law cope with the realities of diversities as they impact upon our lives?
How does it recognise that for many Aboriginal and working-class people some of us could never be fit and proper persons to hold the office of solicitor, barrister or judge because of laws that oppress us and label us for who we are, and who we are perceived to be by law?

Ms Andrews stresses that the legal system must become more inclusive; legal principles, courtrooms and the bench must all be inclusive and reflective of all peoples in society if it genuinely wishes to facilitate justice. By failing to meet public expectations of fair and equal justice, the judiciary face a loss of the confidence and trust necessary to sustain the rule of law.

SEXUAL ASSAULT: REALITY AND IMPACT

Ms Therese McCarthy, Executive Director, Court Network

This paper aims to provide the context needed to consider rape as a legal complaint from the point of the complainant. As rape is a crime against the state, the complainant has no legal representation in court and no control over the process. Her voice and point of view are never heard directly in the courtroom, and preconceptions take the place of her experience.

Rape is infrequently reported to the police - it is a difficult allegation to make. And in Victoria, only 29.8 percent of reported rapes result in prosecutions being initiated. To alter the low report, initiation, and conviction rates, it is crucial that women's experiences be contextualised, that the legal system realise the effect that rape has on a woman's home life, job situation and sense of security.

A rape trial as seen from a victim's viewpoint is not, ironically, about her rape, but rather, about the defendant's innocence. As the defendant is innocent until proven guilty, the woman is a liar until her honesty is upheld. While the defendant is given the benefit of doubt, her behaviour - dress, alcohol consumption, methods of resistance, are closely scrutinised. Despite the fact that she is not a party to the crime, her evidence is required -mediated through a prosecutor. Her right to a screen or close circuit television is weighed up against the defendant's right to view a witness in court. The ideal of justice, Ms McCarthy concludes, will not be capable of fulfilment until rape is contextualised in the legal system and the preconceptions that women often lie about rape for reasons of frustration, vengefulness, malice, or boredom are examined and abandoned.

AUSTRALIA: AN ECONOMIC ANALYSIS

Prof Bob Gregory, Research School of Social Sciences, ANU

This paper is aimed at providing an overview of the changing structure of the labour force in Australia: Gregory's thesis is that in every dimension men are doing better than women and that it is crucial, when talking about men and women's economic equality in Australia, to obtain information about the age and location, not just the gender, of the group in question, in order to appreciate the complexities of current access to employment opportunities.

The paper dissects changes in employment patterns according to age, education, and geographical region. The paper also reflects on how the history of women's wages in the labour market in Australia demonstrates that change can be brought about by institutions such as law and the legal system. The paper sets out an historical timeline that illustrates the development of equal pay and trends in shifts from part-time to full-time employment, by certain groups of women. Gregory grounds all of this by pointing out that the judiciary live in certain types of areas where women are experiencing large increases in income, while men are not actually losing income, whereas the majority of people appearing in court are experiencing quite different patterns of economic change.

Gregory concludes by arguing that external regulation has limited ability to bring about further progress towards increasing women's earning capacity. Instead issues such as overtime hours, actual jobs being performed within institutions, and promotion, are the keys to increased earnings. While education of men and women is now roughly at par, this is not going to close the gap. Instead, Gregory argues, social changes enabling women to be involved more actively in full-time work, or restructuring the nexus between full-time work and promotion, are required.

WOMEN IN AUSTRALIA: INCOME AND RESOURCE DISTRIBUTION

Prof Bettina Cass, Department of Social Work and Social Policy, University of Sydney

The issue of income and resource distribution in Australia is predicated on a certain understanding of what we mean when we talk about "work" - work is viewed as that for which the market will pay; thus that which goes on in our families and the social lives of our communities is not. This distinction is the basis on which difference and inequality is predicated.

Prof Cass argues that the material, emotional and cultural resources generated by women's work within families is of such magnitude that it demands reciprocal public response, and it must be reconceptualised within public policy so that investment in it is seen as a social investment. In terms of gender equity, social policy has to realise that not only are women entering the work market, they continue to contribute two thirds of the value of all domestic service, and fifty percent of all volunteer and community work. The unequal distribution of income and other resources in Australia results primarily from the unequal distribution of unpaid work and paid work and, Cass argues, there will be little change in this balance until men's participation in caring increases to the same rate that women have entered into the paid labour force.

When considering inequality in the labour force, it is essential to recognise the changing context of social life; thus Cass states that the increasing educational levels of women means that unemployment and inequality for young people could soon be primarily a class issue rather than a gender issue. 20 percent of the younger population are not working or do not have access to higher education, which renders them peripheral to the labour force.

Effective and equitable social policies which are predicated on gender equality will also need to be predicated on social equality across the total income and wealth distribution, which requires a redistributive social security system to provide an adequate basic income. Industrial relations practices must properly recognise the family responsibilities of all employees, and consistent public sector investment is needed to reduce unemployment and to maintain high wage standards. An agenda concerned with gender equality will recognise that difference exists but that it is not sex based - rather, family responsibility is (or must become) androgynous - people come to the labour market with human responsibilities, and minimum standards must be embedded in workplace and community cultures to ensure equality based on human difference rather than sex discrimination.

WOMEN IN AUSTRALIA: ECONOMIC REALITY

Prof Marcia Neave, Research School of Social Sciences, ANU

There has been some improvement in women's economic position in the last 20 years, workforce participation has increased and women enter tertiary education at the same rate as men. Much of the protective legislation preventing women from pursuing full participation has been removed. However, there is still a substantial earnings gap, women are still clustered in part-time jobs because of familial responsibility, and they are still under-represented in business, academia, government, and the judiciary.

The gap between male and female earnings is matched by a number of other gaps: power, status, credibility and access to resources are all areas where women suffer inequality. Perhaps because women are over-represented in low status (or no status) work lawyers and courts tend to trivialise women's complaints and accord little credibility to their experiences. Men's greater economic opportunities affords them greater resources - such as access to legal services and expert advice. Women are even less likely than men to be able to afford litigation and they are more likely to be forced to settle their claims simply because of the cost of pursuing them. This lack of resources does not help in attaining legal aid either; men receive the vast majority of funding for criminal trials and there is little left over for women wanting to litigate civil law matters.

It is important for the judiciary to be aware of the role law has played historically in women's oppression. Issues such as rape in marriage, corroboration of sexual offences, and the interpretation of the word "persons" have been the result of judicial "impartiality and objectivity". Just as 19th century judges believed it self evident that women were not persons, some judges today may find it hard to recognise gender bias when they see it. Judges should give consideration to the extent to which assertions of objectivity, impartiality and gender neutrality may still conceal attitudes which disadvantage or exclude women.

Neave sets out 'prerequisites' for the judge who wishes to avoid gender bias. First, legal rules must be put in their historical context. For example, judges often take a limited view of the value of homemaker's contributions in re-allocating assets in defacto partner situations; this can be traced back to the belief that women's work was not work. While statutory provisions now treat it as "work", those provisions have not yet been interpreted fairly. Second, judge's should have an accurate knowledge of the position of men and women in Australian society - such a knowledge will prevent false statements about gender parity, or women's equal power within relationships, or that housework is now shared equally between the sexes. Third, judge's need to have an understanding of what equality actually means. Fourth, judge's need to be aware of their own preconceptions in order to get away from typecast images of the sexes. Fifth, judge's should be aware about the way that their own experiences and perspectives have influenced the development of the law, and that as law has been the sole preserve of men for a long time they may well be unconsciously reluctant to lose that privilege. Lastly, judges need to exercise empathy, to understand the different backgrounds that people come from and to interpret the facts and apply the law in light of that information.

SEXUAL ASSAULT: REALITY AND IMPACT

Dr David Wells, Victorian Institute of Forensic Medicine

This paper draws together some of the problems that the legal system presents to victims of violent crime in having their experiences heard and dealt with in a fair manner and makes suggestions about ways in which procedures need to be changed to allow greater access to the legal system.

Certain groups are grossly over-represented as victims of violent crime; people with psychiatric disturbances, people with intellectual disabilities, and people with substance abuse problems, yet they are just as under-represented as people making legal complaints. There are significant impediments for these individuals in using the legal system and it is important that the legal system - police and other professionals - make significant changes in the way it decides what is needed to ensure that all victims voices can be heard.

The paper considers the importance of pre-trial meetings, where material issues are discussed between counsel and witnesses. While these are invariably used in homicide cases, Wells states that less than .02 percent of the "acute rape" cases he has been involved in have resulted in such meetings. Another issue which could operate to allow greater access to the legal system is the use of video tape statements. While the idea that the courtroom will intimidate witnesses into telling the truth may have merit, this "objective" rule has been formed with no input at all from those who have to recount painful personal details to a roomful of strangers. Violent crime is often an experience that defies description - it is dishonest of those working in the field to claim an empathy that does not exist.

The gathering of statements is another issue which needs to be addressed. Police practice requires a statement to be given immediately after the medical exam and police questioning: sleep deprived, traumatised and sometimes influenced by substances, possibly intellectually impaired, victims are required to give a statement that then is held up to be the final word on what happened. The victim's thoughts may be scrambled and often there is no clear recall at all - such a person is in no condition to provide details, and when the issue gets to trial a year later, the inconsistencies become crucial. Again, we need to ask whose "objectivity" has formed the basis for this police procedure - to reconsider the pre-understandings which have gone into its formation. Another point to note is that in reading out doctors notes from the medical records in court, evidence of past sexual experience which is not admissible, is slipped in regardless.

With regard to rape, it is important to note that popular notions of what constitutes "real rape" actively (re)construct how rape claims are heard, and this poses problems both for the victim in making herself heard, and for the prosecution in establishing credibility. Compounding the problem is the fact that conclusions will be drawn from the demeanour of the victim which fails to account for responses to trauma being unique and difficult to predict. Also, often the actual events sound improbable or unlikely - the young girl who is sexually assaulted is then driven home by the assailant, or the woman who is raped in her own bedroom by a neighbour during a family get together do not fit the picture of "real rape" and her chances of justice within the legal system are slim.

LANGUAGE AND DIFFERENCE

Prof Terry Threadgold, English Department, Monash University

Law makes a claim to precision in the use and interpretation of language which Threadgold aims to show can not possibly be upheld. The claim is based on an understanding about language which is culturally and socially relative. As privileged white members of the Australian community, Threadgold asserts that the judiciary has to come to grips with linguistic difference and realise that the standard Australian English used in court is exclusionary - not everyone can speak it, not everyone understands it. Communication can never be taken for granted, where there is language there is the probability of difference, non comprehension or misunderstanding. Power imbalances need to be taken into account by the judiciary: when non-standard English speakers come to court to tell their stories, the imbalance in access to language, articulateness and power is extraordinary.

Threadgold asserts that the legal system takes linguistic meaning out of context and in effect linguistically constructs realities for plaintiffs which meet the reality understood by judges and lawyers. These new constructions do not reflect the experiences of the "non-speaker" and thus the possibility of providing impartial and fair hearings is severely reduced. Such a procedure, Prof Threadgold asserts, can not possibly arrive at any adequate understanding, let alone a precise definition, of what a word actually means.

The paper considers the difference that gender makes to language, claiming that as the performance of gender is partially acted out by the use of language, the values and meaning attached to words will differ according to the specific bodies receiving and articulating them.

Finally, the paper also interrogates the use of language as a form of discipline. Foucault states that discipline is a form of social control which makes it possible to see some things and impossible to see others, and on this basis Threadgold suggests that if concepts such as truth and objectivity within disciplines were constructed differently, society would correspondingly see the principles and application of law quite differently. Conferences such as Eureka, he concludes, are aimed at precisely that task of reconstructing societal understanding of linguistic context.

FORMS OF GENDERS BIAS

Dr Sheilah Martin, Dean, Faculty of Law, University of Calgary, Canada

Gender relations, power imbalance and gender stereotypes play a huge part in how we approach, analyse and distinguish legal propositions and evidentiary suggestions. This paper provides an overview of six different forms of gender bias; improper use of stereotypes, use of a male norm, failing to include women's perspectives and stories, failing to see and/or undervaluing women's gender specific harms and the use of sexist language.

Stereotyping - ascribing certain characteristics to a person because of his/her membership in a group - has costly consequences for those so depicted. While stereotyping can be used effectively to provide a way of organising knowledge and ideas, its scope should not extend to denying people individuality, or to focusing on what is different about people instead of what is shared.

Gender bias may manifest itself in the use of male norms by implicit assumption. For example, using a typical male reaction as a standard against which women's reactions are measured or using the male earning capacity as the basis for determining awards are both gendered biases.

Failing to recognise or appreciate harms that are suffered by women - such as refusing to see rape as serious bodily harm or refusing to accept that rape has serious long term consequences, or the redescription of systematic forms of exploitation which render the workplace intolerable for women as trivial fun instead of sexual harassment - constitute a form of gender bias. Another example is provided by damage awards for personal harm, where homemaker skills are rendered invisible in determining compensation, or where inequality is replicated by calculating lesser earnings for women than for men.

Gender bias also manifests itself in a blindness to specific gender realities. Treating gender equally does not take into account different social circumstances or biological difference and thus maintains inequality. On the other hand, using a double standard runs the risk of creating a hierarchy where women are not valued equally. Finally, language has to be a source of concern for a judiciary concerned about gender bias. For example, words such as "caress" or "fondle" do not belong in a rape trial, where the reality is that at least one party perceives a serious assault to have taken place. To use words such as this in such a context is to prejudge and to trivialise.

The paper also sets out a detailed discussion of the acceptance and continued application of the "Wigmore Doctrine" - a rule of evidence in the USA which holds that "[n]o judge should let a sexual offence charge go to the jury unless the female complainant's social history and mental make up have been examined and testified to by a qualified physician". This rule (of which there is a similar if more informal echo in Australia) views women as vengeful and fanciful, as deliberately accusing innocent men. This rule incorporates many of the forms of gender bias discussed in the paper and provides an interesting illustration of the powerful fears, traditional distrust and hostility towards women found in the legal system and which have to be dealt with if gender bias is to be removed.

THE GENDER OF JUDGMENTS

Prof Regina Greycar, Faculty of Law, University of New South Wales

This paper examines the way legal decisions are constructed from the 'point-of-viewlessness' that judging *is not* the sole or predominant domain of white men. Greycar argues that simply adding women judge's to the bench will not change the (male) gendered nature of decision-making to a great extent; rather the deeper structures of social knowledge need to be changed to allow women's experiences to be incorporated into legal decision making processes.

We need to tackle the "commonsense" which underlies most judicial decisions. A judge's knowledge comes from his personal life, and his authority as a judge makes his gendered, partial world view into a generally applicable one. As judges are no more immune to common assumptions than the rest of the population, and as these are most often merely widely held misconceptions or myths, decisions which incorporate them are often not correct or fair.

The difficulty posed by the application of 'commonsense' is multiplied by the obstacles which prevent women being heard and given credibility and authority in court. The paper sets out numerous examples of gendered thinking in judgments, showing how judicially constructed versions of reality do not accord with women's experience. For instance, a "nice looking motherly" woman with a successful career and a failed tubal ligation is awarded half damages because there is a "good chance" that she would of her own accord seek less demanding employment to spend more time with her husband. By looking at such statements we learn about a judge's world picture - things like "appearance equals character", "a woman can never be hurt by motherhood", and that "womens work is marginal or a hobby". Knowledge thus gleaned can be used to combat the assumptions on which the decision rests.

The paper moves on to consider the role of rules of evidence in determining whose stories are heard and with what authority. Rules of evidence screen out types of information that are thought to be misleading, prejudicial, non-probative, or just unreliable. Greycar argues that these rules are only ever guesses; that while rules of evidence presume a reality based on truth and facts, all of the facts are the outcome of contestation about versions of events assembled within the constraints of time, place, culture and politics. As discussed above, there are enormous obstacles to women's versions occupying the same space and having the same authority as the "commonsense" of legal discourses, thus such evidentiary contests are rarely won by women. It may be that the focus must be just as much on the facts as it is on the law. The processes by which legal discourses construct reality and give authority to particular versions of events must be confronted and redefined.

Finally, Prof Greycar questions judicial failure to use expert evidence in areas such as rape and domestic violence, and argues that women are still being condemned by popular mythology - judges and juries still feel that they are thoroughly knowledgeable about human nature in areas where clearly they are not and can not be expected to be.

SILENCE AND DENIAL - VIOLENCE IN THE HOME**Prof Hilary Astor, Faculty of Law, University of Sydney**

"Domestic violence" impacts on the ability of women to act freely and to assert and negotiate for their own needs and interests. This paper details the multifaceted reasons for the silence that surrounds domestic violence and the fact that the vast proportion of violence against women is not reported to the police in Australia. While that silence is often attributed to individual women failing to speak about it, social factors create and support that silence and it is unrealistic to expect women who are the target of violence to remedy these issues on their own. Many women remain silent because they believe that the perpetrator is contrite, or because they fear they will not be believed or will be blamed. Others who are the target of racism may remain silent for fear of the consequences if they do speak out - Aboriginal women may fear arrest of the perpetrator or the intervention of welfare agencies in relation to their children.

Violence is very likely to affect what a woman needs from the legal system; the judiciary need to acquire a working knowledge about the violence perpetrated against women by their partners and the contexts in which it occurs, if justice is to be effective and the law is to protect women and the children in their care.

Astor discusses the educational and libratory potential of narrative in its application to law. Telling stories can provide the opportunity for understanding and empathy - stories allow us to test and challenge our assumptions. When a woman who has been a target of violence speaks to a court officer, a registrar, a judge, a lawyer, she has to tell a story about what happened to her. Often women perceive a gulf between themselves and the listener - they sense (or are confronted with) disbelief or incredulity; they are told that no one could live in such circumstances, that their story can not be true. All of those factors about women's lack of authority and credibility within the legal system come in to play. Their stories are harrowing, they may challenge beliefs which are important to the legal listener, they may trigger bad memories. These provide barriers which prevent women from telling what they have to tell for the legal system to do justice, and as such must be tackled and eliminated if women who have suffered violence are to be treated fairly by the legal system.

Women who are the target of violence often need to resolve disputes in both the formal and informal justice systems. Protective orders, property disputes, support and custody and access are important areas for such women. Violence may also affect women's actions in other legal contexts, such as their capacity to act as director's of family companies, their actions as employees, their capacity to pay consumer debts, their participation in crimes like social security fraud. Violence should be considered as a factor relevant to the mitigation of sentence, the demeanour of witnesses and so on. In order to resolve these issues, women need to be able to speak of violence and the effect it has on their behaviour and present circumstances. As the stresses on a woman who has separated from a violent partner are enormous, she will often be desperate to resolve issues of property and access, so unless violence is raised and seriously considered by those she has contact with in the legal system, hopes of a speedy resolution will often work to maintain the silence surrounding domestic violence.

SILENCE AND DENIAL - VIOLENCE IN THE HOME**Ms Ellen Kleimaker, Molly's House Refuge**

This paper presents some of the issues that immigrant women face in their experience of domestic violence. Violence in immigrant communities is often dismissed as being a cultural difference; that immigrant women are naturally passive and demure. Immigrant communities may be very small and women may be isolated and alienated and may be unaware of the support services for women who are the target of violence. Refugee women may have genuine fears about having recourse to the police where they have come from political systems where the police are an instrument of state repression. Additionally, the community in which the woman lives may be experiencing racism which in turn creates a need to stick together and maintain its own values. A woman who reports violence in such circumstances may be seen as a threat to the community - her choices become "report and leave the community", or "stay and suffer in silence". All of these things render reporting violence extremely difficult.

The paper suggests that in order for these problems to be redressed, the police, the legal system, medical services and other community organisations must all be encouraged to employ sufficient numbers of workers (including trained women translators) from different cultural backgrounds and to train workers in cultural awareness and migration issues.

SILENCE AND DENIAL - VIOLENCE IN THE HOME**Ms Maria Dimopoulos, Domestic Violence and Incest Resource Centre**

This paper engages with the concept of the emerging "culture defence"; a cultural explanation for the occurrence of domestic violence and incest within non-English speaking (NES) background communities. Such a defence shows domestic violence in terms of integral deficiencies in the victim/perpetrator's culture. Culture becomes the issue of scrutiny, rather than behaviour, and provides both an excuse and a way of nullifying the violence. Ms Dimopoulos argues that while it is important that the values of immigrant people be respected, we need to question the construction of culture and not just accept that abuse of women is a foreign cultural value.

The defence essentialises culture and its effect on behaviour, and inadvertently supports prejudiced discourse that constructs NES people as an homogenous group. NES cultures are seen as static and deeply misogynist; as unchanging irrespective of interaction with other cultural, social and political processes.

Importantly, the defence is it's renders NES women completely invisible. What is presented as cultural is given precedence over gender - culture is seen as male, silencing the possibility that violence may not in fact be culturally prescribed in the view of women from within that culture. The defence overlooks power relations and the means by which these are maintained and legitimated. While the defence is seen as multiculturalism at work, its obvious effect has been to legitimate male violence against women, and this resonates beyond the courtroom into wider society, sending unacceptable messages to NES women that they have no protection from violence.

SILENCE AND DENIAL - VIOLENCE IN THE HOME**Chief Inspector Vicki Fraser, Victoria Police**

This (very brief) paper discusses police reaction to the fact that since 1990, 35% of police initiated applications for intervention orders have been struck out or withdrawn at court because the woman who reported the domestic violence did not attend her hearing date. This failure rate often acts to reinforce police disbelief about the seriousness or actuality of violence.

Fraser suggests that the high non-appearance rate could be addressed by creating and immediately activating support structures for women who report domestic violence, and by having mandatory arrest procedures for offenders. She also suggests relaxation of the hearsay rule so that police can give evidence on behalf of women who are not able to do so themselves.

SILENCE AND DENIAL - VIOLENCE IN THE HOME**Ms Kate Gilmore, National Committee on Violence Against Women**

This paper sets out some of the findings of the National Strategy on Violence Against Women. The Strategy identifies opportunities for prevention and redress in every major sphere of government activity in all key portfolio areas, establishing that community institutions - their beliefs, attitudes and traditions - can do much to eliminate the cultural practices which programme our community to accept and even actively promote violence against women.

Ms Gilmore highlights three areas from the Strategy. Deregulation requires that our traditional assumptions about what constitutes violence be expanded to include emotional, economic, sexual, racial and social, as well as physical forms of force and coercion. The strategy stresses that a commitment to freedom of information could lead to reduced violence, by removing the false equation of the family with privacy and freedom. That equation currently denies access to critical information about the full picture of family life and thus prevents effective action in eliminating violence. Finally, a commitment to free enterprise requires that a commitment to the elimination of violence because violence against women represents the single most significant factor inhibiting their enterprise and exercise of citizenship rights.