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Guest Editorial

Successful Strategies to Improve Access to Justice for Women Who Kill Their Abusers

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This issue of the *International Journal for Crime, Justice and Social Democracy* has its origins in an inspiring and successful international workshop held at Deakin University Downtown in February 2023 (*Successful Strategies for Improving Access to Justice for Women Who Kill Their Abusers*). The workshop was generously funded by the Academy of Social Sciences in Australia (ASSA). Despite Australia's progressive statutory reforms aimed at improving the accessibility of self-defence for primary victim-survivors who use force against their abusers, significant barriers remain. Both the law and its application continue to impede access to justice for women in these cases. The workshop was inspired by the impact of collaborations between academics, activists, lawyers, journalists, and women victim-survivors across various international jurisdictions, demonstrating the power of advocacy in driving change. In England and Wales and Canada, for example, advocacy has focused on strategic litigation particularly around how the discrete offence of coercive control can inform defences to homicide (see, for example, *R v Challen (2018)*; Bettinson 2018; CWJ 2023; Sheehy 2018; Wistrich 2024). In New Zealand, advocacy has focused on extending the notion of coercive control to better understand intimate partner violence (IPV) as a form of social entrapment and advancing First Nations women's interests (*R v Ruddelle (2020)*; Tolmie et al. 2018). Justice and prison projects and resource and advocacy centres for victim-survivors who have been criminalised for protecting themselves and/or their children from further abuse in the United States, have driven strategic litigation and advanced legal education and training (see, for example, the Survivor's Justice Project in New York State, the Women's Prison Project at the Tulane Law School in Louisiana, and the Illinois Prison Project's (IPP) Women and Survivors Program (WSP) in Chicago, the National Defense Centre for Criminalized Survivors (NDCCS) and Survived and Punished (S&P)).

It is in this context that the international workshop drew together practitioners (practising lawyers, family violence experts, psych- experts) and researchers from a range of international jurisdictions (England, Scotland, New Zealand, Canada, United States, Germany and Australia) and disciplines (criminology, law, socio-legal studies, gender studies, Māori health and Indigenous studies and education), to share insights about their efforts to improve legal understandings of women's experiences of intimate partner violence (IPV), their use of fatal force against an abusive partner and their self-defence claims. Collectively, the participants identified: successful strategies adopted by practitioners working overseas in diverse legal environments; ways of achieving more just outcomes for victim-survivors in these cases, especially for First Nations women; proposed recommendations for improvements to legal knowledge, education and training and identified new directions for research (Tyson, Naylor and Douglas 2024).

Contributors to this special issue highlight, for example, the power of positive collaboration between academics, activists, lawyers, journalists and the women themselves. They identify strategies to challenge prosecutors' decisions to prosecute Aboriginal women in the absence of evidence capable of disproving self-defence, and to identify key evidentiary checkpoints to enhance women's access to self-defence and improve their chances of acquittal. They argue for the need to build the workforce and capacity of experts with frontline experience in IPV, emphasise the importance of understanding IPV through the lens of social entrapment, and propose targeted training to skill up practitioners to more effectively utilise the family violence evidence provisions available in some jurisdictions throughout the whole court process. Finally, they explore potential avenues for further reform drawing on successes and failures in advocacy and litigation across international jurisdictions.

Our issue begins with two articles highlighting the collaborative process in campaigning for justice for and representing women appealing murder convictions. **Harriet Wistrich and Pragna Patel** first met while protesting in the early 1990s outside the Royal Courts of Justice in London, England. Harriet Wistrich helped co-found the feminist law reform group Justice for Women (JFW) in 1991 to campaign against laws that discriminate against women in cases involving male violence against their partners, and later went on to become a lawyer before helping to co-found the Centre for Women's Justice (CWJ) in 2016. The CWJ, a charity based in London, England, seeks to 'hold the state accountable for failures in the prevention of violence against women and girls.' Pragna Patel was a founding member of Southall Black Sisters (SBS), a leading frontline advocacy and campaigning organisation for black and minority women, and later trained as a solicitor. Their article reflects on the enduring impact of their advocacy and fight for justice for women who kill abusive partners. **Elizabeth Sheehy, Kim Pate, Helen Naslund, Matthew Behrens, Mona Duckett and Jana Pruden** reflect on their role in the campaign for justice for Helen Naslund, a Canadian woman who lived in rural Alberta when she killed her abusive husband, Miles, in 2011 as he slept. Helen pleaded guilty to manslaughter. Following a joint submission on sentencing made by the Crown and her second lawyer together (the first had to excuse himself from the case due to ill-health), she was sentenced to 18 years in prison, the longest sentence on record for a woman who pleaded guilty to manslaughter. The authors each describe their role in Helen's appeal of the 'crushing sentence' which led to her eventual release from prison in 2023, including their insights on the strengths and limitations of strategies employed. Helen's journey, recounted by Helen in this article, and in Jana Pruden's highly acclaimed written and podcast version of *In her defence* (Pruden 2023):

> shows the power of what individual people can do when systems fail. In Helen's case, those individuals included experts, lawyers, activists, and people who signed petitions or became her pen pals and friends, each moved to action by what they saw to be an injustice, and doing their part to make it better. (Sheehy et al. 2024: 12)

The next three articles share insights on legal strategy that have helped or that could better assist defence teams and other legal professionals to get the best evidence of IPV before the court and improve women's access to justice in the Australian legal context. **Stella Tarrant, Hannah McGlade and Carol Bahemia's** article discusses the defence strategy of making an application for a stay of proceedings or a 'no case' submission, where Indigenous women are charged with homicide of an abusive partner. The purpose of a no case submission is to argue that the prosecution has failed to present sufficient evidence to support the charges against the accused. The authors argue that in a self-defence case, while the burden of proof lies with the prosecution to disprove beyond reasonable doubt that the woman was acting in self-defence, Indigenous women are, in effect, being required to prove that they acted in self-defence. This is because the prosecution misunderstands the nature of the violence an Aboriginal woman in these circumstances faced and consequently ignores her claim that she defended herself against ongoing social and institutional entrapment. This amounts, they argue, to prosecutors making decisions to prosecute Aboriginal women (and accept guilty pleas) in the absence of a *prima facie* case.

Addressing the legal barriers women who kill in the context of abuse can face in having their experiences properly recognised and accommodated within the framework of self-defence, **Rachel Dioso-Villa and Caitlin Nash** explore legal pathways or 'evidentiary checkpoints' in 32 Australian cases of women prosecuted for killing an abusive male partner in "traditional" self-defence scenarios. The aim of the study was to track the cases to identify pivotal moments or turning points that can alter the trajectory from a conviction to an acquittal, offering pragmatic strategies for success. Although most women plead guilty to manslaughter, a strategy that ensures women receive a reduced sentence and avoid the risk of a murder conviction, the authors argue that going to trial can provide 'additional systemic checkpoints where evidence is repeatedly proffered, considered, and reviewed by different decisionmakers encountered on its path.' Serving as 'turning points in a case', these 'evidentiary checkpoints' can allow defendants and decisionmakers more time 'to provide a social context for the circumstances of the offence in light of the continued abuse the defendants experienced in the relationship … and gain a better understanding of why lethal force was reasonable and necessary under the circumstances.'

The article by **Danielle Tyson, Bronwyn Naylor and Stella Tarrant** addresses a knowledge gap in how legislative reforms impact legal *practice* and advocacy in the Australian state of Victoria. Victoria has introduced legislation that is widely regarded as a model for the rest of the country (Loughnan and Davidson 2023: 13). Following key reforms in 2014 to the *Crimes Act 1958* (Vic) through the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic), self-defence was restructured so that it does not require an immediate threat or the response to be proportionate to be successful, where the killing was in the context of family violence. Important family violence provisions (otherwise known as 'social context' or 'social framework' evidence) were introduced (in 2005 and slightly modified in 2014) to allow for a broader range of evidence of family violence to be adduced in cases in which women kill their intimate partners. To enhance the effectiveness of these provisions at trial, amendments to the *Jury Directions Act 2015* (Vic) include instructions for juries on the relevance, scope, and significance of family violence evidence in relation to self-defence and the defence of duress. Following the Victorian model, Western Australia introduced similar family violence provisions (ss37-39G into the *Evidence Act 1906* (WA)), including formulations of coercive control from the *Domestic Abuse (Scotland) Act 2018*, and principles from a 'social entrapment' model of domestic violence (Loughnan and Davidson 2023: 14). Queensland adopted similar provisions in 2023 (*Evidence Act (1977)* (Qld): Pt A).

Tyson, Naylor and Tarrant present the findings from a Victorian pilot study involving interviews with practicing lawyers and experts that explored the question: how are the reforms to Victorian homicide law, particularly the family violence evidence provisions, working in practice for lawyers and experts in their work with women charged with homicide after killing their abusive partner? Key themes emphasised by interviewees include: the challenges obtaining the full picture of family violence to support women's self-defence claims; the challenges accessing and using experts with an understanding of the realities of IPV; the limitations of, over-emphasis on, and privileging of psychological and psychiatric disciplinary expertise; the lack of authority afforded to non-psychological or psychiatric experts such as family violence experts and their expertise by the courts; limited knowledge of the family violence evidence provisions, and the need for more training about the realities of IPV. The authors conclude there is a critical need for further training of experts, through professional bodies, and judges and prosecutors based on the family violence evidence provisions and an IPV social entrapment framework.

The special issue then considers the success and limitations of strategies to improve access to justice for women across different jurisdictions focusing on New Zealand, Scotland and Germany. The article by **Rachel Smith, Julia Tolmie, Diane Wepa and Denise Wilson**, each of whom have served for a number of years as family violence experts for the New Zealand Family Violence Death Review Committee (NZFVDRC), highlights the shortcomings of the courts' over-reliance on Western psy-disciplines which privilege neo-liberal ideas of self and perpetuate flawed and outdated psychological theories of IPV (e.g., Battered Woman's Syndrome). The concept of social entrapment – an IPV entrapment model – is crucial for understanding the social isolation and fear that women experience, the indifference of powerful institutions such as the police and health system, and how experiences of coercive control are exacerbated by structural inequalities and the limited safety options available to them. Recounting Rachel Smith's experience as an expert in the New Zealand case of *R v Rudelle (2020)*, the authors demonstrate the need to build the workforce of experts with frontline experience, who are trained in IPV social entrapment and who can provide evidence on cultural background from an intersectional perspective.

The final two articles examine responses of Scottish and German courts to cases where women were charged with murder for the killing of their abusive partners. **Rachel McPherson** begins by highlighting Scotland's exemplary approach towards drafting a domestic abuse offence – the *Domestic Abuse (Scotland) Act (2018)* – that has resulted in a 'plethora of change … relating to the criminalisation of domestic abuse;' however, there appears to be a degree of inertia in relation to efforts to improve access to justice for women who have killed their abusers. The article discusses the pros and cons of two potential avenues for reform for women who kill their abusive partners – the use of specialised courts and the use of expert evidence on coercive control – and argues that while there are numerous sites for reform in the existing Scottish legal framework, the fact that nothing has been done to respond to cases involving women who have killed their abusers represents a significant injustice for this group of women. McPherson considers that this is in part due to a noticeable absence of meaningful and organised advocacy compared to efforts undertaken in England (see, for example, Wistrich and Patel 2024).

The article by **Kerstin Braun** illustrates the differing approaches between the courts in Germany and those in Victoria and Western Australia, Australia, to cases involving women who kill their abusers. Braun's article considers the treatment of women who kill their abusers focusing on a 2003 appeal judgment by Germany's highest ordinary court, the *Bundesgerichtshof* (BGH), known as the 'family tyrant' judgment. The case involved a woman who shot her husband while he was asleep, after enduring decades of abuse. The BGH ruled that self-defence was not applicable because it requires an 'imminent' threat—a key difference from jurisdictions like Victoria, Australia, where reforms have removed this requirement. While the BGH concluded that the defendant could not claim self-defence, it found that a defence based on duress was available but was ultimately unsuccessful. This contrasts with how duress is understood and applied in Australia. Unlike the recent public outcry surrounding

the case of Jacqueline Sauvage in France, who was convicted of killing her abusive husband after years of domestic violence, there has not been equivalent debate in Germany. Rather, German courts would appear to regard concepts of duress or an 'inevitable mistake' regarding duress as already providing a sufficient defence for women, leading the courts to see no need for self-defence law reform.

The continued prosecutions of women for killing their violent partner in the context of extensive prior abuse, and the continuing choice of women to plead guilty to manslaughter rather than risk arguing self-defence, demonstrates a lack of real progress in our laws and our courts. This special issue grapples with the practicalities and politics of achieving change. It is hoped it points to some innovative and effective strategies for improving access to justice for women who have used force to protect themselves and often their children from further victimisation, women '*we might otherwise be burying*' (CWJ 2023).

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