UNIVERSITY OF SOUTHAMPTON

# CHILD SEXUAL ABUSE AND THE COURT SYSTEM

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# Abstract

This dissertation presents the findings of a Personal Research Project undertaken by the author in Hampshire, between 1997 and 1999. The study is a qualitative one, which seeks the personal accounts of young people testifying in Crown Courts concerning sexual abuse. Interviews were conducted with sixteen young witnesses, aged from 7 to 17 at the time of their court appearances, who had testified at the trial of their own alleged sexual abuse perpetrator.

Despite a quantity of recent juridical reforms intended to improve children's court experiecnes during testimony against defendants, which led to increased numbers of prosecutions, conviction rates remain low, particularly for indictments against alleged perpetrators of sexual abuse. Previous quantitative evaluations have considered the effects of the changes, but small amounts of research only have taken place concerning the impact of the judicial process on the young people themselves. Anecdotal evidence, however, suggests that the court process has major negative consequences upon children.

This investigation, regarded by the author to be a feminist study, was carried out using a grounded, reflexive approach. Young people were approached via the Court Witness Service. Those content to participate were personally interviewed in depth by the author about their experiences of giving evidence; their feelings and impacts upon them of testifying, and the changes in the process they would welcome.

Data collected evidenced participants' major trauma as a result of their court treatment, often occasioned as a result of the mode of defence questioning. Poor practice emerged as a consequence of weak advocacy by the prosecution, inadequate court organisation, delays in listing, unforeseen adjournments and legal argument - as well as resulting from pre-court investigations. Young witnesses' personal anxieties and lack of knowledge concerning the evidence process all contributed to generally poorly rated experiences. Predominantly, the after effects of the process continued negatively for youngsters, and a substantial minority self-harmed significantly as a result of court traumas.

Data analyses suggest a feminist (post) post structuralist approach may be helpful in identifying, modelling and explaining various power differentials which embroil young females and males in the power struggles inherent in criminal indictments against more powerful abusers. Study results suggest a need for major reform: a requirement for best quality court practice, as well as for significant attitudinal changes toward young people, leading to anti-discriminatory practice which addresses the term coined as 'youthism' as a major oppressive practice, targetting anyone who is 'not-man'. A range of issues concerning child-centredness, power and sexuality is discussed, and their impacts upon justice is argued.

As a result of the study, the development of theoretical perspectives concerning young people's evidence giving has been attempted, which may loosely be described as feminist post-post-structuralist approaches. The accompanying theoretical discussion may go some way to account for the impact upon children, of the justice system and the criminal court process.

## Dedication

To Grace

for all that is yet to be

## Acknowledgements

To the young people who spoke to me for the study:

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Catherine

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# Chapter 1

# Child sexual abuse: introductory considerations

## The structure of child protection legislation

The sexual abuse of children and young people is a subject that has only come to the forefront of public thought in the last two decades, following fairly speedily, in human issue terms at least, on the heels of a growing awareness of physical abuse, what used to be called 'non-accidental injury', and neglect. In 1972, Henry Kempe wrote *Helping the Battered Child and his Family*, which was hailed as a breakthrough volume. The next year, the inquiry took place into the brutal assault and death of Maria Colwell; those conclusions formed the beginning of modern attempts to order the practice of child protection in social work.

The civil law has sought to act hand in hand with live issues in social work. The evolution of (supposedly) increasingly efficacious child protection procedures, together with the development of civil court practice, informed the drafting of what is now the 1989 Children Act. This consolidated the numerous legal instruments within which children had been protected in the largely post-World War II past, aiming to close practical loopholes and extinguish inconsistencies in children's legislation. Its main purpose was to provide appropriate legislature with which to protect the welfare of young people at risk of, or suffering, significant harm. Additional developments such as separate legal representation for young people and independent investigations by Guardians ad Litem have rendered Care and related proceedings gradually more complicated and lengthy, especially in contested applications. Inevitably, too, the 1989 Act has been criticised and reviewed both from social work and legal perspectives; I do not propose to rehearse the issues again here.

However, there has been rather less emphasis on the protection offered by the *criminal* law when children are harmed in some way, especially by sexual abuse. Such abuse often involves members of the child or young person's close family as the alleged perpetrator, and the use of civil Care Proceedings, to protect the child by her/his removal from home is often not appropriate, although it may be the only choice available. The identification of better

options, from the viewpoint of the young person's needs for both justice and stability, have taxed the development of social policy provision over years. Children's wishes, too, although emphasised in theory do not always receive the appropriate weight: from within my own practice experience, numerous children have expressed the wish for abuse they are experiencing, merely to stop, although it is scarcely ever as simple as that. My research interest has focussed upon the workings and effects of jurisprudence in criminal responses to child sexual abuse, focusing particularly upon the views of young people who have been witnesses in the trial of their alleged sexual perpetrator.

**Unequal treatment over time: the category of 'not-men'**

In view of the long histories of gender inequalities within jurisprudence - see for instance the very different accounts of Carol Smart (1989), as compared to Wayne Morrison (1997) - historical perspectives on the legal position of women can help to set the scene. For several decades, recently during second wave feminism - and less recently, in the middle of the last century when women first demanded enfranchisement - the question of female (in)equality has been a recurring theme. Current thinking has reached something of an impasse between academic theorising on the one hand, and so-called popular belief, sometimes described as the 'backlash' (see Susan Faludi 1992), upon the other, which has led to contradictory and heated debate. Many theoretical perspectives revolve around inequalities suffered by women, who as a population majority are constantly subjected to male minority rule, albeit subtly and largely with their consent (e.g. French 1985,1992; Smith 1989; Greer 1999). The popular 'post-feminist' culture, however, suggests that the "fight" for equality has been won, that women are 'more equal' and have more opportunity than ever before. Christina Hoff Sommers (1994) offers a critique of the radical (as she terms it 'gender') feminisms which disagree with the presupposition of 'equality'.

I would regard my perspective upon both individual and societal issues to be feminist, although I will not for the moment categorise which type(s) of feminist I may be. In framing my theoretical views of the inequalities experienced by children during the prosecution of their alleged sexual abusers, I draw from feminist theorising concerning accompanying judicial attitudes and responses.

The problem I encountered almost from the outset, however, is that little has been advanced from feminist theory which can apply specifically to issues of trialing child sexual abuse, and in the course of my reading, I have found that theorising often does not extend beyond 'the female', who is usually adult and quasi-autonomous, (although she may be seen as subject to the subtle and intrinsic power of patriarchy). The theoretical difficulty presented by many purely feminist perspectives is the drawing of a dichotomy between (all) females and (all) males. As I argue, however, categorisation along gender lines is insufficient by itself. I have also considered the more general positions of (dis)empowerment, which are experienced by individuals and do not operate entirely along gender lines.

Indeed, I felt that the relevance when considering sexual assault could be more accurately described as between 'men' and a category I will call '**not-men**'. The latter, as well as all females within any 'category', also incorporated some males. The category of 'men', as applied to Britain, only really covers white British, able-bodied males of adult (but not generally retirement) age with some means of income, either earned or private. 'Not-men' covers everyone else including not only many males of a non-white racial extraction, but those with disabilities and males over retirement age - but, particularly relevant to the issue of child abuse, *males under the age of majority*.

Returning then to a starting point, I drew inspiration from Susan Brownmiller's (1975) study of rape. I also examined some of the more recent popular media views about the attitudes of judges to crimes of sexual assault, noting the often unreconstructed attitudes of many senior members of the judiciary. Following also the work of Sue Lees (1997) on male rape, which suggested that any potentially or actually vulnerable man may - like women - become a target for rape, it appeared important to discuss the place of hegemonic masculinity in the 'not-men' categorisation. I return to a more detailed discussion later in the chapter.

**Jurisprudence and useful feminist models**

In attempting to identify a broad theoretical position to assist me, I turned to Smart's work (1989). In her discussion on feminism and jurisprudence, she introduces the issues.

> "This [book] attempts ... to investigate why law is so resistant to the challenge of feminist knowledge and critique. It is a book about how law exercises power

> and how it disqualifies women's experience/knowledge. I shall argue that law is so deaf to core concerns of feminism that feminists should be extremely cautious of how and whether they resort to law. Of course, issues like rape are already in the domain of law so it is hardly feasible to ignore its existence, but we do need to be far more aware of the 'malevolence' of law and the depth of its resistance to women's concerns. I have argued that there is a congruence between law and what might be called a 'masculine culture' and that in taking on law, feminism is taking on a great deal more as well. Ironically it is precisely for this reason that law should remain an important focus for feminist work, not in order to achieve law reforms (although some may be useful) but to challenge such an important signifier of masculine power. In particular I am concerned with how ... [legal] knowledge disqualifies other forms, most especially feminism". (1989:2-3)

Smart's discussions set the scene for my consideration of the position of some feminist thinkers. Her arguments include the refusal of 'law' to accept any other social reality besides its own. She notes the importance of understanding that law is not a unified form of knowledge, but operates conflicting principles and contradictory effects at every level - yet "it presents us with the appearance of singularity and unity" (1989:4) which empowers it. Smart models a feminist jurisprudence which may hold the prospect of fundamental changes in legal method, although she cautions that within such a project, it may be easy to be led into accepting the legal parameters already laid down by positivist (and masculinist) approaches.

My starting point, also, needed to embrace feminist viewpoints as well as issues concerning the juridical treatment of sexual assault, so that ideas could be progressed and developed. Given my specific spheres of interest in the practice of law and jurisprudence, and in child sexual abuse, my aim was to examine the point where the two meet, as it were, head-on: in the contested trials of defendants accused of one of a number of crimes which can be defined as sexually abusive of children and young people.

**Seeking a theoretical model: the value of related studies**

In order to have a broad theoretical base on which to draw, I sought to examine 'problems' of criminal law from the perspective of what I hypothesised to be a very similar issue - that of

rape and related trials for adult victims. The work of Lees (1993, 1996, 1997) on rape trialing, as well as that of other commentators (e.g. Aileen McColgan 1996), provided valuable background. Their debates regarding court protocols and witness experiences continue to strike chords regarding sexual assaults of women, where the conviction rate is reported as even lower than for sexual assault upon minors, (Lees 1993). One of the main differences is the often the familial, and thus more hidden, nature of child abuse. Foley *et al* (2001) discuss the "plurality of childhoods" in history, reflecting upon the treatment of children over time. Lorraine Green, in Foley *et al* (2001:161) notes that:

> "In surveys the characteristics of adult, male sex offenders, such as their ethnicity, age, education, social class and mental health, are proportionally similar to those found in the general population (Fisher, 1994; Pringle, 1998). These surveys thus seem to contradict not only the pathologization and marginalization of perpetrators, but also the contemporary demonization and marginalization of serial paedophiles and their emergence as folk devils (Cohen, 1973; Erooga & Masson, 1999). It could be argued that this furore surrounding serial paedophiles also masks the fact that most [child sexual abuse] is perpetrated within families or by those known to them (MacLeod, 1999)".

The fact that my study centres not on women but on young people has led both to self-reflexivity and to questioning by others as to whether what I intended to achieve is in fact a 'feminist' study at all. Furthermore, my own positioning as a woman of white British descent is relevant. I am only too aware that my race provides me with greater autonomy than for instance many black or mixed race women, or elderly women regardless of their ethnicity. Equally, I would argue that the mere fact of maleness, in older or ethnic individuals for example, does not serve to guarantee dominance. In considering my personal perspectives, however, I return time and again to feminist thinking on societal and juridical responses to sexual assault. I feel my perspectives both in the course of my study as well as in everyday life, are and remain feminist in origin.

A relevant example is my view that the whole of legal drafting is a process which has privileged phallocentry. For instance, legal tariffing of rape and attempted rape as the more serious charges places indecent assault in the status of a 'lesser' crime. The latter category

may include any non-penile penetration, which can be more injurious to the victim physically, and may objectify a violated individual still further, causing additional emotional harms. In my professional practice, I have heard disclosures from individuals whose experience of indecent assault was far more traumatic for them than another's experience of rape, which was itself nothing short of diabolical. But in the case of sex abuse, the penetration by a penis is still seen as the most serious assault, regardless of the nature of any given assault. This legal classification might be seen simply as poorly informed thought which has overlooked the female view, or as misogyny that privileges any male view over that of any woman - but I would argue that the criminal system does not just undervalue *women*; it undervalues everyone who is 'not-man'. Sommers' (1994) discussion concerning the prevalence of sexual abuse centres on rape *per se*, and she argues that more rigorous research methodologies would result in downward modifications of the (rape) statistics. This centring on quantity does not however, weight the victims' view, and Sommers relies upon the naming of rape by the victim as the major signifier, whilst paying no attention to the social encouragement, framed by society's overall phallocentric structure, upon women to accept sexual violation masquerading as seduction, as Lees (1996) posits - leaving out the violence or interpreting it as a function of the woman's desire.

I was therefore searching for a theoretical paradigm which could examine the usually successful dominance by the perpetrators of sexual abuse, of younger females *as well as* males. A useful model also needed to be relevant to the criminal court system, and to include matters of jurisprudence. Except in a very few cases, the current societal responses ensure that the worst that occurs from the perpetrator's side of things is that current victim(s) are removed from availability to him, leaving him to go in search of new ones. In order critically to consider the current inefficacy of response by society as a whole to a disclosure of child sexual assault, I took as a starting line, whether reported abusers became defendants in court and whether, once defendants, a conviction was achieved.

In addition to absolute belief in the victim's account which is necessary in order for jurors to convict, a final barrier to justice is the sentence which, when punishment is meted out by the judge, sometimes appears to ignore the horrific nature of abuses endured. The questions both of belief and assigned seriousness concerning sexual abuse were issues I wished to examine, by considering the course which children's disclosures take once they reach court.

I believe my area of study is a broadly feminist issue. Not only is it largely women whose lives are manipulated by males in the course of the events and aftermath of sexual assault, whether as victims or carers of victims, but it is usually males who perpetrate the sexual assault of both adults and children. I do not discount the fact of child sexual assault by women against both boys and girls, but as yet I am aware of only very occasional court prosecutions of females for offences of this type. However I acknowledged that a broader model than exclusively 'traditional' feminist perspectives would be needed which could also embrace the fact of *male* child sexual abuse by adults, usually, but not exclusively, males.

**Hegemony and sexual abuse: a proposed paradigm**

I moot that we exist in a hierarchical order: class being a major factor: (see for instance Westergaard & Resler, 1975). As time has passed, however, and more 'liberal' thinking has come to the fore, a large range of discriminations has been identified, and attempts made to theorise and deal with (or not) their effect upon the fabric of society. Within the societal pecking order there are many groups who come out anywhere but top, with their relative position, which is never fixed, depending for the time being on the individual setting and circumstances and upon their cultural positioning with respect to other individuals or groups.

Amongst a selection of well-known prejudices one might include racism; sexism; homophobia; ageism; lack of rights for, or prejudice against, disabled people... or others. Some attempts have been made to legislate about certain 'isms'; others are not taken seriously enough by society to be regarded as worthy of positive change. Indeed, as I have previously argued[1], any excepting white, healthy, conforming, financially solvent males can become a target of discrimination. And, as I posit, within that grouping of white male privilege too, power differentials exist and develop which have serious influences upon individuals.

To the list, which is not in any event exhaustive, I wish to propose a further category: that of **'youthism'**. By that I mean the historical as well as the current undervaluing of children and young people: the tendency to suggest that younger members of society are of lesser value; more likely to lie; the disregard of the vulnerability of youth to exploitation, whether for

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[1]Chitson, F (1990) *Day Care: The clients' point of view* PQ Certificate Project: University of Southampton (Unpublished)

so-called legitimate means or not; the continuing failure of a proportion of parents and carers to offer appropriate care, guidance and discipline; the lack of respect for children's viewpoints, wishes and feelings in relation to their situations; and the lack of respect of their bodies - their personal autonomy and privacy - which can in a number of instances lead to a variety of child abuse being perpetrated against them. Jane Dalrymple and Beverley Burke (1995) discuss what they describe as 'adultism', noting its role in the framing of tendencies to ignore or minimise young people's views. I have preferred the term youthism, however, to mean discrimination on the grounds of youth in the same fashion that sexism and racism discriminate on the grounds of sex and race respectively.

With such an untrodden term, however, it is difficult to draw together theory which can be useful. I was searching for a theoretical model which could examine the usually successful dominance by sexual abuse perpetrators of younger females *as well as* males. The model also needed to be relevant to the criminal court system, and it was necessary to find a starting point which could explain the events which follow the disclosure by young people of sexual abuse. I was seeking means to flesh out theoretically, my hypothesis that the legal system serves to uphold perpetrators' rights; yet breaches those of young victims. In short, I wished to address hierarchies of power not just between women and men, but between any less powerful individual and any more powerful one, and which goes beyond gender considerations alone.

Thus in seeking a way toward theoretical understanding, I chose to press the work of feminism into service to assist and to model. I examined mainstream feminist theories which would assist in the construction of a broadly feminist model, albeit one removed, but in keeping with the spirit of feminisms, and offering anti-oppressive, non-patriarchal, non-phallocentric hypotheses. I have found particularly useful the work of anthropologist Henrietta Moore (1994) and the feminist post-structuralist models of Chris Weedon (1987), as well as accounts of jurisprudence from Carol Smart (1989), and the rape trialing and reform critiques of Sue Lees (1993, 1996, 1997). As Weedon notes:

> "Even where feminist discourses lack the social power to realise their versions of knowledge in institutional practices, they can offer discursive

space from which the individual can resist dominant subject positions" (1987:110-111).

Drawing from these works, and a range of more generalised feminist theory, noted below, I attempt to advance what Moore terms a 'post-post-structuralist' model, which when related to child sexual abuse trials will, I believe, assist in the comprehension of what is taking place.

**Study objectives**

After considering the historical development of the trial system in England and Wales as it operates in and pertains to the range of sexual assaults, my objective was to research into the experiences of child witnesses who have given evidence against their own alleged sexual abuse perpetrator. From the outset, it became apparent that there was a dearth of qualitative study already available on the impressions and reactions of young witnesses to their court encounters. I discuss this in greater detail in Chapter Two.

In the light of the relatively short period during which sexual abuse of children has been prosecuted regularly within the criminal sphere, it was necessary to broaden my outlook beyond the situation of young people alone. I drew on research into the practical running of germane court trials, as well as consideration of relevant theory. In attempting to place the issues around sexual crime involving minors into context, besides the authors already referred to above, I examined issues around childhood abuse and deprivation (see for instance Bifulco & Moran 1996). I also drew from works on theories of justice and jurisprudence (such as Ryan 1993, Morrison 1997); from feminist theorists and criticism (e.g. Tong 1989, Nicholson 1990, Browning Cole 1993); and from critiques of Foucauldian philosophies (Woodhull 1988; Martin 1988; Diamond & Quinby 1988; Sawicki 1991). I was conscious of the effects upon me of the material examined, and was aware of making some ethical assumptions about the responses by society to disclosures of sexual abuse.

From the point of view of my own study, however, in my estimation the issues are as much about the *victim*'s view of what is taking place as that of society as a whole. Thus the views of individual young victims about sentencing of a guilty defendant were a very important issue. Equally, their view about justice: what it means and whether they obtained it, were an

essential consideration. Thus I wished to study the 'efficacy of response' to child sexual abuse; not only what society feels should happen and why, but what those on the receiving end of sexual assault consider. I hoped to begin to redress the balance between, on the one hand, the dominant opinions that inform our judicial system and procedures; and upon the other, the minority personal experiences of victims within the auspices of our judicial system.

**Personal perspectives: issues & interests**

The matter of my own position in both practical and philosophical terms is relevant, as in any personal research study. I have always had a strong commitment to anti-discriminatory social work practice, which has been maintained as my experience has broadened within a very varied social work career spanning a quarter-century. Over a number of years, tacitly - and at times overtly - I have challenged the phallocentric order; this as well as my child-centred interest has brought me to the point of wishing to study the phenomenon of young people's unequal treatment at the hands of the judicial system.

Carol Smart (1989) discusses the reform of child abuse court procedures. Her view is that whereas the law is seen as self-regulatory and appears open to acting upon criticism, in fact it hardly alters. But as she argues, if the system *looks* fair and child-friendly, there will be a tendency to assume that for instance, not guilty findings may really suggest the child was lying. In short, reform must not be seen as a total saviour, and a critical perspective about the effects or *outcomes*, not just the *process*, must be maintained.

Such insights have assisted my understanding, now with hindsight, of the emerging process of child protection over the 1980s and 1990s. In the mid-1980s, I was employed as a Social Services Court Officer, and, trained in child care law but not legally qualified, I was entrusted as the Local Authority applicant for numerous Care Proceedings and related applications. In the Juvenile and occasionally County courts, I relied upon memory rather than any real lawyer-like knowledge, and developed an ability to think on my feet. There was one further advantage: I was never obliged to take a case unless I believed in it - not something most lawyers are able to do. I noted often that such professional reflexivity within the child protection process could be a source of irritation to opposing advocates. Yet their own task -

to win their case according to instruction and regardless of the best outcome for the child - failed to fit with the place from which I was operating.

I had some awareness, therefore, of the ideological position of lawyers in civil child care cases, often seeming professionally unconcerned with the wider human issues, in favour of their clients' instructions. Approaching this study of children's experiences in criminal trials, the difference between my feminist social work position (emphasising the need to take very seriously what young abused children had endured) - and the concerns of defence lawyers to obtain acquittal for the accused (whether or not he had actually perpetrated the offence), was very much in mind.

Particularly given the faith which is placed in the British legal system, the academic rigour of any research that might criticise the system was especially important, and I have tried to be stringent, too, in this resulting dissertation. Introducing the concept of 'youthism' and discussing my term 'not-men' in this opening chapter, I have considered useful theoretical positions, and in particular, feminist (post) post-structuralism as an aid to a growing understanding of some juridical issues.

In Chapter Two, I discuss relevant historical perspectives and the available literature and research. My focus is on the adversarial system and the position of children within it; progress achieved in the reform of sexual assault trialing, including the use of video and closed circuit television in courts, as well as myths concerning the suggestibility of young people. I note the problems that still exist, including continuing judicial practice. I compare women's experiences of the court system in rape cases; issues of power, disbelief and morality regarding the incidence and legal responses to adult sexual abuse; feminist studies of morality and the position of women as 'incompetent', noting the relevance of legal reform in this area to my study proposal. My argument is that the current court system fails to provide a disinterested or child-friendly forum in criminal proceedings concerning sexual assault.

My study methodology and method are considered in Chapter Three. Here I outline theoretical perspectives, noting the qualitative nature of my study. I discuss some ethical considerations, reiterating the importance of encouraging young witnesses' voices and how

my questions were framed to address this. I state the study's development: approaches for permissions and access, and problems and progress.

I then move to data analysis in Chapter Four, discussing theories for analysing qualitative research, discussing how I handled and categorised my case studies to draw out the voices of the young people to whom I had spoken.

Chapters Five and Six present the data itself. In Chapter Seven, I have linked the former two chapters to discussions around child-centredness in the court trial system, issues of power, and finally issues of justice. Chapter Eight continues the discussion process, offering theoretical perspectives and mentioning possibilities for reform. In Chapter Nine I present my conclusions.

# Chapter 2

## Review of research & associated literature

### Introduction

The study I proposed to undertake has led me through literature which touches on differing disciplines. In this chapter, therefore, I consider relevant studies concerning both historical themes and current conduct of child sexual abuse trials and children's evidence giving. The use of video technology and courts' use of closed circuit television is discussed, both from the viewpoint of the use of technology itself, as well as how it affects young witnesses. The government policy of 'speedy progress' of prosecutions and evidence giving by children are introduced, including child suggestibility. Additionally, the impact of court judgements is noted.

In the next section, I consider literature relevant to theoretical, practical and feminist perspectives upon historical and modern jurisprudence and the prosecution of sexual offences. A number of studies address adult sexual abuse, and I argue reasons why the subject of rape, which provides much helpful discussion, is germane to my study proposal. In essence, qualitative studies concerning women's evidence in rape prosecutions flag up the sorts of issues which are of relevance when researching into the experiences of *child* witnesses. The effect of the media upon this area is argued. I discuss the incidence of rape, views about disbelief and women as 'incompetent witnesses', issues of power (and hetero-sex more generally). Legal reforms are considered, and I draw together some research strands which have evaluated the changes.

The theoretical perspectives are then raised, including the importance of difference, feminist notions of justice and the importance of giving victims a voice. I introduce my use of post-structuralist and post-post-structuralist theory to assist in understanding children's court treatment in sexual abuse indictments. Finally, I discuss some perspectives concerning legal and juridical issues.

**Historical perspectives: unreconstructed justice**

Until the recent past, it was extremely rare for adults to be charged with the sexual assault of children. Young people were supposed to be 'seen and not heard', and issues regarding sexual behaviour were rarely spoken of; opportunities for a child to speak and be listened to, let alone believed, were scarce. Equally, the evidence of a child in court - upon any matter - was considered unsafe unless corroborated, and in cases of assault, issues of whether or not children should give sworn evidence hindered all but a few cases, where the child's account was not the primary deposition (Haste 1992).

With a gradual growth in awareness of child sexual abuse during the last quarter of the twentieth century, however, children's disclosure of abuse began to be accepted and more readily believed by adults. This led to growing numbers of prosecutions relating to sexual crimes against children, and an increasing need for young people to give evidence in court. However, the prospect for a young person having to face their abuser in court and recount traumatic, intimate and embarrassing details of what took place was extremely daunting, and often resulted in the witness breaking down entirely with the trial being abandoned (Smart 1989). Thus convictions for child sexual abuse remained uncommon.

The historical arguments turn upon the medieval basis of the courts and justice: the accuser facing the accused, irrespective of pain and dilemma. At least in part because of the heavy penalties which guilt carried, the system's need for certainty was paramount - and an agreed way in which this could be secured was by open confrontation at a trial, as Briggs *et al* suggest (1996). Such legal methods were seen as secure, their primitive origins remaining largely unevolved even when the fabric of society and the justice system began to alter. (Smart 1989), argues issues of jurisprudence are especially resistant to change or modification. The disqualification of any besides law's own discourse plays to the notions of difference within the hierarchical ordering, which has begun to be identified and discussed following feminist thought and theorising; see for example Flax (1993).

Yet, in contrast, there have been enormous changes in the emphasis of the law throughout history, as related to the defendant. The gradual disuse and later abolition of the death penalty is a case in point, Briggs *et al* (1996). Despite moves toward change, the faith of society still remains vested in the criminal justice system. Criticisms concerning individual cases, such as

those of the Guildford Four and the Birmingham Six, are seen as unfortunate errors, and following them, no root-and-branch shake-up of the justice system has come about (McColgan 1996).

In recent years, however, changes of a more radical nature were brought into being. The way in which first young people, and latterly other vulnerable individuals give evidence has been altered to an extent that would have been unthinkable a mere decade earlier (although at the time of writing the Criminal Evidence Act 1999 has yet to be implemented). John Spencer, (2000) in his address to the Vulnerable Witnesses Conference, discussed the fundamental nature of legal changes about evidence giving during the final decade of the twentieth century.

**Criminalising child sexual abuse: issues and debates**

The criminalisation of child sexual abuse began at the end of the nineteenth century, and as Smart notes:

> "It was (and remains) an approach which combines a recognition that children need to be protected with an ambivalence towards victims of abuse", (1989:51).

Cate Haste (1992), too, discusses the rise and effects of the 'moral panic' concerning the sale of children into prostitution in the mid- to late nineteenth century. However, the corollary became that identification of 'moral danger' could lead girls to be incarcerated; it remained a specified ground for Care Proceedings until the implementation of the 1989 Act. Cohen (1973), Myers (1994) and Faludi (1992), amongst others, have discussed the meanings of 'moral panics' relating to child issues; Smart (1989) also documented the societal concerns about threats to family life of those (often aristocratic) men who 'ruined' working class girls. Smart argues that the results of moral panics of the 1880s and 1970s dealt with threats to children of abuse from outsiders; in the nineteenth century however, there was much greater resistance to the criminalisation of abuse occurring within the family, largely due, as Smart notes, to "the simple denial that such acts could occur" (1989:53).

The Criminal Law Amendment Act of 1885 criminalised non-familial child abuse (Smart 1989); but instances of sexual abuse led to problematising of the child concerned, amid fears that s/he would 'contaminate' other children. Thus by the very act of complaining of abuse, the child was placing her/himself into a state where s/he was innocent no longer. It was not until 23 years later that the Punishment of Incest Act 1908 criminalised familial abuse. This Act's focus is noteworthy - upon the 'unnaturalness' of 'carnal knowledge' between blood relatives, rather than exploitation by the paterfamilias. As Smart notes (1989), the rejection of moves to include abuse of stepdaughters emphasises the blood-taboo issue rather than that of child protection.

**Criminal approaches: research on the conduct of child sexual abuse trials**

With the growth in awareness of child abuse generally during the past twenty years, the subject of sexual abuse and its prevalence entered the realm of public debate, and thus the attention of research studies. Attempts to prosecute offenders and achieve criminal justice were shown to be failing. In some instances where a decision had been made to prosecute an alleged perpetrator, the case was terminated prior to trial completion. This decision could be due to evidential concerns, for instance if child testimony was regarded by the judiciary as unreliable due to the young age of the child, (see for example Flin & Boon 1989).

Alternatively, for some, it was considered that giving evidence was likely to prove such an ordeal that it was wrong to proceed. Many child witnesses were so traumatised by the evidence-giving process, especially cross-examination, that they were unable to continue and the case was thrown out, (Flin & Boon 1989) although as some researchers report, some children did report their court experience to have been empowering (Berliner & Barbieri 1984). Some accounts, such as Jones & Krugman's (1986) emphasise that given appropriate interview techniques, very young children can be capable of relating accurate testimony concerning personally traumatic events such as sexual assault. However, even where a trial was completed, as has been shown with work on mock juries, there was often a reluctance by juries to convict (see Gabora *et al* 1993; Shigaki & Wolf 1989).

In the light of this, the issue of support for child witnesses began to be debated at length. Numerous commentators argued matters. For a cross section of the viewpoints, some of

which refer to debates taking place in the US, see, besides references in the preceding paragraphs, Gothard (1986); Scott (1989); Lambert (1990); Kendall-Tackett (1991). Various methods by which children might be supported through the court and evidential process were discussed. For the first time, the traditional requirement for the young victim-witness to face the accused was considered, and the possibility debated that it might be relaxed in some way. A number of differing discussions was aired, for example Douglas & Willmore (1989); Spencer (1987). The United States was much affected by the 1990 *Craig v Maryland* ruling, in which it was judged that only in exceptional circumstances would the child's protection from the defendant's gaze be required. Montoya (1992) discusses these and other effects of trauma upon young witnesses. Debates continued about the best means of protecting children and young people who need to give court evidence - or whether they need 'protection' at all - whilst upholding the right of defendants to a fair trial.

Additionally, there has been continuing controversy about the reliability of child witnesses. The position of children in society, together with the juridical history and consequent outcomes of trialing sex offences have placed into the public mind huge queries about the truth of children's statements which allege sexual misconduct, as Shigaki & Wolf comment (1989). A cross-section of the (in)justice issues is also discussed in Cohen (1993); Jones & Krugman (1986); and Scutt (1987), arguing that young people were experiencing the effects of minimisation, disbelief and a reluctance to regard them as persons whose voices were worthy of a proper hearing. Ceci & Bruck (1991) offer an overview of child suggestibility, concluding that, generally speaking, despite the ease with which children can be encouraged to agree with a questioner, spontaneous disclosures of intimate acts involving themselves personally are most unlikely to be fabricated. Concerns about the retrieval of 'false memories of abuse', however, continue to surface. Bifulco & Moran (1998) discuss both this and the notion of what they call 'disavowal', where victims blank out much of the detail of their abuse, although in their experience every person who had been abused was aware of the fact. Much public opinion, however, continues to be influenced by a sense of incredulity about the sexual assault of minors. For a discussion of the implications of the child abuse 'backlash' - sometimes described as 'child sex accuse' - see Myers (1994).

The Criminal Justice Act 1988 abrogated the corroboration rule for unsworn evidence of a child: providing the child understood the duty to tell the truth, their evidence might be

sufficient for a jury to convict. The trial judge's discretion became the deciding factor in whether a young child was considered competent to give evidence, albeit unsworn, although judges generally continued to warn juries of the dangers of convicting on uncorroborated evidence, as Smart states (1989).

In 1989 the Pigot Committee - *The Report of the Advisory Group on Video-Recorded Evidence* (Home Office, 1989) - reported, making a quantity of recommendations about the treatment of child witnesses. Although some were implemented, such as the use of video-recorded evidence-in-chief, others, such as the proposal that the cross-examination of the young witness should also be pre-video-recorded, were not made into law. A short time later, the *Memorandum of Good Practice* (Home Office 1991) set down detailed guidance on the process of interviewing asserted child victims of sexual assault. This allowed young peoples' initial disclosure to be investigated jointly by trained police officers and social workers, with child interviews taking place in a special suite, located away from what was felt to be the intimidating setting of a police station. Such interviews are videotaped and usually form the young person's evidence-in-chief if the matter is ever brought to trial.

The changes in the law following the Pigot Report and the *Memorandum* have certainly assisted to some degree a proportion of the young people who have disclosed sexual abuse. In some instances of which I am aware through my practice, the alleged abuser admitted events when confronted with a videotaped statement of the child. However, despite carefully managed and recorded disclosures, the number of alleged perpetrators of sexual abuse brought to trial remains extremely small, when the known scope of the problem of sexual abuse of young people is placed in context. Additionally, the conviction rate where the defendant pleads not guilty is also poor. This is discussed further below, and some possible reasons and remedies are mooted.

Examples from my own practice demonstrate that, for the young witness, giving evidence - albeit via a closed circuit television link (CCTV) in a separate room away from the court, or with a screen protecting the witness from seeing the defendant - is an additional ordeal to the abuse which led them there. Researchers such as Davies and Wilson (1994) have examined the practices surrounding the videotaping of children's evidence. They note the positive changes in the law following the Pigot Report and the *Memorandum.* The study of San Lazaro

*et al* (1996) into criminal investigation outcomes, showed a conviction rate of 86%, given very 'pragmatic selection' of cases for prosecution, many of which resulted in guilty pleas to lesser charges. The Victim Support evaluation study (Plotnikoff & Woolfson 1996) notes a conviction rate of 62% where outcome was known, but this makes no distinction between pleadings.

Despite intended improvements for youngsters giving evidence, the adversarial system continues. Thus the defence lawyer is charged with obtaining an acquittal for his client, the alleged perpetrator, by *any* legal method. This means that the defence often intimidates the young witness in course of cross-examination, asking searching and embarrassing questions, not relevant to the offence at issue. At times other irrelevant or confusing pieces of information are introduced by the defendant's lawyer, again to raise doubts in the jury's mind. The defence is assisted by the fact that we live in a patriarchal society where so-called normal male views are rarely regarded as prejudicial to non-males, relying as they tend to, upon issues that are promoted as 'common sense'. As Lees (1993) notes, the prosecuting counsel rarely challenges comments from the defence which are prejudicial to the victim of the assault.

Levels of witness distress have varying effects on juries (Swim *et al* 1993; Brekke & Borgida 1988; Field & Beinen1980) and anything that might increase juror scepticism will assist the defence case. Some of the issues concerning the credibility of young witnesses giving evidence on CCTV are addressed in Westcott *et al* (1991). Their non-abuse-related studies children suggested that, of itself, the CCTV link was no more likely to produce a particular result than testimony in open court; and that testimony via the link was not a communication inhibitor. However, they also conclude that the adversarial system itself has implications for the perceived credibility of young witnesses.

The Criminal Justice Act 1991, implemented in October 1992, was the first statute to legislate for the 'speedy progress' of prosecutions for sexual crimes against children. Plotnikoff and Woolfson's (1995) study evaluated the progress made. They showed that far from speeding up their progress through the criminal justice system, matters of child sexual abuse took longer than the national average for other criminal proceedings to reach disposition. The

procedures intended to reduce delays were little used, and were in any event, ineffective, often actually lengthening the process.

For Gerrilyn Smith (1996) in an unpublished lecture, the criminal justice system provides a poor likelihood of delivering justice for sexually abused children. She argued there was an expectation that children would fit into the adult system, noting the reluctance of young persons to 'bother' to accuse adults because of the small chance they had of being believed. From the other, more litigious outlook, criminals, including abusers, need to be brought to account for their actions.

A number of studies have looked at quantitative issues surrounding sexual abuse trials. (See for example, in addition to those already cited, Chandler & Lait (1987) on the treatment of children in the Crown Courts; Wiseman *et al* (1992) on issues of reliability; Glaser (1989) on the evaluation of videotaped evidence). A few studies have considered the effects of the investigative and support system generally in matters of child sexual abuse, such as the NSPCC study (Green & Katz 1999), with which I was invited to collaborate. Additionally, Deirdre O'Shea and Annie Bousfield's (1999) article concerning a qualitative study into the experiences of fourteen children who had given evidence in Kent in 1994 to 1995, identified a range of similar concerns. It is one of very few studies which addresses accounts of young witnesses of their views and feelings about what took place in court. This qualitative area has largely neglected, especially in government-commissioned research. For example, Andrew Sander's (University of Bristol) commission to undertake research concerning the planned introduction of new ways of hearing the evidence of vulnerable witnesses, as legislated for in the Youth Justice & Criminal Evidence Act 1999, does not seek the individual accounts of witnesses as a major feature of the study Sander (2000).

**Justice for children**

The position of children in society continues to generate debate (e.g. Foley *et al*, 2001). However, in contrast to the paramountcy of the child's best interests in civil legislation, the positioning of criminal justice's focus in child abuse indictments is upon the defendant, not the victim. At the inception of my research, few studies had been conducted about the experiences of young witnesses and the impacts upon them, from their own viewpoint, of

giving evidence. Despite the widely held belief that the broad protection of young people from harm is of the most pressing concern, the voices of children themselves are rarely canvassed concerning issues that are considered to be within the adult and tacitly male, purview. For young witnesses, the prospect of having to attend court to speak of their abuse can be truly terrifying. I therefore proposed to study the experiences feelings and attitudes of young witnesses who have given evidence in the trials of their sexual abuse perpetrators.

The historical difficulties in prosecuting child sexual abuse persist despite attempts at reform. Numerous instances are noted of appeals in child sex cases being upheld for spurious reasons, sometimes centring round semantics and the exact wordings to juries used by trial judges concerning weight of evidence, (despite a lack of legal obligation upon the judge to mention such matters). Some notions endure, such as that certain classes of witness are inherently less credible than others. Smart (1989) notes that the legal disqualification of children is an issue in its own right. I would posit that resistance to the concerns of any less powerful group is a feature of the practice of law as a hegemonic institution.

Further, the question of sentencing in sex offence cases is one which regularly has caused criticism. Various sentencing guidelines have been stated, and numerous cases reported, with moral judgements made about the possible 'culpability' of the girl concerned, even in incest cases. Broadly, the degree of harm and abuse of trust occasioned to the victim affected the imposition, or not, of custodial penalties and sentence length, but with numerous mitigating circumstances included. In one particular case[2], Lord Lane stressed that circumstances varied infinitely and sentencing should not amount to a rigid arithmetic approach. He noted, "...sentencing is an art rather than a science; ...leniency [was] not in itself a vice. That mercy should season justice was a proposition as soundly based in law as literature".

Much of the rhetoric leads back to the idea of children being partially to blame in at least some cases. The fact that, of necessity, loose *male* morals are operating in unlawful sexual intercourse cases is not mentioned; the double standard applies, and the judiciary can thus become embroiled in highly questionable judgements. Lyon and de Cruz (1990) discuss judicial attitudes concerning children, mooting an approach to the justice question which marries together the needs of the victim, and the needs determined by justice in its philosoph-

[2]Attorney-General's reference No 4 of 1989

ical sense. Given occasions where a defendant has been found not guilty and has gone public about the 'miscarriages of justice' which he might have endured, there is a sense that many children lie about having been sexually abused, with the actual incidence of abuse being regarded as much lower than disclosures suggest. The ability of sexual abuse perpetrators to groom both their child victims and adults alike is not generally referred to, and the insidious effect upon society is often actively refuted. The development of a partnership in judicial decision-making, similar to the multi-agency approach to child protection could ensure the interests of the young people are the paramount importance to all involved. Dalrymple and Burke (1995) note the importance of legal change in the development, generally, of anti-oppressive practice, citing improvements in attitude toward young people which have derived from legal reforms. However, when children are witnesses their needs are no longer the paramount consideration, and this effective cessation of their rights renders them extremely vulnerable.

**Studies concerning adult sexual abuse: relevance to my research proposal**

In view of the relatively short time over which young people have been able to attempt a criminal remedy for their sexual abuse, I have turned to the wealth of writing upon the subject of rape, and particularly on the issues surrounding rape trialing.

Since the work of writers such as Susan Brownmiller (1975), Susan Griffin (1981) and Jill Saward (1991), amongst others, brought the circumstances and nature of rape more into the everyday public consciousness, a vast amount has been discussed about its inevitable concomitant, the criminal judicial process.

Carol Smart suggests that, "law's definition of rape takes precedence over women's definitions..." (1989:4). She argues, however, that it is essential for feminists to tackle law at a conceptual level in order to discourage resort to this major signifier of masculine power as if it could hold the key to women's oppression. It remains a widely held belief that women are responsible for the sexual behaviour to which they are subjected. Historically, as well as currently, women were felt to provoke attack, to 'ask for it', in effect, (Haste 1992). Men who 'lost control' at the sight of female humanity were considered to be less culpable than for crimes of other orders. Susan Faludi (1992) discusses the resurgence of 'backlashes' against

emancipation, which she argues come into play when reforms concerning women's position show signs of lasting effectiveness. I note that the phrase 'political correctness gone mad' is all too often forwarded as a reason to disregard otherwise logical arguments about equality. The opposite - which I define as 'political incorrectness' - is used however, with impunity to treat women as unreliable witnesses - yet one does not so often hear popular accounts against the power of patriarchal hegemony. Smart notes "how law exercises power and how it disqualifies women's experience/ knowledge"... (1989:2); indeed any "...alternative accounts of social reality", (1989:4). Smart suggests an explanation for law's lasting resistance to change which she calls the "ideal of law", (1989:11), in which, as she argues, claims to legal truth can become accepted realities in the wider societal sphere.

Aspects of rape law reform, its effects and evaluation, have occupied much writing. Turning to an overview of the subject, the work of Carole Goldberg-Ambrose (1992) argues the pros and cons of legal change, and considers some of the pitfalls. Numerous controversial judgements led to concerns being expressed about the probing, in cross-examination, into the sexual history and lifestyle of rape victims. Such questioning left women feeling as though they were on trial, not their rapists, (Stanko 1985). The Sexual Offences Act 1976 provided anonymity to victims and disallowed routine interrogation about women's previous sexual life, although the option to do so remained under the judge's discretion. Haste (1992) notes that in the early 1980s, women were still deterred from complaining of rape for fear of unfair treatment by police and the courts. A number of miscarriages of justice hit the headlines, noting the pressures involved in giving evidence in court and the leniency shown to those convicted. Haste's account (1992) notes that the Lord Chief Justice, Lord Lane declared that imprisonment was the appropriate sentence for rape unless there were exceptional circumstances. However, the Criminal Law Revision Committee turned down proposals to extend the offence of rape to marriage: 'An extension of the offence to all marriages... might be detrimental to marriage as an institution,' it concluded (HMSO 1984:20). Haste notes (1992) that it finally became an offence in 1991 after a judgement ruled in favour of a wife who was raped by her husband whilst they were separated.

Sue Lees (1993, 1996, 1997) has researched court trials in rape cases, and written on the subject from 1989. The main drive of her work is summed up here in view of its relevance to my early thinking and study design. Lees (1993) definition of rape is that it is:

> "...the expression of power and the desire to humiliate. It is one way that men use to dominate women. Another form of domination is practised by the courts where men, highly paid and unscrupulous, defend this right that men hold to power over women. The judicial 'rape', where a woman's reputation is put on trial by the court is, according to many victims, as humiliating as the actual rape. In some respects it is worse, more deliberate and systematic, more subtle and more dishonest, masquerading in the name of justice". (1992:11)

Lees has investigated the process of attrition in sex assault cases by examining police records; monitored Crown Court rape trials using transcripts and personally recorded proceedings verbatim; and surveyed rape and attempted rape survivors. Lees notes that judges are quick to inform juries how 'easy' it is for women to bring rape charges. They do not mention, however, that the matter will have been before the Magistrates Court previously for committal to trial, and that the women may have been under great pressure to drop the case. Media accounts to the present day also continue to suggest how easy it is to accuse a man of rape, and how difficult to disprove, whereas in fact the direct opposite is the case. The comments made by judges in a number of Lees observations state that sexual assault complaints are prone to be lied about; but nowhere is it suggested that accused men are likely to lie to escape conviction. Yet, of the two versions put forward of the circumstances, the woman's is frequently discounted or disbelieved. The level of intimidation she faces from her attacker, too is ignored. Rather, sexual innuendo goes unchallenged in trials. For example, Lees notes how intimate garments, belonging to the woman, have been used as titillating objects, handed round with veiled disgust, and made the subject of cross-examination.

Writing in 1996, Lees noted the absolute numbers of convictions for rape, attempted rape and lesser offences had decreased from 1985 to 1994, according to Home Office figures. In 1993, 9.9% of cases reported resulted in a conviction; in 1985, it had been a 24.4% conviction rate. Lees argued that over the period, the Crown Prosecution Service was proceeding with fewer

cases. In 1995, the CPS had declined to pursue two cases which were later successfully privately prosecuted, although as Lees explains, access to private prosecutions has also been reduced. Furthermore, despite the progress achieved, for example in the police's response to reports of sexual assault, Lees concludes:

> "The problem really lies ... with the difficulty of gaining convictions when so much is stacked against the complainant.... [T]he image conveyed by the judiciary is that all is well with the judicial treatment of rape and the main problem is to protect men from false allegations". (1996:238)

The difficulty is that a certain amount of 'persuasion' towards sexual encounters, which can lead to violence, is seen by many men, including barristers, as a perfectly acceptable part of the courting process. The idea that women enjoy yielding, whilst maintaining their verbal refusal, is a strong idea and one of the most difficult to deny. Corroborating evidence of, say, the extreme distress in which one women was found immediately following the attack is not best used by the prosecution. In such an instance Lees personally questioned the prosecution barrister about why the woman's distress had not been mentioned by him in his summing up. He gave the opinion that information of her state was *not corroborative*, (my emphasis) exemplifying the lack of sympathy by the prosecutor for the victim. For her part, her life had been wrecked. For him it was just a day's work.

Often, as her trialing studies show, jurors are only able to deal with the conflict by their inability to reach a verdict, the effect of which is to cause a retrial where the woman, if she can face it, is obliged to go through the entire procedure yet again. The effect of two no-verdicts is to allow the defendant to go free by default. However jurors are often time limited for their deliberations, (which rarely occurs in other serious trials) and are not encouraged to reach a verdict, nor informed of the effects of their not doing so.

Another difficulty is the feelings of aloneness experienced by victims in the court process. They are not represented as the defendant is, there is no legal assistance for their appearance which is merely as a witness for the prosecution. Lees notes, "[This] results in a highly disinterested representation on the woman's behalf", (1992:23). She describes this as a 'contest' system of trialing, where each advocate has a turn at questioning each of the

witnesses. Amongst other problems, this puts considerable strain on the jury to remember exactly what was said (Spencer 1989), leading to an adjudication which relies upon impressions.

Lees states that a problem with legal changes being implemented in Britain rests in its anachronistic and old fashioned judiciary. Her assertion is that judges are largely old, male, upper class, white and highly privileged, presiding over courts which they regard as havens of rationality, away from the otherwise imperfect world. The judiciary has opposed steps to improve its training over a long period, fearing the imposition of 'official' views upon their independence. Despite evidence to the contrary, new moves have therefore arrived slowly. Her view is that the evidence of rape victims should be heard in private with reporting restrictions intact, with screens or CCTV linkage to protect them. A greater official awareness of the trauma involved should be in place, she argues. New laws have come into being since Lees papers but many of her concerns remain untackled. As will be seen, however, numerous issues regarding rape trials apply to child sexual abuse trials also.

**Patriarchy and dominance**

Marilyn French (1985) has contended that the juridical institutionalisation of patriarchy and the control of females (or subordinates) appears to have increased. Her discussion on the origin of patriarchy and morals has proved helpful. She argues:

> "Our moral system is a system of priorities, or, rather, a texture, an inter-locking set of shifting, ambivalent, and conditional goods and ills.... The morality of a society also manifests itself in its choices:... its mode of ordering itself and the kind of order deemed desirable" (1985:16).

French's placement of societal structures and their histories into a contextual framework has assisted me in the analysis of the 'modern' juridical structure. She offers an account of the male fight to control nature, and thus those aligned with nature, as well as others regarded as inferior. Women, entrenched with nature, reproduction and all it entailed, became objects to control; to exercise power-over. French concludes that:

> "In patriarchy was not an attempt to revise matricentry, but to overthrow it, to revise its values and its organisation" (1985:122).

Peggy Reeves Sanday (1981) provides two criteria for male dominance: the exclusion of women from political and economic decision making, and male aggression against women in any form. This definition can produce some paradoxes: some societies which include women in politics still feature considerable aggression against women; equally, the 'myth of male dominance' (Rogers 1975) can feature where men are less aggressive to women, or where women have some world power. Patriarchal cultures control women, taking over and regulating female functioning, and limiting women via economic and familial institutionalisation. Such cultures require coercion to achieve control: if there were a group that was *naturally* superior, it would be able to rule without force to maintain its supremacy. This is not in fact the case. French (1985) makes the point that even feminists at times judge equality as the achievement by women of what men already possess. She notes:

> "Requiring sexual fidelity of women, but not men, makes women's bodies men's possessions, without the reverse.... A man may *grant* his mate equality, but it remains his to confer, not hers to require, and he can at any time withdraw his gift" (1985:84 - emphasis in original).

French goes on to argue that patriarchy made men central (and women marginal) to human life; yet women's roles of procreation ensure they remain central. Men's centrality in political and economic life, from which women are largely excluded, ensures women are dependent upon men. Yet despite attempts to enforce subordination, women refuse to be silenced. Whilst masculine power is rooted in the world, feminine experience is rooted in nature (1985). So arise the binaries of meaning which assist in the continuing lower ranking of qualities which are regarded as 'feminine'. Thus authority, aggressiveness, ownership, law, truth and justice are all regarded as 'masculine'. Feminine symbolism tends to be polarised in the ideas of 'virgin' or 'whore'; there is rarely a middle path. Despite recognition that individuals can possess positives or negatives attributed to the other sex, people are likely to be judged according to stereotypes. Over time attitudes have to be repetitively expressed, in order for the unnatural masculinisation of control - patriarchy - to survive. Equally, the elimination of female power has not been achievable. Throughout history, instances of the

writing of the day show how threatening even small amounts of female authority have been to men.

French discusses the issue of power over one's individual self which she regards as essential for basic harmony in life. This includes the right to be free of abuse, to control one's own sexuality; to marry when, whom and if one chooses, and to control one's own reproduction. In all Western cultures, most women have been restricted concerning these rights; however, some women have been able to obtain a measure of power to control such facets in their lives: yet progress is often negated, and women and girls are blamed for the sexuality of males. French cites, for example, a Wisconsin circuit judge who labelled a five year old girl the 'aggressor' in a matter of sexual abuse by a 24 year old man, whom he exonerated[3].

The view of S.P. Schacht and P.H. Atchison (1993) in their article has been very affecting, going toward explanations of male dominance when viewed from a feminist perspective. The issues of pre-existing gender inequalities and their origins are argued, with especial reference to their relevance to heterosexuality. Schacht & Atchison consider how heterosexuality is practised as a form of male dominance, whilst Catherine MacKinnon (1983) describes it as:

> "[A] socially constructed form of power.... [T]hrough sexual relations... men dominate and control women.... [S]exual acts that involve coercion, violence and even consent are all viewed as falling under a dynamic of male dominance and female subordination". (1983:637)

Schacht and Atchison's article offers a definition of heterosexuality: an eroticised, hegemonic, instrumental ideology of male dominance with the goal of exertion of power and control over the subordinant actor in order to maintain pre-existing gender inequalities. As well as the whole range of male responses, including aggression, harassment, undermining, power-play or actual violence; they point to all types of sexual abuse. Heterosexual instrumentalism, allowing men to dominate women, provides the underpinnings of a system where women are controlled in all settings; and only when incest, rape and prostitution and all other images of heterosexual instrumentalism are eliminated will male dominance disappear.

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[3]Citation in French, M (1985): *National NOW Times,* Jan/Feb 1982. The judge was Wiliam Reinecke, circuit court judge in Lancaster, Wisconsin.

Societal response results in instances only coming to light occasionally, often after lengthy periods of abuse. Such heterosexuality is seen as the foundation of the social structure of male dominance; with consent making no difference, and dominance the result. Although the egalitarian nature of some relationships is accepted, they note that some homosexual partnerships also indirectly support heterosexual instrumentalism. Their analysis discusses the myths which surround rape: its supposed rarity; its usual commission by psychologically sick strangers; and that society's response is supportive to the woman and punitive to the perpetrator.

Again contrary to popular belief, the majority of rapes are carried out by someone the woman knows, and with whom she is or has been, intimately involved. Russell and Howell (1983) found only 16% of rapes were by strangers. Pauline Bart (1983) asserts that to say rapists are 'sick' is inaccurate unless one is prepared to purport that a substantial percentage of the male population is 'sick'.

According to Malamuth (1981), 35% of males indicate some likelihood of raping - a 'rape proclivity'. The media reporting of sexual attacks is criticised for targeting these, rather than other, crimes of violence such as mugging, yet without reporting the true picture as it occurs. Many convicted rapists do not view their forced sexual relations as a crime; and psychological studies fail to differentiate rapists from the rest of the male population. A profile of the potential rapist is thus shown to be that of a normal male, not a 'psychopath' or 'criminal'. Writers such as Brownmiller (1975) assert that the fear of rape maintains limits upon the behaviour of all women, and sustains pre-existing inequalities.

Dobash & Dobash (1998) discuss new ways of considering forces of violence. In particular I found their questions on the potential patterning and function of violence very useful: I return to their work in Chapter Eight. Lundgren's (1998) work concerning gender power, violence and resistance has also been valuable in thinking about pluralities of meaning, and the constantly changing natures of and attitudes towards dominance. This may apply especially when her arguments concerning apparent societal acceptances of "a fundamental system shift" (1989:191) are transposed onto the legal and para-legal responses to child sexual abuse; it might appear at first glance that changes are likely to be welcomed. However, as she argues, change in these contexts "may also be interpreted as a way of avoiding change in the

basic gender power relationship" (1998:191). Such an outcome could be achieved by altering the infrastructure. For example, should the law on sexual assault become orientated to the needs of 'not-man', would this type of legal power then be considered low status - psychologically, socially and economically? I would argue that in part at least, this is what has occurred over years to civil ('care') proceedings in respect of children. Other provisions, such as the easier granting of parental responsibility to putative fathers may be a response to trends toward births occurring outside marriage.

Kelly and Radford (1998) discuss issues concerning self-blame by victims of violence. They argue the nature of impacts of violence, setting out clear statements concerning psychological and physical effects of sexual assault. I note the significance of these matters to my own study, discussing them further in later chapters.

Schacht and Atchison's (1993) construction of sexual abuse in the family suggests that a male abuser is already a dominant person in the family, exercising - indeed blatantly abusing - their authority. The victim is placed in a position of implied consent and the abuser's behaviour reflects the dominance operating. They draw upon the work of Herman and Hirschman (1977), who note that the incest taboo which is created and enforced by men is thus most easily broken by men. Herman and Hirschman suggest that males have regarded as a birthright the ability to achieve control through heterosexuality; except if it is 'their' women being violated by *other* males. Child sex abuse is thus very often a betrayal by someone whom the victim is dependant upon for protection and care. Their work points to studies reflecting sexual abusers as overwhelmingly male, often a relative, with victims usually being female. Bagley (1996) offers a similar argument concerning the nature of male authority in the home when sexual abuses are perpetrated. Abel and Becker *et al*'s (1987) voluntary study suggested however that non-familial abuse can target either sex, the age of the victim making the subordinacy in the act. Despite improved modern approaches toward victims of child sexual abuse, historically responses have been abysmal, implying societal tolerance of the sexual abuse of children, (e.g. Smart 1989). It would appear to be a moot point whether societal responses to the phenomenon of sexual abuse reflect a true dual standard; suggesting on the one hand that deviant sexuality only really occasionally exists, whilst at the same time revelling in the 'sauciness' available to all though popular discourse.

Numerous issues surrounding the victim, such as guilt, culpability, loss of self-esteem to a greater or lesser degree, and fear, amongst others, and can delay or permanently prevent disclosure (Jacobs 1996). Jocelynne Scutt's (1992) article on the culture of disbelief in rape cases also places matters in context, showing women as 'incredible' in law even in the most harrowing of circumstances. Barker and Morgan (1993) argue that there exists considerable empirical support for the feminist construct that most abusers are male and most victims female. With disclosures of all types of predatory sexual behaviour increasing it is clear the phenomenon is widespread. However, as they note, by locating abuse in the realm of general male sexuality, feminist theory has a problem explaining why some men rape women and abuse children and some do not.

Having considered this, it does not in my view, present a difficulty with the theory. As a male, a man tends to construct the world as a place where he is aware of his relative position within it, belonging to a group which are more robust than others by virtue of sexual identity; but equally he is less powerful than some other individuals who may exercise *their* supremacy over him. The creation of this power differential (although not necessarily as a sexual-power construct) depending on his reaction to it, can produce in the male an almost-denied discomfort with his status, which may manifest in a whole sweep of behaviours, ranging from, for instance, the negative use of humour against women to maintain the power status-quo - to, more seriously, a tendency toward sexism or the acting out of phallocentry. Such behaviours may equally be used against a less powerful male, but the threat of another male is not *seen*, in societal terms, as the major problem even though it may in fact be so. I would argue, thus, that whether acted upon or not, the power differentials exist.

Weedon (1987) discusses patriarchy, and the seductiveness of its symbolism within modern society. Weedon suggests theoretical ways forward from the viewpoint of differing forms of feminism. In view of the importance of the family as a societal building block and a unit within which much child sexual abuse takes place, I have examined Weedon's critiques of a number of feminisms concerning this area. She notes the naturalness with which liberal feminism accepts the family as a unit of social cohesion, together with the importance of the concept of self-determination for all. Thus women's choice is seen as being based on her free will, over which she as an individual has sovereignty. Liberal feminism sees as valid women's complicity with patriarchal structures, and cannot therefore deal with the

'oppression of patriarchy' as a choice. In contrast, Weedon views the radical feminist project as being strongly for "an essential femaleness which women must seek to recapture beyond the structures of the patriarchal family" (1987:17). The socialist feminist agenda focusses on the socially produced, changeable nature of humankind, within which oppressions such as capitalism and racism, as well as patriarchy, historically have been produced and all of which require to be transformed in a new socially constructed freedom.

Weedon argues that what is needed is "a theory of the relationship between subjectivity and meaning, and meaning and social value" (1987:18), to account for such issues as the appeal of the family, and the longevity of continuing unequal social relations. She notes the pluralist nature of, and differentiates between, various post structuralist slants; settling on a 'feminist post structuralist theory' which can be considered useful as it begins to address:

> 'the questions of how social power is exercised and how social relations of gender, class and race might be transformed' (1987:20).

Weedon posits how meaning is constituted within language and discourse, and subjectively produced, noting feminist "...theories of women's language as a constant repressed threat to the patriarchal symbolic order" (1987:53). Weedon discusses the plurality of language, and the impossibility of fixing meaning, as a basic tenet of post structuralism, rendering interpretations as "temporary, [and] specific to discourses in which it is produced..." (1987:82). The effects of meaning are no less real for being unfixed, however, although they compete and conflict. I discuss her hypotheses and those of Moore (1994), both in the consideration of methodology in the following chapter, and again in Chapter Eight.

It is clear from numerous studies (for example Susan Faludi 1991) that some men see their place in society as part of a 'divine order', and moves to challenge this are vastly uncomfortable to them. As I argue, when (particularly) white able-bodied males of working age with economic power (whether waged or otherwise funded) fight against perceived loss of power-in-the-world, their action may come over as a fight against women. Faludi notes William Goode's (1982) comment that, "Men view even small losses of deference, advantages, or opportunities as large threats", puzzling over the exaggerated reaction of males to minuscule improvements in women's rights. Lees (1997) discussion suggests such threats such may be

more widespread - and for instance, the power-over inherent in male rape, more commonly practised by heterosexual males than previously thought - although of course not all males construct power relationships in this way. Lees indicates that those who do, seem to fear change which might rob them of their power; but their degree of fear may be part of the ideology of patriarchy, with nothing else besides a predilection to act upon inner feelings required.

**Perspectives concerning legal and juridical issues**

Since the mid 1970s, rape definitions have broadened and procedures for trial altered in a variety of ways in English speaking countries. One illustration is the innovation of "rape shield laws", which prohibited the use of information about victim's sexual histories, with the aim of making court experiences less traumatic for victims. (This type of shielding (Montoya 1992) should not, however, be confused with moves to protect child witnesses from their alleged perpetrators' gaze in court).

The interpretation and dilution of law reforms has been questioned regularly. Research from Canada, Australia and USA as Carole Goldberg-Ambrose (1992) posits, shows how the interpretations of accounts of rape, by a largely male judiciary, overrides any concern for the victim herself. Many police and prosecutors have been unwilling to pursue complaints; some offices simply ignored the new requirements and carried on with the same forms and procedures. A number of studies, such as Loh's (1980) investigation of rape law reform in Washington State indicated that "personnel were applying the previous standards to rape cases, regardless of alterations in the law". Results of evaluations of rape reform generally have been mixed: Bumiller (1987) for instance views the changes as having "delegitimised women's experience and provided legitimacy for males' claims to sexual access and overall dominance." In general, studies do show that the reporting rate for rapes rose since the reforms. Lloyd and Walmsley's (1989) English study during the late 1980s showed a sizeable increase in police acceptance of rape complaints, together with a stable conviction rate but a higher incarceration rate and longer sentence lengths following law reforms.

Formerly, feminist commentators such as Goldberg-Ambrose regarded traditional rape law "as contributing significantly to a system of male dominance", (1992:173). She discusses the

aims of reform, citing transformation of public attitudes to what constitutes coerced sex; the facilitation of rape reporting; removing trial traumas which tend to degrade women and make them feel culpable; bringing conviction rates for rape and increasing prison sentences to levels in line with those for other serious crimes. She states: "Judges are notorious for their conservatism about their own practices.... [I]t remains difficult to get judges to make dramatic changes in their conception of justice and trial process" (1992:179). The law is allowed to work within its own parameters; the often archaic opinions of judges are seldom criticised and less often altered.

Drawing from available data, it has been argued that the very fact that attempts have been made to reform allows the legal process unlimited scope for delay (Cuklanz 1996; McColgan 1996). Failure can be put down to many things, and the political climate allows for numerous changes in emphasis. In any event, the notion of swift action or hurry is alien to the legal process. Additionally the judiciary are not the ones who suffer from the consequences of their mistakes. Indeed the culture suggests they do not accept either a need for real reform or any notion of, nor concern for, the damage to victims, whose concerns in crimes of sexual assault appears not to affect their thinking in the least. It is questionable whether they are even aware of the gaps in their knowledge. Judges are highly intellectually educated; usually having undergone a privileged educative system; public school, more often than not, followed by an Oxbridge degree; subsequently bar school and pupillage, and a rarefied career where they are treated with immense respect. Thus they rarely come into contact with the messiness and untidiness which characterises criminal issues outside hallowed court corridors. However intellectually prepared they may be for the complex legal issues with which they are faced, they are far from prepared for the ragged pain and emotional experiences of crime victims. It is unsurprising that they have no working awareness of the suffering encountered by, particularly, female crime victims, whose experience is beyond their ken.

It is noteworthy, however, that in tandem with attempts at law reform came the setting up of specialised police units for dealing with sexual abuse crimes, 'rape suites', which were an institutional, rather than a legal change. The willingness of police authorities to develop more female and child-friendly resources has offered some comfort at least, to victims of sexual assaults. Women's reception, and therefore their perceptions of the way they are treated in these settings has improved inclination to report rape as a crime.

The position of women judges also needs mentioning. Smart (1989) notes that female lawyers, if they wish to pass their law exams, are in effect obliged to toe the juridical line. She posits that women lawyers and judges are tolerated - perhaps cautiously welcomed - providing they pose no major threat to the complex workings of the profession as a whole. Mossman (1986) discusses legal method, and the requirement for feminist scholars to use accepted approaches or risk disparagement. I would posit, thus, that women in the legal profession, like women everywhere are indeed 'not-men'; to succeed is to be tolerated, but not unconditionally accepted.

A different, but also lay portion of the judicial process, jurors, need a mention too. In the current structure, it is not possible to overturn a jury's decision if the verdict is acquittal. Studies with mock juries reveal that they continue to consider extralegal factors such as the victims' marital status, and conformity or otherwise to gender norms, in deciding whether to convict (Brekke & Borgida 1988). The same study, however, found that the introduction of expert testimony on such matters as the incidence of false accusations of rape, the incidence of acquaintance versus stranger rape, and the dangers of resistance may assist jurors to look beyond societal prejudice when evaluating evidence. This not only improves the quality of jurors' deliberations but increases the likelihood of guilty verdicts. Further, Rowland's (1986) study notes that where expert testimony is introduced by the prosecution, this can focus deliberations on effects, rather than upon the prior lifestyle issues so often emphasised by the defence.

Nevertheless, many rape myths continue to have prominence with jurors as Field & Beinen's (1980) work demonstrates. They point out that, "as long as large numbers of men and women believe that women are inferior and should be kept in their place through forced submission to sexual acts, the law will reflect that view." Gabora *et al*'s (1993) study of juror deliberation in simulated child abuse trials also reflects similar difficulties. It would appear that too little is known about the relative significance of legal, procedural and evidentiary changes upon jurors deliberations. Borgida (1980) suggests, however, that the exclusion of sexual history evidence makes jurors more likely to convict in rape indictments.

Caringella-Macdonald (1985) suggested that measures to improve arrest, prosecution and conviction rates could themselves have a positive knock-on effect on attitudes, because attrition in these aspects of rape cases tends to perpetuate the myth of false accusation. It is, she acknowledged, a slow process, because the attitudes that are important to change are the very same attitudes which maintain attrition rates. It is argued by Goldberg-Ambrose (1992) that reforms which target the trial process and thus jurors' attitudes rather than perhaps society as a whole, may prove more promising as vehicles for achieving feminist goals.

> "Ultimately, there are some problems with rape that the legal system cannot hope to fix, at least without compromising bedrock values of fairness to the victim or defendant. For example, to the extent that ... having to appear at trial under any conditions anguishes victims and deters them from reporting rape, law reform cannot make a difference. Social science research has not yet come up against that brick wall, however. There is still much unfinished business for research in studying problems with rape that the legal system may be able to remedy" (1992:183).

Jocelynne Scutt's (1992) paper posits that, in general, the legal system appears sceptical of women's ability to tell the truth, positioning women as incredible in the context of the law. A long tradition exists of disbelief of the assertion by women of sexual assault:

> "Chief Justice Hale... sat on the last trial of witches in Britain: the witches were found guilty, and Hale considered it the only appropriate outcome. Chief Justice Hales' assertion is that rape is a crime "easily charged and hard to be disproved" although the accused be "never so innocent". (*Hales Pleas of the Crown* 1678:635 - Scutt 1992:446)

Such opinion, she argues, founds the basic body of rape law. Over time and via judicial decisions later translated into statute, rape law has been set apart from the general run of criminal law. Scutt notes the self-defeating nature of much of rape law for the woman victim, such as the requirement for prompt complaint and the historical corroboration rule. The only other individuals whose word required corroboration were children and accomplices, and

judicial norms lumped then all together as potentially unreliable. Even when corroboration warnings became discretionary, (such as in Australia in the 1980s), judges continued to subscribe to long-held beliefs about women's reports of rape being incredible. Scutt moots relevant cases in detail, such as that of the Collins sisters who were convicted of perjury even though their reports of sexual abuse were, in fact, true. The case shows how impervious is the legal system to the rights of women and children who complain of sexual abuse, and how individuals seeking the assistance of the authorities are met with disbelief. Scutt notes:

> "[A] court is more likely to give credence to a woman's words when she says she has *wrongly stated* her father abused her sexually, as a child, than where she says she was *in fact* abused sexually by her father, as a child.... [A] woman who says she was not abused, (however false that statement is) is given credence by the courts: because those words are what the courts want to hear.... The court would rather allow lies to stand, than to confront the truth that is child sexual abuse and the context of, and power relationships surrounding, that abuse. (My emphasis) (1992:445).

Scutt also criticises the legal 'principle' that rapists of sexually experienced women warrant lesser penalties. This simply confirms for her that male-orientated and dominated courts are unable to establish a set of principles that recognise the reality of rape: that it is violence and power centred in sexually dominant and dominating activity, that it is detrimental to the very essence of being a woman. Scutt argues that women experience rape as rape, not as some variation on consensual sex - in effect a "mini-rape" (1992:454).

A further issue is the one regarding supposed male inability to "control themselves" once aroused. For example, Sir Harold Cassel (aged 72) (cited in Helm 1988) freed a child molester, saying his pregnant wife's lack of sexual appetite had caused "considerable problems for a healthy young husband!", and had led to sexual assaults upon his 12 year old stepdaughter.

Judges often regard male violence as regrettable but understandable (Lees 1993). The implication is that men cannot help themselves; they are victims of their own negative sides. In fact this gives weight to the assertions of, for instance, Schacht & Atchison (1993), who

note that there is little if any real difference between consensual heterosexual relations and rape, given the dominance which characterises heterosexual sex. Lees quotes Griffin (1979) who suggests that to separate the rapist from the average dominant heterosexual may be a matter of *quantitative difference* (my emphasis). However this is not a link that is fostered by the judiciary - suggesting as it does that 'all' men cannot help themselves and might therefore be capable of rape. This lends weight to arguments about the power of law; its ability to disqualify any knowledges which fail to suit it, even when those opinions are voiced at times by judges themselves. Judge Nina Lowry, the only woman judge trying rape at the Old Bailey at the time of Lees paper (1993), commented in the summing up of a rape case: "Our male judges have been insensitive to the horror and anguish suffered at the hand of male rapists."

Appeals of convictions have at times proved successful upon some very thought-provoking grounds. In a 1991 case the Appeal Court Judge made it known that the appellant's defence had been jeopardised by repeated reference to the victim's distress "which seriously damaged, even if it did not completely undermine,... [his] account of what had happened."

There was much press coverage in August 1996, concerning a rape trial where the defendant had chosen to conduct his own defence. He subjected the woman concerned to an horrific ordeal of cross-examination lasting several days, forcing her to relive every detail of what had taken place. The woman, Julia Mason, waived her right to anonymity to put her side of the case after the (guilty) verdict. As a result, debate was renewed about the plight of rape victims, and moves were placed in hand to disallow rape defendants from conducting their own cases. The 1998 White paper, 'Speaking up for Justice', addressed a number of the issues.

In the succeeding chapters I demonstrate the relevance of the type of studies cited concerning adults' abuses, such as Lees (1993, 1996, 1997) and Faludi (1992), which have very specific applications to this research, as will be seen in the Methodology and Analysis Chapters (Three and Four) and in later portions of this dissertation. I discuss these and other instances more fully later, drawing from my own study results.

## Conclusion

In this chapter, I have discussed a range of theoretical and research literature. I have drawn on historical accounts, linking the criminalisation of child sexual abuse with justice issues for children and adults alike. I have noted the importance of the siting of power within court trials in sexual offence indictments and discussed the impediments to children obtaining justice when they have been harmed sexually.

In the next chapter I move to my study methodology and method.

# Chapter 3

# Methodology & Method

**Introduction**

In searching for methodology and method which would best serve my study aim of allowing the voices of young people to be heard, I sought theoretical approaches that would prove helpful. Brid Featherstone (Fawcett *et al* 2000) argues for considerable and clear thought to be devoted to *process* within research. She suggests that a story telling approach to research holds progressive possibilities for both interviewer and interviewee, and is congruent with her feminist and post modernist leanings. (Featherstone and Fawcett (2000) suggest that post-modernism and post-structralism amount to the same thing).

A discussion of the importance for research of the telling of stories and their power as metaphors appears in Plummer (1995). His view about stories concerning sexual themes argues for these *"as issues to be investigated in their own right"* (1995:5; emphasis in original). The varied interpretations of sexual tales, socially produced in differing social contexts, Plummer argues, can reflect the choices, constraints and controls incumbent upon the teller, as well as "the grounded social conditions of their emergence" (1995:16). During my search for useful theoretical models, I began to draw up a list of helpful concepts and meanings. In addition to facets which appeared congruent with my study aims, I also read about approaches I did *not* wish to use, and these negatives helped to clarify where I was going with the study.

At this stage, I found Strauss & Corbin's (1990) approach to qualitative research and grounded theory formed an excellent basis on which to work. I have also checked many of my approaches against the work of, for instance, Reinharz (1992) and Hollway & Jefferson (2000). Within and around this I also considered relevant theoretical courses which would assist in my later analysis of the qualitative research data. I used Strauss & Corbin's (1998) techniques for developing grounded theory, Fawcett *et al*'s (2000) work on post-modern/

post-structural perspectives; and issues of inequality and research in Truman *et al* (2000), and Denscombe's (1998) work on social research projects.

In Chapter Two, I noted Chris Weedon's (1987) theoretical discussion on the nature of feminist post structuralist perspectives. Henrietta L Moore (1994) posits a theoretical discussion from the anthropological and gender-based viewpoint. She discusses the importance of difference, describing what she terms a 'post post structuralist' perspective. I gained much basic argument from a variety of feminist theorists, but found myself drawn to Weedon's and Moore's stances, which proved very useful in the process of understanding children's court treatment in sexual assault trialing. Their relevance surrounded concepts of 'feminist' power differentials, but unlike some 'pure' feminist theory - which alluded only to the position of women as oppressed - they offered accounts of power which allowed for the experiences of unequal treatment by others than women alone. I used these concepts to construct a model within which the sexual abuse of young people (and, indeed, adults whether female or male) can be understood, together with theoretical pointers toward an understanding of the mechanics of continuing legal oppression when one examines the role of jurisprudence within trials for sexual assaults. My study's focus needed to account for more than just sexism, and the (post) post-structural perspectives allowed for an "unequal personhood" which feminism's more traditional women-orientated focus did not necessarily seek to address.

Weedon (1987) argues that the 'implications of femininity' are inescapable, as we demonstrate either compliance or resistance to dominant norms. Her position here does not account, however, for what I term a 'non-realisation' of the patriarchal order: a not-knowing concerning expectations that women (or 'not-men') are 'supposed', according to accepted norms, to behave in given ways. Those women who (whether consciously or not) do not behave as prescribed may be castigated by the patriarchal order for their outspokenness. More tragically, the 'not-man' population may criticise as well, feeling such individuals would have 'done better' had they conducted differently that portion of their lives that gave onto male offence. Additionally, nonconformist behaviours by not-men can be used against them, making them potential targets for patriarchal dominance in an effort to force conformity - or punish its denial.

Like Weedon, I have thought of the meanings assigned to these and other feminist post-structural issues as temporary, and subject to the ever-changing and often ambivalent responses of not-men, as well as of men. One of the most difficult problems is that the changes such temporary and critical responses undergo do not proceed in a single direction, but can alter from, for example, almost-feminist to almost-patriarchal, given the temporary assigned viewpoint of all the individuals involved. The continuing self-confidence of the 'outspoken' individual in their personal positioning is thus very easily manipulated, with result that both self-determination and self-assigned labels such as 'feminist' become rarer in the main stream; and defiant, radical or esoteric feminism is the only strand left largely unaffected. I assigned a temporary meaning in such instances as that of an 'accidental feminist', which, within Weedon's (1987) and Moore's (1994) (post) post-structural framework is a constructed position which would inevitably change with a dawning of individual understanding.

I was concerned to ascertain whether participants in my study would have had temporary understandings which altered in the course of their experiences of the evidence giving process with the trial. I drew from Weedon's arguments in considering my study framework, for instance how women's understanding can allow oppressive practices to flourish; also the terms and emphases of language when viewed as a direct catalyst in the treatment of sex abuse: for example: 'The way it is'; It's not so bad'; 'It doesn't really happen that often'; 'Of course she led him on'... and so on.

In examining what happens in sex abuse or rape trials, I needed to place the available data, as well as my own study results, within the context of a theoretical framework. I needed to move a step forward from solely gender-specific feminisms, which could not account adequately for the behaviour of the male-dominated judiciary, even when the more 'victim-friendly' procedures were added in. I examined what was known of children's experiences in the court system, and hypothesised that much of it was probably quite damaging to them. In considering what happens in trials, I was mindful, also, of the temporary nature of juridical approaches, opinions, understandings and ultimately, juror deliberations, not just between but within given trials.

**Identity of study subjects: ethics and nature of research**

In essence, my study proposal was to obtain information about what takes place in child sexual abuse trials, from the child's point of view. I also wished to illustrate clearly the problems and strengths surrounding the current court model, and why there appears to be so much resistance to juridical change. In view of the dearth of qualitative research into the accounts of young witnesses, I needed to develop a specific and child-friendly model which could facilitate examination of what is taking place when children come to court and give evidence. Works such as Briggs *et al* (1996), and many feminist writings on empowerment (such as Nicholson, 1990; Tong ,1989; Moore, 1994) guided me initially.

After completing my literature search , I considered more specific research issues, especially methods and skills which would facilitate the production of optimum data. In view of the very sensitive nature of the study, I emphasised the ethical considerations, and the appropriateness of the study subject.

The identity of the young persons within the context of my study was vital: not only victims of sexual abuse, they are also young, vulnerable individuals. Given the institutionalised power of the juridical system, they are the least powerful persons in court, experiencing the 'double jeopardy' of youth and witness vulnerability within it. The range of offences young people had experienced required their sexualised stories to be told in the judicial setting; yet in the light of historical invalidations of sexual assault victims, this further disempowered their integrity. Their status as children also added to their vulnerability, and the nature of the defence task - to discredit persons threatening the defence case - positioned them as largely unprotected. Yet within this scenario of powerlessness, as the potential instrument of conviction, castigation and punishment of the defendant, young witnesses speaking of their sexual abuse were also, briefly, potentially extremely powerful.

The paradoxes in place offered scope for a study of potential ambivalence and contradiction. With this interesting set of differing components as the backdrop, I wished to obtain young people's accounts of the court system and process, their expectations and feelings. By drawing complexities from the data, I sought ways of understanding the paradigm operating.

In planning method, I was aware that the nature of the study could well be seen as potentially threatening, and that the judiciary might not welcome a study which proposed to speak to children and young people about their experiences as witnesses . The subtle face of patriarchal reason and the ostensible care with which reforms of the evidential system for young persons had been framed, allows only certain criticisms. As an overall instrument of continuing sexual access (as I argue), however, the prosecution process concerning abuse of minors sought to emphasise trial fairness, and the integrity of the system to discern the truth. I recognised therefore that negotiating permission to seek access could prove problematic.

In the event, my initial written approaches were not replied to; I was requested subsequently to resubmit my proposal, and this became mislaid. In all, I encountered an eight month delay in obtaining the necessary permission to proceed from the Lord Chancellor's Department.

**Identifying study participants**

Initial permisions notwithstanding, I was conscious of the likely difficulties I would experience. For instance, the sensitive nature of the study would mean that identifying and negotiating likely participants would prove difficult of itself; issues such as the geographical spread of responents could also raise problems. This caused me much concern, and fears I would not achieve access caused temporary academic paralysis!

I considered numerous ideas about how best to approach my proposal and generate study respondents. I discovered there were few retained records about children who had given evidence. In any event, in order to make contact viably, I would need to access young witnesses via groups who had both information and physical contact with them. Considering the point at which potential research participants should be approached, I settled on no earlier than the actual court day.

I discarded the idea of tapping into police records. After the 'joint' interview, the officer often did not have further personal contact with the young person. I contemplated obtaining access via professionals engaged in post-court counselling of young people. However, enquiries revealed that many children did not receive any counselling: those that did often waited a lengthy time after the court hearing. Additionally, many workers to whom I spoke

felt that my interviewing young witnesses during their period of counselling potentially would disrupt their work. Referrals would thus be delayed and I felt it unlikely that young people would be prepared to discuss court experiences again after their counselling was completed.

I spoke to social workers whose young service users were due to give court evidence. This was potentially more productive, but in fact some social workers did not even accompany the young people to court. Often the 'joint' interview had been carried out by another social worker. They too were not required regularly to give evidence, a fact I had not at first appreciated. Often the social worker's evidence of the child's disclosure was agreed. Indeed the defence tactic of avoiding a highly trained worker giving evidence of their assessment of the truth of the child's allegations, serves both to shorten the trial so minimising costs, and also to place much more pressure of belief upon the individuals who do give evidence.

I eventually decided to request the assistance of the Witness Support Service. Their volunteers carried out pre-court visits and the Witness Service staff were on-site on the court day no matter what the listing delays might have been. From my own experiences working in the courts, I was aware there was, quite often, ninety percent hanging around and only ten percent action, allowing ample opportunity to speak to young persons and discuss my study.

I contacted the Witness Service Co-ordinator at Winchester and outlined in my proposal, asking if it would be possible for them to assist me in obtaining referrals of young witnesses. She suggested I contact the Victim Support headquarters to seek permission for the Witness Service to assist me. I wrote to them outlining my research proposal and seeking advice, and shortly received their reply with full support for the project.

**Research instrument design: framing questions & approaches to the interview**

In tandem with attempts to identify and negotiate access, I considered and discarded various research questions, finally settling on three which could be posed to young witnesses:

1. What is your understanding and experience of the Court process?
2. How were your expectations about Court and the outcome different from what actually happened, and in what ways did any dissimilarity affect you?

These first two were linked together, addressing young witnesses' experiences of practical issues, the court settings, and their treatment before and during evidence giving and cross-examination. I also planned to focus on each child's personal feelings about the various stages, the impacts on them of the attitudes they encountered within the court process, and concerning such matters as any delays and adjournments.

My final question was:

3. How could the Court experience have been improved?

Here, I was seeking the child's views of what was good, helpful and positive, as contrasted with the alterations they might have preferred. I wished to link this to their individual understandings about 'justice' and fairness in the trial in which they had been involved.

Settling the basic research questions was but the beginning. My practical social work experience pointed strongly to the need to approach potential participants sensitively and carefully. In view of the need to make the minimum demands upon youngsters who had already been through the court experience, as well as personal time constraints, it would be important to generate 'good', in other words detailed, data in the course of a single interview. The importance of both facilitating and encouraging young people to vouchsafe to me some very sensitive and painful material caused me to examine optimum interviewing techniques (Reinharz 1992).

Clearly, interviewing young people in the context of research would be different from social work interviewing. However, it was important to bear in mind that there are similarities, and that the richness of data I might generate would be likely to be directly related to the quality of the interview. The ability to make potentially emotionally impaired youngsters feel comfortable, and to generate trust quickly, would thus be essential. A great deal of written work exists concerning the gathering of qualitative data by use of face to face interviews. In particular, from an emancipatory viewpoint, I drew from work such as Hollway & Jefferson (2000) on issues of the defended subject; and Truman (2000) concerning representivity of marginalised research participants. Some comments were especially useful:

> "Integral to feminist epistemology and methodology is 'reflexivity': the continual assessment of the contributionof one's knowledge to others..." (Truman 2000:44)

I had also studied methodologies researchers had used in speaking specifically to people who had undergone serious personal trauma. The work of, amongst others, Lees (1993, 1997) into adult rape victims' court experiences; and Bifulco and Moran's (1998) study concerning adult recollections of childhood neglect and abuse assisting the placing of my study proposals within the footings of discussing court experiences concerning sexual abuse with potentially damaged individuals. Other writings also proved helpful: for example Atmore (1999), whose paper discusses feminist issues concerning definitions of, and oppositions to, sexual violence, noting the polarisation which often accompanies approaches to discourse on sex assault.

In order to obtain the most from interviewing, I therefore focussed on empathetic interview approaches, which I utilised during my research interviewing. The importance of participants' stories and my responsibilities to them as people made me approach the task with the greatest care, with my emphasis upon the importance and uniqueness of what they had to say. Truman's quotation seemed very apt:

> "I now feel that what was most beneficial to my participants was the fact that I wanted to know about their experiences; I believed them, and felt they had something valuable and worthwhile to say". (Truman 2000:39)

Furthermore, Humphries (2000) paper concerning emancipatory action discusses contradictions within 'everyday' meanings draws from the feminist, neo-marxist and post-structuralist emancipatory perspectives of Lather (1991). She discusses how discourses of emancipation can transcend binary logic by subscribing to 'both and neither' arms of the binaries (Humphries 2000:183).

**Practical issues concerning my grounded theoretical approach**

I have discussed above my feminist perspective and the feminist (post) post structuralist theoretical models which informed my thinking about this study. I now turn to specific details regarding my research.

The type of question asked is clearly material; I regarded it as extremely important to identify an intuitive model which did more with data as an expression of individuation from the

participants. As a social worker I have gained experience in speaking to children and young people about difficult episodes; I have also studied creative therapy techniques (e.g. Jennings 1975) which can facilitate individuals' unlocking of sometimes deep seated anxiety and pain. Hollway & Jefferson's (2000) discussion regarding eliciting of personal stories notes some potential problems and solutions. They note the biographical-interpretative method, part of the narrative tradition of which Plummer (1995) also speaks. There develops an emphasis on the significance of the teller's account - what is and is not included - and I strove to develop a style that allowed the participant to decide, yet kept the interviews 'focussed' (Mishler 1986). Hollway & Jefferson also note the importance of not imposing a structure on the narrative. They state that "all research in a sense produces its answers by the very frame through which the questions are set. No frame is ever neutral, and neither was ours" (2000: 38).

In order to gather sound raw data which could be analysed and categorised without loss of either the personal or the professional, it was essential that I maintained attentiveness and active listening, which is a key term of Plummer's (1995). Studies concerning interviewing and listening to sexual offenders (such as the work of Hilary Eldridge *et al* (1990) in the Gracewell Clinic assessment format) assisted me in considering how to approach witness interviews. Not for the first time, I found it ironic that skills used with offenders could also be used appropriately with victims.

Empathising with young people's personal position was also essential, especially for young people whose alleged perpetrator had been acquitted, as the gaining of trust was vital for a full account. By the term 'empathising', I mean employing a disciplined style of direct research which sought to uncover and convey the lived experiences of the participants, by use of a sympathetic style in which I personally positioned myself emotionally alongside each young person to whom I spoke. Using the phrase, "Can you tell me?", I concentrated on keeping questions very open ended. Whilst posing the main three research questions to each participant, the use of my question schedule, although twofold, was very loose. Firstly it was important that participants were aware of exactly the range of questions I might pose; secondly the schedule acted primarily as my aide-memoire and ensured that, broadly, we did not miss out facets of the questions, thus offering similar opportunities to each child. The ways in which each responded varied due to their personal approaches. My concern was to echo participants' phrases, and I picked up young people's previous answers, repeating their

own expressions to give active encouragement, but without explicitly checking relevance, allowing the interview to go where it would. Like Hollway and Jefferson's (2000) account, I was rewarded with various revelations which added to the richness of the data obtained.

I was concerned to avoid positions which led to youngsters' personal intellectualising by asking "Why?", in the course of participants' accounts of their experiences. I did, however, want to hear what their reasoning was, and asked questions later in the interview about the 'why' of outcomes and their views and understandings about justice. It seemed very important to include this as I did want to gain from participants a sense of where cases 'should' have succeeded, and did not, and *vice versa*.

Whilst designing the study, I returned frequently to questions concerning the ethics of my choice of participants in the circumstances. However, other studies which had questioned respondents about their experiences of trauma, (such as Bifulco & Moran 1998; Holland *et al* 1998), led me to conclude that, provided I was rigorous in designing the instrument, it would be perfectly ethical to proceed. With this in mind, I designed the question schedule, beginning with a structured list of issues as a start point. I then revisited qualitative methodology and, retaining the topics I wished to cover to encourage consistency for me, adapted the schedule into a flexible open ended set of questions which would form the basis of qualitative interviews. A response sheet was drafted for my own use, with spaces to note supplementary questions and further topics raised by the youngsters themselves. The question schedule is attached at Appendix I.

Given my strong commitment to client self-determination and anti-oppressive practices, it felt relatively easy to be rigorous about not imposing personal models onto participants during the interview process. During analysis I needed *actively* to ensure I did not devalue or patronise by disinterestedly 'speaking for' the participants. On the other hand, it was essential that the study analysis was conducted within a professional framework. The law disables much outside its own purview in any event, and I did not wish to be labelled as so 'touchy-feely' as to disqualify my findings from the outset. Allowing the data to 'speak for itself', however, meant keeping in mind at all times the realities of the young people's experiences. Thus it was in my view insufficient to treat the data as mere categories. It was important not to lose

the personal, and therefore in participants' quotations I refer to them throughout by their pseudonyms, although I also used a numbering system for my ease of reference.

In the course of my study planning I became embroiled several times within circular thinking concerning youngsters' evidence giving. For example, reports such as Lees' rape studies (1993) show that if, in court, the witness alleging rape is too calm, they may be seen as incredible. On the other hand, those who become too anguished and cannot complete their evidence have no prospect of seeing the defendant convicted, to say nothing of risking the 'hysterical' label. Unfortunately, as work with mock jury studies suggests, (Gabora *et al* 1993; Field & Beinen 1980) the outward show of witness demeanour counts for a great deal.

One further issue concerns the description given in this account to the young participants who have been sexually abused. Greer (1999), amongst others has rejected the use of the term 'victim' to describe persons experiencing violation, arguing that the very use of the term at once disempowers and renders 'victim-like' (i.e. helpless, vulnerable, manipulable) those labelled. The fight against linguistic attempts at subordination may potentially empower on a personal level, but, especially in the case of children and young people, it also suggests a level of personal power which does not exist either in fact - given that abuse has happened - or in concept - when discriminatory court trialing methods are taken into account.

Yet the use of the term 'victim' may be a tacit invitation toward self-fulfilling prophecy. One of the themes which derives from much liberal feminist thinking (see for example the discussion of Tong, 1989) is the importance of equality of opportunity which much early feminist activism centred upon. Amongst others, Spender (1983) has discussed the practice of male censorship which renders the female into an enforced passivity that undermines power. By terming sexually abused individuals 'victims', one potentially may be robbing them of an ability to 'fight back', but by going through that most harrowing of experiences - giving evidence - they *are* fighting back. I have therefore chosen to use the term 'victim' to refer to my study participants in some instances. Kelly *et al* (1996) question the victim/ survivor labels, arguing neither is helpful in the longer term. It is accepted that different viewpoints can be argued; however, mine is not a longitudinal study.

My study design led me to draw parallels between the received accounts of witnesses, and the study data in quantitative research. Demands for the latter, and the doubt that can be cast upon qualitative models and interpretative analyses reflects and is reflected by the juridical demands for set evidence which meets inveterate but arbitrary quantitative standards of credibility - such as prompt reporting of sexual assaults.

**Interviewing young witnesses: referrals and arrangements**

I did not interview any young people who were of a different ethnicity than white British, and just one of the respondents (a 16 year old male) had a learning disability. During analysis, however, it was important to recognise the importance of participants' youth as my main concern. It had been the grouping by age of participants which had initially identified them as suitable study subjects. The Witness Service co-ordinators in Winchester, Portsmouth and Southampton Crown Courts agreed to speak to young witnesses scheduled to give evidence at the trial of their perpetrator, asking whether they might be willing to talk to a researcher about their court experiences. Letters were handed from the Witness Service introducing me, and one from me to the young person outlining my study and requesting they fill out a return slip if they were content to be contacted again. Letters about the study were also given to the parent or carer accompanying the young person to court, to ensure they were aware of, and content with the overture to the child.

I then telephoned, in most cases, to arrange an appointment to see the young person at home. After meeting them and their carer, I outlined the purposes of my study, discussing the ground rules which would apply should the young person be content to proceed, and going through with them the questions I was wishing to ask. I emphasised they could break or stop completely at any time. After hearing the information, all the young people and their carers whom I visited were content for me to proceed. A copy of the introductory information and the Ground Rules used are attached at Appendix II.

My first two witness studies were carried out without benefit of a tape recorder, as I had made a definite decision *not* to audio record participants' responses. I had not felt sufficiently comfortable to request that I tape interviews with the young people who had agreed to speak to me. I believed that following the abuse, the witness process, and, albeit with their

agreement, speaking to me, the use of a tape recorder was a further intrusion. I therefore recorded the first two just on my answer sheets.

I realised, however, that as both respondents had been so willing to discuss their experiences with me, requesting to record their story would have been much less of an imposition than I had feared, technology held few anxieties for them. Furthermore, interview transcription proved difficult, despite attempts to record 'everything'. Additionally, I felt my case study model might be more credible if responses could be gathered verbatim. Examining why I had been so keen *not* to tape record, it struck me that my initial reactions had been to minimise my work and personally to 'disappear' as much as possible whilst still conducting the research.

When I asked subsequent participants for permission to record our conversation, still slightly to my surprise all the young people interviewed in their own homes gave permission for me to do so. One further interview had to be recorded just on paper. The family - the young witness, her sister and their mother - had been living in a safe house following the beginning of the trial. They agreed to meet me in a cafe, and use of the tape recorder would not have been appropriate.

**Study numbers and characteristics**

In the event I received a total of 24 referrals; 15 from Winchester and seven from Portsmouth Witness Service Co-ordinators. I also received two referrals concerning children giving evidence in Southampton Crown Court, from a social work colleague in Hampshire who was aware of my research. I was also aware of a young witness fostered in Dorset, whose evidence-giving I observed, as well as that of two other young women testifying against the same perpetrator in the same trial.

I was able to interview a total of 17 young people, 16 of whom formed my sample. Of the 17, one was not a victim but a witness only. Eleven of the 16 had given evidence in Winchester and in five in Portsmouth court. The other five young people referred from Witness Service later changed their minds about speaking to a researcher, or in one case, moved from the area. Twelve of the sample sixteen were females, of which six obtained guilty and six, not guilty

verdicts. Of those twelve girls, seven were aged 13 to 16, with guilty verdicts being returned for only two of these; the other five were between eight and twelve and only one, (the twelve year old's) resulted in acquittal. Although none of the results is significant statistically, I found this age disparity in successful prosecution extremely thought-provoking. Of the four males interviewed, one was 18 (17 when he gave evidence), and a not guilty verdict resulted; of the other three, two were 16 years old and one was seven, the youngest child I spoke to: these three trials all culminated in a guilty result. I discuss my study results at length in Chapters Seven and Eight.

The young woman (aged 15) whose evidence I observed, was not able to be interviewed due to the serious level of self-harm (overdosing, cutting and alcohol/drug bingeing) she was carrying out for many months after the trial. Being well acquainted with her circumstances I was aware that much of her anguish was related to the trial, and personal guilt about the perpetrator's imprisonment. The two social work referrals did not follow up their interest in the study: I received no other referrals concerning Southampton Crown Court trials.

I also approached Manchester Witness Service, whose co-ordinator and deputy I met at a London conference concerning young people's evidence. Although they handed out several letters to children testifying in two of their Crown Courts, no details were received of young people willing to discuss their experiences with me; perhaps the geographical distances had proved an added off-putting factor. It was notable that several participants said that the Winchester and Portsmouth co-ordinators had discussed my proposals with the children concerned and asked them to become involved. This personal approach proved most helpful in identifying potential participants.

Part-way through my research I became aware of an NSPCC study taking place in the Portsmouth area into the experiences of abused young people, from the Memorandum of Good Practice 'joint' interview, through to the completion of the trial hearing, if there was one. In the light of my own study I was invited to collaborate, and several of my interviews were incorporated. I was invited to give a presentation of my interim results at the subsequent seminar in July 1998. Later, I was invited to add my comments to the study report (Green & Katz 1999) prior to publication. I mooted that one of the important issues was the

need for a named indiviudal to hold responsibility for young witnesses receiving appropriate information concerning case progress if a trial was to be pursued.

**Court observations: a jolt**

In considering how to evaluate the court system, I was drawn very much to the work of Sue Lees (1993) who had worked on complete rape trial observations. I had considered initially whether observing entire court trials would be a useful means by which I could collect data. There was something very inviting about the idea of being 'in on the ground floor', in the thick of the trials, where I might be able to observe the actual conditions under which children and adolescents were required to recount their stories. I soon abandoned this as a main research method, however, for two reasons. Firstly I recognised that despite the opportunity to obtain firsthand views of children's court experiences and cross-examination, such observations would be too researcher-led and would not focus in sufficiently upon the *personal* opinions and feelings of the young witnesses which was my study focus. Secondly, I felt it was going to be problematic to complete observations in this way because of the difficulties of access, as cited by Lees, (1993).

However, in the course of my work practice, in 1999, I had occasion to attend court to support a foster carer and her foster daughter (who I will call 'Hannah') for the latter's evidence-giving. I arrived in the morning to learn that the young person had been dewarned to the afternoon. I used the time observing from the public gallery, where I was able unobtrusively to take some notes. I listened whilst two other witnesses gave their evidence of sexual abuse: one a young adult testifying in open court, and one young person who was to give evidence in court with a screen. The judge had so ruled, apparently because she was then 16. The other young person (Hannah) was then just 15, and had been granted permission to use the CCTV link.

The adult woman gave very solid evidence despite the suave opening attack by the defence barrister cross-examining (see page 88-89). The 16 year old girl was difficult to see from the gallery because of the screens, but she began falteringly and started to weep. There was one point at which I began to fear she would collapse under questioning from the defence. The prosecution requested a break, and the Witness Service were very quick to ensure they were

there to meet her as she came out. When her evidence resumed, it was plain that the defence barrister hoped to take advantage from her distress, but she appeared to get her second wind, and her demeanour became stronger.

When, after lunch, Hannah gave evidence, it was clear that the CCTV link protected her. She handled the defence barister with aplomb: a snippet of the cross-examination is included in Chapter 7 (at page 148-149). The judge was concerned that she understood the technology and the sequence of events. When the defence barrister banged the desk (I thought, in annoyance) the judge asked blandly if there was something the matter with the screen. Following Hannah, there was some question that the foster carer, too would be called to give evidence, which had not been anticipated. She was extremely tense and frightened at the prospect, having had no preparation, although in the event the defence decided to accept her statement contents which, it had already been indicated, were agreed.

I came away from the court that day not knowing the result, yet with huge tension and anxiety for all three victims - only one of whom I knew - as well as for the foster carer who had smothered her feelings in order to support Hannah. I had been conscious of a fast heart rate and huge amounts of energy going into 'willing' the witnesses to do well. Their accounts were very bound up with each other, and the perpetrator was tried for all the like offences at one time. I would not care to speculate as to the outcome had he undergone three separate trials. Accounts of the regular non-acceptance of similar fact evidence (for instance McColgan 1996), demonstrate that often a single jury hears only about offences concerning one victim, even though the defendant may be accused of assaulting several more.

I was conscious that the impact of this trial upon me had been heightened by the three separate yet similar accounts of the defendant's abuse. These included for example, his use of language to take advantage of those he had abused, and the pervasive means by which he had been able to keep his activities secret for 35 years, according to known incidents.

I include the above description for three reasons. Firstly, personal observation served to confirm the appropriateness of my chosen research questions and methodology: the 'slant' of the data I was collecting, Secondly, the witnesses' feelings provided a taster of the analysed

data I later produced; lastly, the observation illustrated the effects of the research upon me, and enriched the positioning of my whole project.

**Conclusion**

This chapter has discussed various methodological approaches, and has outlined methods used for this study, together with some factual information about the means utilised to conduct the research.

I now move to a discussion of the methods used to code, categorise and analyse the data. I also mention the study's impacts upon me as the researcher.

# Chapter 4

# Data analysis

**Preamble**

In order to make sense of the data, I needed to analyse the information I had received from the interviews. From the outset, following the first two interviews, I recognised that I had obtained a wealth of 'raw' data. My first thought was the excitement that I had actually succeeded in speaking to some young witnesses; my next was the realisation that my analysis would need extremely thoughtful handling to obtain the maximum from it. I would need to code and separate out the responses into a number of categories, to make some sense of them, looking for themes, similarities and contradictions. In the course of this process, I used the analytical tools devised and described by Strauss & Corbin (1990, 1998). Part of the work concerns what is described by them as theoretical sampling: asking the 'right' questions about my data, and making comparisons between properties and dimensions within it, to those from other known or considered information. Another aspect was the coding process, thinking and analysis. I have further developed Strauss & Corbin's methods, adding analytical processes of my own to fit with the needs of my particular study. As a result of all this I was trying to generate meaning from my own study - and ultimately, some theoretical understanding.

**From interview to category**

After each taped interview, my first act was to play the recordings in the car, practically straight away. I wanted to listen again to the information each young participant had vouchsafed; to rehearse what had been the feel of the interview, before the detail left me or became confused with other interviews. I felt I should make the most of the taped reporting by listening to it as much as possible.

There is nothing in my former social work experience, however, which had prepared me adequately for the effect of this hearing upon me. Listening to the young people to whom I had just spoken, I felt the impact of their words almost as a physical thud. I found myself

getting angry, sometimes weeping, for their injustices - which, at times seemed *not* to equate with the outcomes. What also struck me, repeatedly, was the way the young people's truth shone out like a pennant in an otherwise grey sky. It seemed easy to visualise it like this, as a contrast to the courts' formality, bureaucracy and rules. Regularly, it was a wonder to me that these young people had had the stamina to have survived abuse and *then* coped with the court. I was struck by the enormous resilience I was seeing, which one could not recognise without an answering flash of hope for the survival of the humyn spirit. This should in no way suggest that their court experiences had not affected the study participants; yet they had survived!

After just listening to the interviews, I began to transcribe onto the word processor. Described in one sentence seems now to suggest that this took but a tiny portion of time, which is inaccurate in the extreme; the repeated listening was immensely time consuming and tiring. There were, unfortunately some instances where, despite my best efforts, the taped conversation is indecipherable: this was noted in the transcriptions.

I now matched the typed accounts against the answer sheets on which I had written - scribbled - more or less continuously; which helped me to focus. I made no differentiation about what to record, so that I would have the maximum information, serving to emphasise the comments. In the transcripts, I used **bold type** to indicate the speech of the interviewees. ***Italic type*** preceded by a dash (-) indicated the interviewer's (my) questions, and where another name (e.g. ***'Mum'***) is given, it indicated a remark from another person. For the three non-taped interviews, it is accepted that a partial record of these only is possible. The written transcriptions, through which I now read several times, provided an instrument I could access more easily.

It may be helpful here, just to rehearse participants' identity. I used real birth dates and interview dates, noted the court in which the final case was heard, and the area in which the young witness was residing at the point of the interview. No one besides myself received information of the true names, addresses or any identifying details about participants; once the young person chose (as I encouraged) or was given a pseudonym, I used that at all times to refer to the individuals concerned.

It is important to state that some of the interviews had been obtained at clear personal cost to the young individuals concerned, often a mix of both trauma and catharsis in revisiting the court sequences. I was very taken by how extremely positive some participants found the interview in terms of their own healing; for them, the interview with me had 'got rid' of some of the court traumas. It was very heartening that of these, two were young women who had been seriously self-harming. In other instances, the participant witnesses had been through the most traumatic, hectoring and abusive court experiences, and the impacts upon them had been enormous.

Five participants spoke of feeling useful in becoming involved in research, and their hopes that the system might be changed for the better for other young people. Some were vehement about the injustice they had suffered. Several parents wished to discuss with me at length their own feelings about what had happened during the court hearings, and I took written notes with their permission.

**Microanalysis**

On looking at a number of the interviews with the data still in the 'raw' state, I began gradually to analyse some of the pertinent issues. Wherever the data hit me most extremely, I subjected the words, phrases, lines to microanalysis, asking the questions: what might the respondent have meant by this? The examples below are comments from two of the participants:

**The awfullest bit was his barrister. [Brian]**

in contrast with:

**He was all right, yeah, he was nice. [James]**

Micro-analysing the above comments assists by bringing into play numerous questions, comments and significances. For the first quotation, I looked at various interpretations which could be placed on 'awfullest': most awful within a number of bad things; the thing that made me most full of awe; the most frightening; the worst of all I experienced at that time; the

worst experience ever; most affecting. Bit: small part; portion; bitten. His: someone else's: not mine; the perpetrator's. Barrister: lawyer, solicitor, judge, advocate.

James' comment, **'He was all right'**, can mean, 'I think he truly was all right'; or, 'I think *you* would have thought he was all right'; or, 'I think you expect me to say he was all right'. 'All right' can mean anything from 'not acceptable in any sense', through 'just about okay if you aren't too fussy', to 'not as bad as I imagined'; or, taking in the shades of 'all right' meaning 'fine', with any one of a series of levels which the researcher will see and may take as a meaning in the researched. The connotations of **'...nice'** also has a large number of possible interpretations. Within what the *participant* sees as nice; what he thinks the researcher believes is nice; what he believes the researcher might *understand* by nice; what he thinks the researcher will think *he* thinks nice means... and so on, will come a shade of understanding and construction from which some sense can emerge.

From the range of possibilities it was important to examine possible lines of thought. It was essential to ensure my interpretation was as unbiased as it could be, and additionally to break down what was being said, to generate, ultimately, a clearer understanding of what was going on overall. In carrying this process out it was essential not to discard meanings until I had considered as many as might be discerned.

I now examined the transcripts line by line, using a working document on the word processor. I was asking, throughout, 'What could this mean?'; 'Is this what s/he really meant to say?'; 'In what ways has my personal interview style influenced these answers?'; 'What does this tell me about my basic research questions?'; 'How can I link this back to my original questions, and to participants' interpretations of those?'; 'Are patterns and comparisons beginning to emerge?'; 'Does this fit with what I have already found - or am I seeing new, different reactions here?'; 'What comparisons can be made?'; 'How can other related information be used to help me to see my data in the most credible fashion?'; 'Where do my own experiences and knowledge fit in with all this?', and so on.

**Data coding**

I began to categorise and code the information. By 'coding', I mean the Strauss & Corbin (1998) use of the term: the analytic processes though which data are fractured, conceptualised and integrated to form theory. Going through each set of responses, I began to allocate categories within the data, to get an initial grasp of where participants comments were sited in the wider scheme of the entire research. I reproduce part of a transcript to demonstrate how this was achieved, with the words in square brackets representing the categories spoken of.

*Interviewer: - So can you think what could have been improved?*

'Ellie': **The defence barrister to learn some manners.** [Changes/ impact of trial]. **To get some decent people on the jury.** [Changes] **Stick with the judge 'cos he was really nice.** [Court experiences] **Better prosecution barrister.** [Changes]

*- The prosecution was the person ...*

**On my side, yeah.** [Understanding]

*- On your side. What was wrong with her?*

**She was really really young, and she didn't actually know about it, she didn't put a positive case.** [Reason for outcome/ experience of court]

Gradually, categories emerged, and the young people's responses were used to distinguish additional categories. I reproduce some of my notes and thoughts to illustrate the process:

'Ellie's comment about the defence barrister represents issues of change but speaks of feelings too, linking with experiences of cross-examination. But these comments are really about her 'ideal world': how can I best represent what young people want? Given the reoffending potential for sexual abusers, whose needs, realistically, can 'justice' fulfil?

'Her words about a 'decent jury' indicate a huge level of dissatisfaction with the case. How does this link with the outcome, which reflects the system 'failures'. 'Stick with the judge' suggests an acceptance of the system, but what does this mean? Was her anger more around the system players: the prosecution and the defence - or the system itself, which allowed the injustices to succeed?

*'I* was wholly convinced of Ellie's account, yet am aware of the need to consider the opinions of the judiciary who place unerring faith in the system: "If the defendant was found not guilty he *was* not guilty". Legal understanding of 'not guilty': how can the court system reconcile itself to the criticism of 'insufficient findings of guilt', with the view that the verdict is 'right'? Where and for whom is the concept of 'right' in the debate: for law? the legal rights of the defendant? the investigating officers (given that CPS only proceed with so-called strong cases)? Where does the victim come in? How does this fit with well-publicised miscarriages of justice? Does it mean that a person found guilty, who then on appeal has the conviction quashed, was guilty and now is not; or, was not guilty all the time?
''She was really young': inexperienced? too anxious to please? - if so, whom? Issues of belief emerge: do prosecuting counsel's 'personal' views affect the 'fire' they put into the case? 'She didn't actually know about it, she didn't put a positive case': caused by last minute preparation or personnel change? Something around barrister arrogance? Do CPS regard child sex cases as being of less importance than say, armed robbery/ murder? Where is sexual abuse in their hierarchy?'

I now examined how the interviews linked with one another, searching for common threads and themes, although constantly questioning whether they were truly similar, and what caused any differences.

**Further coding**

As I added to my original categories, my list of possible relevant points grew large, and I needed to 'do something' with it. To assist me in generating understanding, my next stage was to make use of parts of Sue Lees' rape trial observations (1993) as a relevant contrast. I was also drawn to accounts of rape victims such as Jill Saward (1992) and Julia Mason (see Chapter Two p38): I admired the sheer indefatigability of those women; their accounts were enormously pertinent to my study. This was not to say that their experiences would become part of my data. I was able, merely to think differently about my participants' words, making comparisons to assist my analyses and generate meaning within my own study.

By this method of analysis, I was able to look both at categorisations, and toward some form of conceptualisation. I began to envisage the data leading to and around one another through

a type of three-dimensional latticework, but a very 'soft', malleable one. In my thinking, there were additional interwoven threads, some representing comparisons with other studies, others which looked at *meaning*.

I had ideas about where certain concepts might fit; some of the young people's *perceptions* and feelings interested me rather more than factual accounts, and it was their perceptions about court which I was attempting to trawl. With this in mind I marshalled the categories. For instance, 'feelings' encompassed witnesses first views; then their feelings prior to the court, and then whilst giving evidence.

To complete the sections' arrangement, I referred to my research questions. *Experiences of court*: what actually took place, became the first; then *feelings.* The third was *differences* and how these impacted upon respondents - the *emotional outcomes*; finally came *changes*: what could or should have been different. I grouped the remainder of my categories into the four sections, ensuring individual replies linked appropriately. These are reproduced below:

**1. Experiences: Categories 1,3,4,7 & 8**

Time scales: before court case informed/time from offence to court [1]
What court preparation/explanation the young witness received before court, and their understanding of the process [3]
Which court people (if any) who introduced selves before trial [4]
Court experiences of young witnesses [7]
Cross-examination experiences. [8]

**2. Feelings: Categories 2,5,6 & 9**

First feelings about the prospect of going to court [2]
Who (family/friends) supported the witness prior to the case [5]
Feelings about the prospect of going to court and giving evidence [6]
Feelings when actually giving evidence [9]

**3. Differences/outcomes: Categories 10, 11, 12, 13, 14 & 15**

What the witness believed the outcome would be (before trial) [10]

Witness' desired outcome of case [11]

View of trial (desire for it to proceed - regardless of verdict) [12]

Witness' view of reason for outcome [13]

View of fairness/justice of trial [14]

Outcome for witness [15]

**4. Change: Category 16**

What important changes could improve the young witnesses experiences [16]

Although the sections were of disproportionate lengths, I concluded I had actually allotted categories appropriately. The next stage was to put codes beside each major comment, depending on the messages being delivered. Some were more easily categorised than others, and various trials and revisions were required. I made further attempts to examine my own research rigor, going through the entire process on several occasions over time, superimposing one coding upon the other, checking to see where codes did not agree. As a mere interpreter, I was particularly concerned not to 'force' the data where it did not truly go (Strauss & Corbin 1998). I recognised, however, the impact of self within the process, and attempted all the time to prove myself 'wrong', regularly questioning the origin of my perceptions.

In time, I was as satisfied as I could be that each category plainly derived from what the *young people themselves* had said, albeit in response to *my* questions. Although this rendered the topic into a circular form stemming from my overtures to the young people via the Witness Service, the questions and form of the study had been compiled with much supervision and had withstood the ethical tests set for it. Nonetheless, the fact of interviewer bias both in instrument design as well as throughout the analysis was there, and the best that could be devised to deal with the personal within, was to acknowledge it was a part of my study, and try to break through and move beyond it, as Strauss & Corbin (1998) posit.

**Comparative analysis & conceptualising data**

I now began comparatively to analyse participants' comments. To do this, I classified portions of the comments into defined properties and actions (Strauss & Corbin 1998). The comments of Strauss 1969 (in Strauss & Corbin 1998) are noted:

> 'Any particular object can be named and thus located in countless ways. The naming sets it within a context of quite differently related classes. The nature or essence of an object does not reside mysteriously within the object itself but is dependent upon how it is defined'. (1998:104)

The naming of the discrete parts sometimes suggested itself because of the imagery and meaning they invoked; these concepts are noted in square brackets, e.g. [anxiety]. At other times labels were taken from the participants' own words, and underlined. This latter is referred to as '*in vivo* coding' by Strauss & Corbin (1998), after Glaser & Strauss (1967).

Not every possible phrase or idea is conceptualised. The conceptual name or label is suggested by the context in which the event is located, placed into one of the above four sections within which the sixteen categories already had been grouped. This conceptualisation more concerned participants' own experience, feelings and responses than the earlier exercise going though the transcript content to place comments into sections.

The original concepts appear as they were named by participants. Adjectives such as 'inadequate', or 'lack of', for preparation and understanding, for example, reflect the attitudes of the young witnesses which are of the foremost importance. Where there was no clear descriptive message about the positives or negatives of what had occurred, I do not attach one.

To demonstrate this part of the analysis, I quote three short passages from the data, concerning young witnesses' <u>feelings when giving evidence</u>:

**- <u>Scared</u>;** [scared] **I didn't feel I could say what I wanted to, and because I didn't get it out, the decision would go against me.** [lack of self-confidence] **I <u>felt sick</u>** [felt sick] **talking about the incident. [Alison]**

**It felt OK** [felt OK] **because I thought about what the outcome would be if I gave my evidence well. Then it would be a better outcome for me, and the more positive I was, the less chance there was of him getting away with it.** [grasp of cause & effect] **[Dawn]**

**I was really tense,** [tense] **and watching everything I said,** [self-aware] **it made me real angry** [angry] **that I couldn't tell them what it was like.** [lack of opportunity to express self] **[Ellie]**

Again, the next step was to consider carefully the concepts I had attached. I linked these to the earlier notes made during microanalysis, in order to assist with understandings; yet to maintain the young people's constructs. I now gathered all the concept labels together for each participant under each of the four sections.

For this example, concepts were grouped as follows:

- [felt OK]
- [tense] [angry] [scared] [felt sick] [lack of self-confidence] [lack of opportunity to express self]
- [grasp of cause & effect] [self-aware]

Placing these where they matched gave me a grasp of the tranches of feelings I was encountering. Some were obvious; others demonstrate the different levels of understanding of the witnesses about what was going on during the trials. Participants' responses are recorded in the next two chapters, and a fuller discussion is offered in Chapters Seven and Eight.

# Chapter 5

# Data presentation I

## Introduction

The previous chapter sets out my data analysis methods. I have analysed the responses of young witnesses in some detail, and began to draw out the recurring and significant themes, beginning by returning to my basic research questions to ensure relevance. I now present my findings, tendering the data in the following two chapters. The first considers the court experiences of young witnesses in Part I, and their expressed feelings in Part II. Part III in Chapter Six deals with the impacts of the trial upon children, and the final section, Part IV, discusses study participants' suggestions for change.

Having gathered such an amount of data, the length constraints within this dissertation dictate that some parts are discussed more thoroughly than others. My data presentation in these chapters reflects themes coming from young witnesses' accounts; which I have illustrated with selected quotations, as my focus is upon the voices of young people taking part in the study. Participants' ages at the time of the interview with me are included initially. I offer comparisons between and amongst participants where that is relevant to what happened. Discussion, analyses and links from my study to other research findings and theory are addressed in Chapters Seven and Eight.

## PART I: Experiences

In this section, I examine young people's experiences: issues concerning the happenings in court as they perceived them, both generally and with respect to their cross-examination. Several of the additional matters of 'experience' about which I spoke to young people served to introduce the issues and make a beginning to the interview; where they have particularly significant things to say I include these as well. It is clear, however, that the issues regarding their treatment in court were of most importance to the participants: I therefore take up their opinions as my major concern.

In general, the experiences which young witnesses report were regarded by them as quite difficult. Many, even some whose overall view of the court process was favourable, reported concerns and trauma regarding the way in which they were questioned and treated in the course of their evidence giving. This was particularly true of young people's experiences of defence barristers who gave no allowance for the fact they were cross-examining minors.

I am reminded of the philosophy behind the 1933 Children and Young Persons Act which first allowed for separate Juvenile Courts for youngsters accused of offences; and the rigid rules concerning their complete separation from adult criminals. Over sixty years later we are nonetheless, still permitting defence barristers to treat young people who are obliged to give evidence of sexual abuse, in much the same fashion as adults complaining of the same type of crime. The fact that young witnesses are permitted the Closed Circuit Television link (CCTV) or screens in the court which prevent the defendant seeing them, does not neutralise the defence's obvious scepticism about the victim's account, and the hectoring tone they often employ.

I (i) Legal issues: young witnesses wishes and understanding

For many young people giving evidence, lack of, or inadequate choice is a major issue: in numerous youngsters' accounts no one asked their preferences about evidence giving, although there are isolated examples of more positive practice. In several instances, youngsters were not told of decisions until the last moment:

**They asked if I would like the video link: I said yes but they didn't know 'til the day if it would be granted. [Catherine - 16]**

Not only were decisions rarely discussed with young people prior to taking place; neither were reasons offered. In some instances, there was a last minute change concerning young witnesses' evidence, which had a huge impact upon them. Study participants found this inexplicable and apparently just subject to the whim of the court. For example, when Ellie arrived at court she discovered that the judge had suggested she was too old to give evidence via the CCTV link. Her friend, the same age, who was a witness but had not been assaulted, was to have given her evidence in court using the screen. The judge felt this too, was

unnecessary, suggesting open court was appropriate. Ellie was extremely upset for both herself and her friend, and threatened not to give evidence unless permission for the screen was reinstated.

**The judge wouldn't let her, that's all they said. And she burst into tears. And then L____ [Witness Support Co-ordinator] ... spoke to the judge.**

*- Did he change his mind?*

**Yeah.... I was extremely angry when they said she wasn't allowed, so I just thought, that's it, I'm not going to go through with it, it was completely unfair. [Ellie - 16]**

In the event, both girls gave evidence in court with the screen round the witness box. Ellie, although grossly damaged both by her rape and the subsequent court trauma, was, nonetheless a fighter and was not prepared merely to accept and do what she was told. She realised she had some power in the situation - the 'power' not to give evidence - although she was, mercifully, unaware of her legal compellability. Her action did, however, provide some choice; one can imagine the furore if a minor was placed under some form of court sanction for a charge of 'contempt' as a result of a refusal to give evidence because CCTV or screens were withdrawn.

The use of power, albeit a limited sort of power, enabled young women such as Alicia to retort effectively to the defence barrister:

**He went, You've got a very fertile imagination. And I turn round and I say, It's a good thing I'm not fertile anywhere else. And the CID in the case had to leave the courtroom. He was made to leave.**

*- Oh really, why was that?*

**'Cos he burst out laughing. But after that I just walked out. [Alicia - 14]**

Alicia's distress in her interview with me was palpable; nevertheless she had stuck a blow for her personal power despite what might be seen as a position of powerlessness. Both she and Ellie were 'bloody but unbowed'. Despite the most appalling trauma, and the personally dysfunctional nature of their subsequent reactions to the court process, I felt that given a

reasonable level of family support, which both were receiving, their sheer fighting spirit would see them through to a form of recovery.

A number of the interviews illustrate the attempts (by either the judge or defence counsel) to prevent use of screens and the closed circuit television link. I encountered many instances where rules were changed to suit the powerful actors but attempts were made to deny non-powerful individuals any but the most basic rights. The account below is by no means isolated.

***Mum: The defence counsel wanted it [Susan's evidence] not to be on the video link. He [defence barrister] was still fighting it out, and in the end they stood her in the witness box in court - it would have been with screens. And I was very unhappy and asked what we could do. The Child Support Unit [Police] phoned and spoke to somebody, and in the end we won: we were told the link would be allowed.*** **[Susan's mum - Susan aged 9]**

In general, young witnesses said they had wanted to know what would take place concerning their evidence-giving. This information, however, (whether positive or negative in terms of the youngsters wishes) was rarely available until the last moment.

**Because, I just didn't know what would happen, we were just told to go and wait, and they didn't let me know what was going to happen. [Jill - 13]**

**I had the TV link, and the usher was there with me. I would have liked mum to be in the room with me but she wasn't allowed. [Alison -14]**

Indeed, several participants spoke about discretionary decision making leading them to wonder what influenced a judge to rule, or court protocols to be set, in a particular way. As numerous child witnesses reported, it was quite bad enough to have to give evidence of sexual assault without the 'goal posts' being moved.

***Mum: What I couldn't make out was why his granddad couldn't be with him, once we got to court and had to wait. They just took him off, by himself ... and my dad wasn't giving evidence.*** **[Sam's mum - Sam aged 7]**

**I (ii)** Delays

On numerous occasions cases were adjourned or delayed; in my study, this could be anything from a few hours to over two months. Many children and their parents said they felt confused and uncertain because of the changes. Two defendants 'sacked' their barristers on the day the trial was due to begin; another one dispensed with his solicitor's services.

***Dad: First of all, the day was booked for the beginning of December, then two days before, we hear that he's going to try and get it delayed - change his barrister. And it does get delayed. Then we're told, We don't know how long it'll be, cos of the court lists. And this apparently happens all the time.*** **[Shelley's dad - Shelley aged 13]**

Furthermore, at the most serious end of the scale, one young male witness described the impact for him on learning of a court delay.

**Well, I committed suicide.... I made an attempt to slit my wrists.**

*- Was this after the court or before?*

**Before. It was about September. Because, our court case was September 23rd, and they ... [adjourned] 'cos of another court case....**

*- Was that bad? Did they take you to Casualty ...what happened?*

**Er, I had a couple of stitches. As you can see.**

*- Poor you.*

**Poor me. [Brian - 16]**

On other occasions, children had to wait in the court building itself for lengthy periods on the day the trial was to proceed. For one of the participants, this was a two day wait:

**We had to wait. See, I was just taken away from everybody, ... just taken away and put in a little room.**

*- And how long did you have to wait?*

**[Sighs] Two days. [Shelley]**

For most other young people it was from an hour or two, up to a half day's wait. The most positive arrangements reported are those where the young person was enabled to wait at

home, then called for a set time, such as straight after the court's lunch recess. Again the practices vary enormously, but the police and court staff were often unable to impart accurate information about length and reasons for delay. Even where the young person was told something of the types of court protocols which cause such hold-ups, they were, at best, unsure about what was meant.

*- And did you understand, were you told what was happening?*

**Not exactly, no, they said something completely different. [James - 16]**

Even the most confident witnesses spoke of the court machinery and delays interfering with their everyday lives. The most positive comments surrounded being kept informed, both about process and progress of the trial. This is an aspect about which young witnesses are rarely fully advised. On occasions where a young person was given some additional information concerning how matters were developing - in Dawn's account, for instance - I detected a greater sense of their feeling at least slightly more in control.

I (iii) Judges, juries and the court

Often, 'court' issues dominated the proceedings; additionally, it was very early in the interview process that I began to uncover difficulties brought about by judges' proprietorial attitudes.

**There was something between the judge and my Social Worker. He had a go at her... I'd asked that my Social Worker sit in the Video room with me, and they said eventually she could sit next door. Then because of the legal argument there was some reason she wasn't going to be allowed to go in the next door's room.... But the usher brought her upstairs: they didn't realise it wasn't allowed, it wasn't her fault, but the Judge had a go. And I think he didn't like the letter my Social Worker had written about me having panic attacks. [Catherine]**

Later, considering Catherine's account I imagined her social worker as forthright and courageous enough to write to the judge: (few in my experience would risk judicial wrath in that way): above all determined to do whatever she could to make it right for the young

woman with whom she was involved. Catherine explained to me that she had come into foster care as a result of her disclosure: her mother preferred the protestations of innocence made by her stepfather, the defendant, over the account of her daughter, in spite of his prosecution. Worse, mother and daughter had almost reached a reconciliation when the not guilty verdict put paid to it; mother labelling Catherine as a liar.

In contrast, some very helpful judicial practice was occurring. It was Dawn's choice to give evidence in court:

**Also that day I was told that the judge... I was supposed to have... to give my evidence through a video link but the judge granted permission for me to be in the court, but I had a screen around me. And before we went into the actual court, they took me into an empty court, and they put the screen around me, and sat somebody where the defendant should be sitting and asked me if I could see that person ... So there was a bit of preparation for me to be actually standing in court. [Dawn - 16]**

Some other relevant comments were made about the judge involved in the trial.

**The defence barrister repeated himself a lot and wouldn't let me finish speaking but the judge interrupted him and said, Let her finish. The judge was nice to me but there was a bad atmosphere created between the barristers and the judge, trying to make points against each other. [Anna - 11]**

*- Tell me what happened when you came to give evidence?*
**I went into the TV room, the link... this lady came and played a puzzle and the judge came and said hello and then, after watching the video and I had to do the actual thing.**
*- What did you have to do?*
**I had to tell the judge about what happened. [Toyah - 9]**

**I had to see the judge in his little room. He didn't have his hair on, his wig... when I was talking to him, I said not to wear his wig. 'Cos when I was talking to him he put it on and said, Do I look funny?**
*- And the lawyers, they didn't wear their wigs either?*

**No. [Naomi - 8]**

**[T]he judge. He asked me if... I needed a drink.... [Brian]**

*- Did the judge say anything while you were giving evidence?*
**[He] asked me questions, to confirm what I'd said, and when [the] defence barrister... ask[ed] the same question over and over again, I think the judge noticed I was getting a bit uneasy with the questions, and he would say, This question's already been answered; or would interrupt him. [Dawn]**

**And the judge was intimidating as well, when he asked questions. [Jill - 13]**

**....The judge actually was really nice..... He kept giving me looks of reassurance, you know, and said if you need some time just say so. [Ellie]**

Some judges made efforts to assist the young person; however I contrast Ellie's view of the judge with his initial refusal to allow her to use the video link or her friend to have the screens around the witness box.

As well, some participants had concerns about the jury's attitude:

**[Sighs] ... I reckon the jury was - brain dead. My dad thought that. Mum and S_____ [friend] said so too. They were all really young and hadn't had any experience at all. They looked like my age. [Ellie]**

**Well, I felt the jury was just bored. One girl was just totally bored the whole time, the way she was sat - and one man was sat clicking his pen the whole time. [Vicky -12]**

Practical considerations were often very much on the minds of young witnesses and their families. Lunchtime was a difficult point for many children giving evidence. Some parents went to great lengths to avoid their child seeing the defendant and sometimes his supporters too, but this involved the victim's family in much skulking and awkward lunch arrangements.

One family took their daughter to another town for a meal as the defendant was on bail. Others still ran across the defendant despite assurances they would not.

*- What happened, about lunch?*

**We went into Winchester for lunch. We were told he'd stay in the canteen, and he was s'posed to have a prison officer with him - but we still bumped into him. They should be separate, I think. We were told it was all separate, and we wouldn't see him. And after, we told the man - the D.S., the sergeant, and he goes, 'Oh, right', half laughing. And I don't think it was right. [Vicky]**

I (iv) Quality of support and expertise: the behaviour of professionals

Some quite potent examples were told me about the behaviour, knowledge and committment of professional personnel. Several are positive, and seem to reflect some excellent practice; some are quite negative.

I(iv) a. Witness Service

In particular, the comments concerning the Witness Support Service, both in the Portsmouth and the Winchester Courts were consistently very positive. Young people commented about the assistance, support, and sheer organisational abilities that they had relied on from the Witness Service. On the occasions that carers had spoken to me their comments reflected similar opinions: the quotations below are indicative of the general view of the support provided.

**I wasn't expecting the Witness Support Service to be there, I'd never heard of it before, and them being helpful was really fine, if they hadn't have been there, I'd never of known about the set-up or who was who, or what would happen. There was a discussion of whether or not the defendant should be in court while I entered. And the Witness Support Service and the barrister said the defendant should be taken out of the court and so the detective went away and spoke to the judge and other barrister, and I was granted permission, for him to leave. We were actually waiting in the waiting room outside, and one of the Witness Support Service stayed with me up until I entered the court. And then, they were there when I came out as well. [Dawn]**

*Mum: The Witness Support were brilliant - they couldn't have done more.* [Sam's mum]

*Mum: The ... most helpful people were the Court Witness. They were the ones who seemed to know what they were doing, where they were, how to sort everybody else out.*
*- Do you mean the Witness Service?*
*Mum: Witness Service, yeah. They were the ones that sorted it all out. Everybody else didn't have a clue.* [Naomi's mum]

I(iv) b. Police inputs and investigation

Young people described a range of practice concerning police and related investigation of young people's disclosures. Sadly, and particularly in view of generalised police attempts to be more sympathetic in the investigative process for sexual abuse complainants, some of these do not reflect the positive levels of practice they might. There were some individual officers, however, who demonstrated enormous commitment to supporting young witnesses.

**I would have liked some of my mates to give evidence. But it didn't happen, 'cos the Police didn't talk to me after I'd given a statement..... I think the Police could have been more helpful about things. I phoned up the police officer that was doing it ... well, doing everything with me, you know... at least four times. And he never rang me back, y'know? [Peter - 18]**

**The detective in the case, he was really good... he would come round and... speak to us and tell us what was going on. And then the day we actually went to court, he drove us there, and drove us home as well. [Dawn]**

**They did some DNA tests.... They interviewed me the first and second days, and they did the test on the third day. But it should have been done the first day. So it was too late.... I had a go about the police doctor - she treated me like not a person. And it was a woman doctor too - she could've been more tactful. And they said to me, when I said about it,** [speaking in singsong voice] **'That's what she's like I'm afraid'. And she just shouldn't be allowed to be. But, y'know, that's their way of not dealing with it. It's not on. [Vicky]**

Although in general, one can readily understand that youngsters would not want to, as it were, prolong the agony by making a formal complaint, several parents reported that they had made complaints, particularly regarding some major concerns about police conduct:

***Mum: We were told ... you see I went to all the court hearings so I knew when the dates were. And I was told a certain date ... to go*** **[to court]. *The Police came round the night before, ringing the doorbell at half past eleven at night -***

*- Half eleven?*

***Mum: Half eleven at night the police rang this doorbell. And I ... didn't go down. And a note was put through the door:"Urgent - Do not appear in court tomorrow". So that was another disorganised mess-up.*** **[Naomi's mother]**

Another mother explained she had made a complaint about the investigating officer who was looking into her son's case.

***Mum: This policeman also went to see the next door neighbour, the defendant's partner. When I said I was concerned that he had been there - I rang him up - he told me, Well, I can see who I want. I did realise they might have things to discuss.... However the officer was in there for two hours. Then afterwards the policeman telephoned this woman and told her I'd rung him and said how concerned I was about his visit to her. The next thing I know, she put a note on my car, saying this policeman had visited because they 'had something to discuss...' There were lots of ways the police didn't do their job properly. The same policeman was still dealing with the case and his boss, the Inspector, didn't realise he was. There were lots of things that weren't dealt with: they could really have cocked it up, we were jolly lucky to get the verdict we did.*** **[James' mother]**

Other instances of poor practice came to light:

***Mum: They*** **[the police]** ***didn't caution him. They took about 50 pages of evidence, off the kids, and then didn't caution him, and they couldn't use any of that evidence at all.***
**[Shelley's mother]**

**I(iv) c.** Other professionals: aiding and abetting

The role of psychiatrists, and young witnesses' views of counselling caused them confusion and distress at times. Some professionals were seen as supportive and helpful; others were disappointing as far as the study participants were concerned. For many young witnesses, a number of the professionals surrounding the case, ostensibly providing support, proved to be of little help: at worst they caused additional emotional damage. Some young witnesses wanted somebody else to work with them, but this was not always possible, for whatever reason.

A number of youngsters who were offered counselling prior to the trial were not able to continue:

**Then, I got offered counselling, but I got told by somebody that, see, the defence barrister might throw it back in my face, an' I would be contaminating evidence, so I didn't do that. [Alicia]**

**I started [counselling] again two weeks ago. My social worker did some but then I got another social worker. She spoke to CPS who said I wasn't to have counselling so it was stopped. They said it would contaminate my evidence. I won't see the psychiatrist 'cos he did a "little experiment" on me. He took me off my antidepressants. And it was really bad.... So I'm being referred to another one. [Catherine]**

A number of youngsters were referred for counselling following episodes of self-harm:

- *Have you had any counselling?*

**Yeah.... [the] Psychiatrist... after I'd done** [cut] **my wrist. [I saw him for] 'bout five weeks.**

- *... Do you think it was helpful to see [him]?*

**In ways, yeah.... When I went in there he was really good, 'cos he was putting all the good things into my head like my parents, about my hobbies and all that lot. Basically he was pushing all me bad things to one side, to the back of me head, and just keep the good things. But it ain't as simple as that. [Brian]**

**[S]traight after the [court] day, I went to the doctor - my parents were worrying about me, basically about me being suicidal. An' I've got the physical scars all over my arms and that.**

*- Have you been referred to a psychiatrist to do with the cutting ....Have you seen somebody already?*

**Mm, a psychiatrist - but he was absolutely pathetic. He was just - he asked me a load of questions which had *nothing* to do with it, with anything like that. I mean, one question, 'Do you sleep with your boyfriend regularly?' I mean, what's that got to do with it? - I couldn't believe it - I just thought, Well [half laughs], I haven't got him with me.**

*- Did he come up with any kind of, reasons, any things that could help?*

**Nothing.**

*- Did he prescribe any medication at all?*

**Nothing. [Ellie]**

**I got it with B____ [counsellor's name] of the NSPCC. That's just finished.**

*- How many times did you see her?*

**'Bout seven. I did... er... Art therapy with her.**

*- Did you find it helpful?*

**Yeah, a bit 'cos we... I drew a picture of him and we chucked it out [half laughs] - chopped it up, and then I did another for mum. [Ellie]**

Many of the stories recounted by young people described the pressures and despair, especially relating to perceived disbelief, either by individuals or by wider society in the persona of the jury. There was a feeling from several participants that they were not told, routinely, how 'forceful' they are going to have to be when giving evidence. Children in my sample generally were emphatic in spite of, rather than because of adults; child assertiveness is rarely encouraged.

Equally, the social work world did not always support young people giving evidence adequately. Some social workers were praised by the children, but they were not necessarily involved insofar as they were able to attend court to support the child in the evidence process. In a similar fashion, some psychologists' inputs assisted if the relationship built with the

child is good. If not, the outcome may be very far from ideal, as the examples above illustrate. Data concerning the trial impact are presented in Chapter Six.

I (v) Witnesses experiences: pressure, fright and self confidence:

A large proportion of young witnesses found their court experience frightening or anxiety provoking in some form; many described it as 'scary', some felt nervous or pressured:

**I went into the TV link, yeah.... I suppose it was like, scary, more than anything else. I was there for an hour; it was a lot of pressure. [Brian]**

Others felt reasonably comfortable and self-confident: yet young people's positive or negative feelings did not prove an accurate indicator of jury decision. For instance, Brian and Vicky felt scared and nervous, yet the former obtained a guilty verdict and the latter, not guilty. In contrast, Peter and Dawn were both self confident during the evidence giving task, but whilst Peter's alleged perpetrator was acquitted, Dawn's was found guilty:

**Really I was a lot more self confident when the questions started coming, you know, that I could answer them fine.... The good thing was they let me use whatever language I wanted.... [Peter]**

*- How did he speak to you, the defence barrister?*

**He um, he spoke to me, he didn't look directly at me sometimes. He dragged out the questions and he... spoke really slowly. It was like I was waiting... for him to ask me a question, and I was waiting to give my answer. He kept on hanging on, it was like he was trying to get me more confused.**

*- Do you think he succeeded?*

**No he didn't. [Dawn]**

Several of the participants either used or appreciated positive coping skills, at times aided by their carers. The ingenuity shown at times was noteworthy.

*- So was she ...worried she was going to see him?*

***Mum: Yeah.... [S]he was worried and I was worried.... As we was driving in through, I said, If you see anybody that looks like daddy, just close your eyes. 'Cos I thought, if he can see her, but she can't see him. He ain't gonna be able to do nothing if she can't see him.*** **[Naomi's mother]**

I (vi) Cross-examination

The cross examination of young people impressed as the single worst aspect reported by almost all the respondents. This topic alone could practically fill the chapter, so I have been obliged to limit myself to the most significant accounts.

I(vi) a. Only the strong survive...

On numerous occasions, it is only the strength of the young witness, sometimes with the benefit, also, of family support, which effectively allowed the trial to proceed. The delays, difficulties and personal emotions which witnesses had to experience and overcome meant that only the very strongest survive the witness process.

**I think really the only reason I managed to say what I wanted to was at the end after the defence, I said, I sort of asked the judge if I could say a bit more. Sort of to clarify some stuff. [Peter]**

**And you're trying to give evidence that's true, and you've got twelve people sitting in there that says, No. And you're trying to get through to them that you're right and he's wrong. [Dawn]**

**The next day, it was. I was questioned for ages, 'bout 2 ½ hours.**

*- And how did the defence barrister treat you?*

**It started off, he was sort of jokey, a bit. Then he got horrible.**

*- How did you cope with that?*

**Okay. They'd said, to make sure you stood your ground, and stick up for yourself. And I did, I held my ground. [Vicky]**

In some cases, parents lent their own strength to the children concerned:

***Mum: I wasn't allowed to talk to her about what had happened, obviously, but what I did say to her was that daddy thought she wouldn't be able to do it.***

**[Naomi, returning and hearing part of this]. But I did.**

***Mum: I know darling.... He told her that I knew what was going on - which was ridiculous - so he'd lied to her and got her into a sense that she wouldn't tell anybody. So I think when the actual court case come, he thought to himself, She won't say nothing.... So the night before, we said to her, He thinks you can't do it, but we know you can do it. You stand up and answer those questions and show him, and everybody else in that courtroom, that you can do it. Then that will be like stuff for him. [Laughs.]*** **[Naomi & Naomi's mum]**

Other examples illustrated young people's perceptions of their own powerlessness and their understanding of the liklihood of disbelief:

*- Can you tell me why you didn't think they'd believe you?*

**'Cos, he was older, and - it's his word against mine. [Alicia]**

**I(vi) b.** Cross-examination traumas

The major trauma for young people - often merely the worst of several experiences bound up with the entire court process - proved to be their experiences of cross-examination. A number of young people had some level of awareness of what could occur before it began:

**I sort of knew that he was going to be defending the... anyway so he was going to try and make out that I was accusing, making it up, which wasn't very nice. [Dawn]**

It is noticeable here that Dawn does not name either perpetrator or crime. This was a feature of many youngster's accounts.

**I knew the defence barrister would me hard on me; 'cos of watching the telly, 'The Bill' and other police programmes. [Alison]**

**I knew it would be hard - I'd been told and I realised anyway. I knew the cross-examination would be worst. [Catherine ]**

Participants spoke of a number of broad approaches by the defence barristers. In considering the nature of cross-examination, I have drawn out various types of comment from young witnesses' accounts of the questioning by the defence.

Defence barristers often openly accused the young witness of lying, or made suggestions to that effect. This was one of the most disturbing aspects for child witnesses. Sometimes this was approached as a direct accusation:

**... His lawyer kept going on that it did not happen, he did not do it, he kept saying it and ... I kept going, Yes it did, Yes it did.**
*- And how many times do you think he asked you that?*
**'Bout four times. Yeah. And then he goes, You're a liar, and I goes, I'm not a liar though 'cos it did happen.... I didn't realise what it was going to be like, to be told you're... lying. [Shelley]**

**Well it was okay 'til the defence barrister... he started to ask me questions.**
*- What was he like?*
**Horrible. He kept saying... he kept asking if I was lying. [Vicky]**

**Basically [he wanted] to make out I was a liar - which did really really upset me. I cried a couple of times at that. [Brian]**

Sometimes in my study, the defence preferred to suggest that the young person had somehow been 'mistaken' in their accusation of abuse:

**[T]he defence barrister wound me up. He used the word "horseplay" - he made out my dad had just mucked about and it wasn't really abuse. [Catherine]**

Some barristers used more subtle approaches, trying to catch the witness out. Alicia recounted:

**But it was like, the barrister's trying to make you say something, and I think I turned round to the men and I said, Look, do you wanna hear what I have to say, cos it's going to be the truth, not what you're trying to make me say.**

*- Right. And what was his reaction to that?*

**He just shut up, at that point. [Alicia]**

From some children's accounts, it was apparent that defence barristers had tried to tap into a child's fear, almost mesmerising the child to agree with the barrister's account:

**They asked first, what did he do to you, how you felt about it. But this other man [said], because he done this and that to you, was I frightened. And I said I was scared and frightened, I told him to stop but he didn't stop. [Naomi]**

Several young witnesses were so concerned to complete their ordeal and have it done with, that they did not perhaps give themselves the space which would have been helpful:

**Then the defence barrister. He was quite scary; it was like he wanted to shout but he didn't. He went through the detail of the incident.... He said I was lying - I... wanted to shout, I am telling the truth, believe me. But I didn't. It went on a long time; the judge didn't stop him.... I felt I was being accused... it was... a lot worse than I thought. I wanted to cry but I didn't. I thought it was going on for ever. I didn't feel comfortable enough to ask for a break even though they'd said I could. [Alison]**

Another manoeuvre used by some defence barristers was to slur the witness's character, or to question their behaviour in some form:

*- ... So how did they actually treat and question you?*

**I think he treated me badly. Well, it was like I'd done something wrong and I was getting into trouble for something. ... [T]hey read out my criminal record... to make the jury get a poor impression of me. I don't really mind now, but I went nuts when I first heard it, over the lunch hour: the CPS told me, that when ... I'd been cross examined, my barrister can read out his criminal record, which was a lot worse. [Alicia]**

**He said that basically it was my fault for what I was wearing, I was wearing trainers, track suit trousers and a big jacket. I couldn't believe it, he uses that.**

*- What did you say, what did you reply when he said that?*

**I couldn't. I was shocked. [Pause] I have to say, he's the evillest person I've ever met in my life.**

*- Did you cry?*

**Yes I did. [Ellie]**

Most of the above examples, and numerous others from my participants reflected a high level of discomfort with the system, as well as an understanding of the unfair tactics used by the defence. This was not the worst of Ellie's experience, though:

**And also the map that they gave of the area, it was out of date. The attack actually happened at the garage...**

*- Yes, your mother's mentioned...*

**But on the map the garage was over there** [points towards the road in the opposite direction to the direction where the garage is]. **So they said that I must have walked past my house, to where the garage used to be - thirty years ago.... And as the garage is now *there*;** [points in the direction where the garage now stands] **they didn't believe me on that.**

*- Did you explain the garage has moved?*

**Oh yeah, oh yeah, but they didn't believe me. And also they didn't believe S_____ [friend] when she said exactly the same thing. Luckily my mum said exactly the same thing when she had to give evidence. And then they believed her. [Ellie]**

Whilst describing this, Ellie became extremely angry. Her fury at her inability to outsmart the defence, as well as her feelings of personal impotence were extremely strong.

Additionally, what young witnesses regarded as irrelevant questioning occurred as a regular feature of the cross-examination of witnesses.

**Some of the questions he asked, just wasn't a connection with the case at all, anyway. [Brian]**

Several young participants cite instances of apparently irrelevant questioning. Catherine for instance noted that she was asked in cross-examination about her parents' divorce.

Some lawyers for the defence used myriad tactics. The following transcript quotations show a selection of the measures deployed:

**... [T]hey blamed me for what happened when I was younger: I was raped when I was six. They did a video then, [but] ... mum didn't feel I ought to be a Court witness. But the defence barrister distorted it. In my video ... this year ... I said there had been "an incident" when I was six. But on the video they thought I said "accident" - so the defence barrister kept asking: Why did you say this was an accident; but I'd meant 'incident'. And I thought I'd said 'incident'. And he made out... he fired questions at me so fast. [Alison]**

As in other young people's accounts, no allowance was made to Alison for her sensitivity or trauma. Other children experienced similar effects:

**He kept saying I was drawing in the box. I wanted to say I didn't draw on [it] and he shout[ed] at me, saying I was drawing on the box when I wasn't. .... He said, Did you have a pen with you... and did you draw on the telephone box.... I think he thought he'd trip me. 'Cos he** [defendant] **was telling him I drew in the box. [Toyah]**

**[H]e tried to twist it. 'Cos, we made a mistake and I tried to put it right and he kept on saying, 'Ooh, it isn't this', for about ten minutes. [Anna]**

**Well, the ... defence man wasn't very nice, he made me nervous.... he kept trying to make me say it didn't happen. And trying to make me say things that I didn't want to say... he kept repeating questions, but in a different way. To try and make me change my answer. [Jessica -14]**

**I don't think you can be prepared. Because it's different in different cases. I mean with different barristers, and I mean I'm just saying that his barrister was doing his job but,**

**he surely could have remembered that I was a child, and not an adult, and not something off the bottom of his shoe. [Alicia]**

Alicia actually underwent the court experience twice as the jury were unable to reach a verdict in the first trial.

**My mum had five minutes to ask me whether I wanted a retrial or not... but I think if I had longer to think about it, I wouldn't have gone for a retrial.**
*- So going through to the second time, when they kept adjourning it, how did you feel then?*
**I was confused... [t]hey had thefts up in court, when they were adjourning mine - or the judge was playing golf or something - well they didn't say the judge was playing golf, they said he had 'prior engagements'. [Alicia]**

In some ways the second trial Alicia underwent was worse. Her cross examination was particularly arduous amounting to eight hours over two days. She was aged 14 at the time.

The issue of what she was wearing at the time was also raised, placing upon her, rather than the defendant, the onus of self-justification. The question of her clothing furthermore, placed her in a role where her dignity was denied - Alicia was required to hold up garments for the CCTV camera, potentially for the titillation of the court. Additionally, the jury's - and her - wish to be seen in person by them was disallowed by judge's ruling, although she felt that might well have tipped the outcome in her favour, by showing the jury she did not look as if she was sixteen.

*- There's no way you look 16, lovey, there really isn't.*
***Mum: But the jury requested to see her, in court. And the judge refused. Did he not?***
**'Cos there was a photograph of me standing there 'cos I had a couple of marks, on my body. And they wanted to see what I was wearing... I actually had to hold the items of clothing up to the camera. An' the judge basically said, No, you have a sufficient picture there.**
*- What did you feel about that?*
**If the jury'd seen me in person, maybe he wouldn't have got let off, maybe he would be in prison now. [Alicia]**

Where the verdict was acquittal, other young witnesses also spoke of wishing they had been seen in person by the jury:

**But I felt if I'd given evidence from the Court itself it'd have gone the other way, because being in front of him would have been better, the jury would have maybe thought differently. [Alison]**

Overall, young witnesses became very upset at the whole court process; in particular, some commented it had felt as though they were the accused party.

*- So, how did you feel about going to court and giving evidence? The whole experience?*
**It wasn't a very good experience, to say the least.... Actually it was terrible. [Catherine]**

*- How did you feel about going to court and giving evidence? The whole experience?*
**I didn't like it. It was one of the worst things I've ever had to do in my life. [Vicky]**

A few young witnesses reported more positive experiences of cross examination. Their fears concerning the process did not always turn out to have been proved in fact, as the passages quoted below bear out:

**I thought they was gonna ask me all these difficult questions, and I wouldn't understand.**
*- And did they?*
**No, they asked me nicely - they asked me questions but quite in a simple way. [Jessica]**

**He was all right, yeah, he was nice.**
*- Did it feel better or did it feel worse than you expected?*
**Better.... A little bit better.... 'Cos, when I came out, everyone said how good I was. [James]**

I myself observed a sexual abuse trial in Winchester in 1999. Unfortunately, I was not able to interview the witnesses, as noted in Chapter Three. However, at the trial, I was taken by

the defence barrister's opening remarks which emphasised that the young woman witness was (then) over the age of consent:

*"Forgive the ungallant question"*, said he. *"It is not done to ask a lady her age, but would you be so kind as to tell the court how old you are now?"*

He had no need of obvious savagery.

**I (vii)** Witnesses and family support

The effect of family support, however, is a major factor of the child's survival after the court. It was very plain that where there was solid support for the young person from the non-abusing carer(s), youngsters managed notably better. Many parents had shown much fortitude whilst assisting the youngster through the court process; some had gone to great lengths and given much emotionally to help their children to cope.

***Mum: Yes, that's what I said, I mean, to get her through it.... I said to her, You stand tall, and if they ask if you're right - she said, I'm going to say I'm not wrong. If you want to say - to the judge, or anyone, if you want to shout at them , you shout at them, you tell them if you're right, and I'll tell 'em the truth too. And I said, You can say whatever you like, you can swear, you can say rude words, if that's what you want to say, you can say whatever you want, all day. Don't be frightened to say whatever you want. And I think, 'cos we said this to her, that's what got her through. If we hadn't of, she would have ended up not saying... and then....*** **[Naomi's mother]**

In a few instances, parental support had involved physical and practical upheaval. One family had moved from their home into a safe house in another area. They were living in one room until they were rehoused; the mother had given up most of her possessions to keep her daughter safe. A fuller description appears in the next chapter.

**I (viii)** "Sod's Law"

In the course of their court experience, some witnesses encountered practical problems. Despite the existence of the closed circuit television at both Winchester and Portsmouth Courts for some time, there were occasions when the video equipment failed. Other young people had to deal with various difficulties and coincidences:

**The video was started and stopped on the Tuesday. This was because they realised my social worker's boss was in the jury. They swore the whole jury in again with an alternative juror, although they considered swearing a whole new jury. [Catherine]**

**It was on the day, we had to wait 'til about four o'clock - we'd been there since ten in the morning and they said, We don't need you, come back tomorrow. Then when we were there on the Thursday, the video failed.**

*- When was this?*

**In the beginning, at the start of the day.**

*- And did they come and tell you this?*

**Eventually, the next day wasn't it? - after they tried to fix it. It really was... And there was another problem with one of the jurors - on his deaf aid, his loop kept failing, and he couldn't hear anything. It was just one thing after the other. [Jill]**

*- And how long, then were you giving evidence for - do you know?*

**Dunno. Um, cos we went in there quite - about one or two, something like that.**

*- After lunch?*

**Yeah, but they - the video thing or something weren't working.**

*- It wasn't working? Were they able to show your video?*

**Yeah.**

*- And did it break down for a short time - long time, or what?*

**It felt a long time, but I don't think it was. [Jessica]**

**The TV link - that was bad. It broke down, or it wasn't working properly. They sorted it out, though, and it was OK once they put it right. [Vicky]**

## Conclusion

The quotations in this chapter represent only a tiny proportion of the court experiences the young people spoke to me about. The content of some participants' interviews demonstrate trends which may be linked helpfully to theoretical positions suggesting particular ranges of outcome and perhaps assisting in the search for a more child-friendly kind of justice.

Concerning child witnesses experiences overall, there was a binding-up of issues between what children wanted, what they got, their lack of self-confidence and their lack of power. When one begins to unpack the various issues that were operating with varying strengths, one starts to find a clear pattern emerging of young witnesses' powerlessness the majority of the time. Any power they did snatch back was at the cost of seeming helpful and compliant, regardless of their actual viewpoint concerning either the offence or their court treatment.

On occasions, young people were able to obtain a slightly better 'deal' due to the efficacy of one or other of the range of professionals involved; this did not always achieve much, however: Catherine's social worker appeared to antagonise the judge, for instance. Sometimes young people themselves struck out for their rights, but these appear to have been granted either simply by chance, or because their challenge might cause some systemic difficulty if unheeded. Young people were not being given the correct treatment as of right, or to enable them to give best evidence, or because the jurisprudential considerations suggested this might be the fair thing to do.

**PART II - Feelings**

This second category of data presentation is divided into four subsections, and concerns the feelings of young witnesses. Firstly, the young people's feelings prior to going to Court; next, their feelings about the prospect of giving evidence; then the effects on their feelings of the support they received, and lastly their feelings when they were actually giving evidence.

II (i) Prior to Court

Many youngsters were ambivalent about the initial prospect of having to go and give court evidence. Alison echoes the view of a high proportion of participants:

**I was very mixed up about going to Court. [Alison]**

There were particular contrasts when their early feelings are compared with their later view. It was noteworthy that for some young people, there was a definite feeling that they were

carrying out a civic duty, and their feelings seemed to be bound up with that and with a greater or lesser degree of resignation at the task ahead.

**I wanted to go 'cos I felt I should give my evidence - but I didn't want to go 'cos I was frightened. [Dawn]**

Some young people's opinions altered quite markedly over time. Brian for example, made the comment that at first:

**I s'pose all right actually, I was pretty cool about it. [Brian]**

Then when the prospect of court loomed larger, he made the comment that he was:

**Scared. More nervous than anything else. [Brian]**

Anna's response showed similar feelings:

**It was all right. Then the night before... I was upstairs and then I got the phone call, and I was like, really scared. [Anna]**

This illustrates the kind of turmoil many participants felt. Some described a feeling of inevitability; on analysing their views I felt much was bound up with the concept of court agency. Some quite young children to whom I spoke had a very clear notions about the power of the court. Whilst none discussed this overtly, there was a discernible attitude from many young witnesses that the court was greater than they were, greater indeed than other sections of society as a whole. Peter's comment spoke volumes about a whole range of such issues:

**Um, really I was sort of terrified about it, I was worried about the defence lawyer ripping me to bits really and I was worried about having to go an' face my dad, you know? I didn't think I could do it, but... there wasn't really much way to get out of it. [Peter]**

It was very interesting that the level of comfort, discomfort or mixed feelings about the process seemed not to relate to the young witnesses opinions about their preparation; nor did it relate to the actual court outcome. I discuss this more fully in Chapter Six, when I present data about the trial impact.

Some younger children were much calmer than others, such as Toyah, although her later comments in the next section also illustrate the gradual building of negative feelings as the court day approached.

**I wasn't that scared really, to be honest. [Toyah]**

**II (ii)** Feelings before trial

Youngsters' desire for some form of justice or retribution began to become a feature when we started to discuss their feelings as the prospect of the trial began to draw closer. The wish was less strongly expressed by children and young people where the perpetrator was eventually convicted. It seemed as if the justice of a guilty verdict had absolved some of their strong feelings; although many participants expressed some dissatisfaction with the court sentence, even where a guilty verdict was returned. The actual issues for the children concerning sentences are dealt with in Chapter Six.

**I just wanted him to go down and get what he deserved. I mean, I was pleased there would be a case, but scared... because I knew he was there - but - it had to be done. [Ellie]**

**I didn't mind because I had to go to court - it'd be best so - get him found guilty. [Jessica]**

Like the queries about their experience discussed above, asking young people to describe their feelings before the trial produced responses which addressed both their lack of knowledge and their anxieties. Whether with hindsight or whether it had been in their minds before the trial, numerous children had expressed concerns about the way the defending lawyer would treat them.

**Er, I dunno really, I knew it would be difficult, the way things are, sort of from the other side, and I knew, I thought it would be a bit scary, 'cos like on a lot of films - I've seen, the witnesses are like - in the ones I've seen, they're treated like something off the bottom of someone's shoe. [Alicia]**

The feelings of potential young witnesses as the prospect of evidence-giving grew nearer showed a degree of realism in a number of cases. As Brian put it:

**'Cos, those court cases you see on television, the American ones, they really badger you don't they, on the other side, on the defence side. [Brian]**

Others were anxious and frightened chiefly. Words like very scary; horrible; not very nice; hard; messed up; nervous; having butterflies; worried; upset - all figured large in children's accounts. Their reasons were very understandable:

**Horrible.**
*- Can you tell me why you thought it'd be horrible?*
**Cos I thought I was going to see that man. [Toyah]**

II (iii) Support

The issue of support for the young people, and the way they felt about it, or its lack, had been an important one also. Many young people had received unequivocal support from their families, or from certain family members, and had expressed a degree of relief that these individuals had been there for them whilst they were awaiting the court day. I identified the support of young witnesses' families as being a major factor in sustaining young people through the long wait for the court hearing. As a general rule, the greater the support and acceptance the family gave, the more it assisted the child concerned. The effect of lack of family support was no more clearly demonstrated than in Catherine's case:

**My social worker [supported me]. I was in care, then out, then back in. I came back into care about a month ago. It was really because of the court case. My mum didn't**

**support me; I took three overdoses. I don't know if she believes me, she didn't support me. Only my social worker did. [Catherine]**

It was not, however, always sufficient for the young people to have family support, however unerring. Ellie's litany of appalling self harm, more fully discussed in the next chapter, was not without insight:

**I don't know what I'd have done without my family, I've nearly given my mum a nervous breakdown. I must get help I know. [Ellie]**

Alicia also had self-harmed to a great extent. She had been in and out of care over the course of the disclosure and trial, although this had not been directly related to her disclosure.

Furthermore, for one participant, the prospect of her mother's knowledge about what had taken place made it difficult for her to discuss her ordeal at home.

- *What made you tell her* [girlfriend], *first of all, can you remember?*
**'Cos if I - I felt if I tell my mum, she would not like me and stuff.**
- *And what when your mum found out, how was that?*
**She was, um, shocked about it. [Jessica]**

The issues here were bound up between Jessica's guilt about her abuse, and her feeling that the sexual abuse to which she had been subjected, had diminished her in her mother's eyes.

II (iv) Feelings when giving evidence

The feelings the young people expressed about when they were actually giving evidence were some of the most telling.

**I didn't feel I could say what I wanted to, and because I didn't get it out, the decision would go against me.... I felt uncomfortable and so I wasn't very good at eye contact. But I had wanted to show him I was telling the truth by looking him [defence barrister] in the face. I felt sick talking about the incident. I was very upset. [Alison]**

Alison clearly had a good grasp of what she should be doing to deliver best evidence, and was aware of the impact it could have on the court if she did not live up to expectations. Some other young witnesses were also well aware that their words would have a major impact:

**Dunno really, I felt that I couldn't say it in ways that I would just generally say it. Um, because I thought they'd judge me on that, I didn't think they would believe me.**
*- Can you tell me why you didn't think they'd believe you?*
**Cos, he was older, and - it's his word against mine. [Alicia]**

Catherine's position mirrors the view which numerous women victims have described in the trials of their abuser for rape:

**I felt like I was on trial. Although I'd been told I had done nothing wrong. But it still felt as though I was on trial. [Catherine]**

Such a view mirrors the beliefs of many victims of sexual abuse, whether minor or adult, following their abusers' trial, that some part of the responsibility must 'somehow' belong upon the victim's shoulders. The only way to achieve an outcome which fully acknowledged that the young person was in no way responsible for what had happened was a verdict of guilt for the defendant.

Some participants could be seen to achieve what seemed to be a 'purity of truth telling' - at least, once the guilty verdict had vindicated their story. Such a state of grace was often achieved in a very down to earth manner, however, such as in the case Dawn described:

**My mind was totally blank, I was just thinking, whatever questions they asked me, I was just trying to focus on that and make sure that what I said was what I wanted to say. 'Cos I knew that if you said something you were unsure about, the detective explained to me that they would... they would be on that and asking questions about it, so I tried to be positive. [Dawn]**

The effect of Dawn's helpful detective shows most clearly here. The feeling of 'needing' to be polite within the court setting was tacitly expressed by some youngsters, and some of those

who did best in the evidential process had accepted that they would need to express themselves clearly.

*- How did it make you feel, giving evidence?*

**It was a bit nerve wracking but then I think, if I was a lot younger, it would have been harder, I'd have been more nervous. But there's my parents said to me, You're not the guilty one, so just give your evidence.**

*- So did it feel OK, or not, talking about what had happened?*

**It felt OK because I thought about what the outcome would be if I gave my evidence well. Then it would be a better outcome for me, and the more positive I was, the less chance there was of him getting away with it. [Dawn]**

Again Dawn's parents reinforced their confidence in her; the acceptance she received had a very positive effect.

Fear and anger seemed to drive a number of the children when they were actually going through the evidence process.

**Really scared, I was. And worried. [Toyah]**

**I was really tense, and watching everything I said, it made me real angry that I couldn't tell them what it was like.... I was so angry, and I was also scared because I knew that the man who attacked me was in the same room. [Ellie]**

*- So how did it feel, when you were actually giving evidence?*

**I - terrified.**

*- Can you tell me what scared you most?*

**Him, knowing that he's seeing me from the camera and giving evidence about what - saying what - where he's touched me and that.**

*- How did it feel, to be questioned?*

**Horrible. [Pause]**

*- Can you tell me specially why it was horrible - what was the worst thing?*

**When he accused me of lying, when he was asking questions. [Shelley]**

**Oh, I wanted to walk into that court room, and I wanted to actually kill him. It made me feel like nothing, to be honest. Cos, he just treated me as if I *was* nothing and, it was just horrible. [Alicia]**

There were also positives around evidence giving. For some, the issue of using whatever language they wished was an important one:

*- How did you feel when you were actually talking about what had happened?*
**OK, good.**
*- And can you tell me why you felt OK and good?*
**Because, I, like, could say it in my own words, they didn't mind how I put it. [James]**

Some young witnesses had expected things would be worse than they proved:

**It was upsetting - but it was okay.**
*- Right. So it was a lot better really than you'd expected?*
**Yeah.**
*- What was the reason for that?*
**I thought they was going to be - like - really pushy and everything, but they weren't. [Jessica]**

**I felt better once I was there, than I was before; it was okay because we had a break. It felt like, all right - but I felt a bit scared. [Anna]**

For some children, the waiting being over was important to them. The positive value of a break in evidence giving is significant for the children who were afforded that respite.

*- Right. What were your feelings when you heard he was actually being found guilty?*
**I was quite happy, I knew I - I wouldn't have to go back and ... [pause]**
*- Did they say that you might have to go back?*
**No, but I just thought I might have to, just in case. [Anna]**

The above comment of Anna's illustrates the almost mystic, unknowable feeling which the process could take on.

The trial completion brought with it a catharsis for some:

**At first I was scared, but then pleased, because he was found guilty. [Jessica]**

For others whose perpetrator's verdict was not guilty, it was a different story.

*- So, the whole experience of going to court and having to give evidence, how do you feel about that?*
**Waste of time now, a complete waste of time.... He'll be out there doing it to somebody else. [Ellie]**

**Conclusion**

When the common perception of sexual abuse - as a crime either perpetrated by strangers, or carried out against victims who may have 'led them on'- is linked with a high level of scepticism about children's truth telling, it is little wonder that many young witnesses feel the sympathy of the court is denied them.

The feelings reported by young witnesses show their anticipation of court and the evidential process as largely negative; none expressed feelings of faith in the ability of the jury to return the correct verdict. For my part, I became convinced that every one of my study participants had without doubt been sexually abused, (similar to the view of Prior *et al*, 1997), yet in the juries in about two-fifths of the prosecutions were not of a similar mind. For the older group aged 13 to 18, only five guilty verdicts were returned from the eleven young people interviewed.

The younger group of six children aged between seven and twelve fared better, with only one not guilty result. In these accounts the higher conviction rate may be pure chance, but may also suggest for example, the benefits of good pre-court preparation for the youngsters involved. I discuss this in more depth later.

# Chapter 6

# Data Presentation II

**Introduction**

This chapter continues the data presentation begun in Chapter 5.

**PART III - Trial Impact**

In this section, I consider the impacts of the trial upon young victims. Data concerning the trial impact was some of the most interesting. The quotation below shows the value of *in vivo* coding in my analysis, and illustrates the range of emotions expressed by a single respondent concerning the impact of the court trial.

**I got quite annoyed and felt frustrated. I wanted to shout, I am telling the truth, believe me. But I didn't. It went on a long time; the Judge didn't stop him.... I felt I was being accused, it was like they were saying I was lying, but I wasn't. I wanted it to be OK. It was a lot worse than I thought. I wanted to cry but I didn't. I ... thought it was going on forever. [Alison - not guilty verdict]**

I ordered the findings into negative and positive aspects, and further sorted the categories into headings depending on verdict. Comparisons showed that this category was the one where the greatest influences - although by no means all significant effects - tended to appear.

III (i) Defendant's reputation

I begin the reporting of this section by noting the impact of the victim's character versus that of the defendant. This was especially relevant for a number of young people, and the 'good character' of the defendant was also sometimes cited as relevant. It is noteworthy that the witness is herself seen as culpable in the first quotation below.

**The evidence was so confused. People said what a wonderful dad he was, and I was a horrible girl. And one minute he [defence barrister] said I was "mistaken"; then he said I was "lying". [Catherine - not guilty verdict]**

**Um, we never had enough evidence - see. He had 16 witnesses...**

*- Sixteen?*

**16..... I had three. Including myself. And I think that could have helped a bit, [laughs ruefully] you know? Like I said, really, it was just my word against his, and all except two of those witnesses for my dad had nothing to do with it. You know? They were just out to say what a great person he was, which I thought was a complete waste of time, you know? [Peter - not guilty verdict]**

Assigned status, such as the so-called 'good' character of the defendant and the 'bad' character of the victim, whether demonstrated directly or by inference, is clearly important in the establishment or non-establishment of guilt.

III (ii) Self-harm

Some issues surrounding instances of self-harm by young people have already been mentioned in the previous chapter. Considering their ordeals, the resilience shown by a number of young people was noteworthy of itself. For the older participants with more personal self-determination, however, the level of serious self-harm was frighteningly high. Of the ten 13 to 16 year olds whom I interviewed, five had cut their arms or wrists; one of them had also cut her chest and breast. Of those five, three had also taken several drug overdoses.

**I'm back in care, I've taken three overdoses because I was desperate for help, and one time I was nearly Sectioned. [Catherine]**

In addition, the young woman (aged 15 at the time of court hearing) who gave evidence in the trial I observed, but whom I was not able to interview, took six overdoses in the months following the trial, two of which were extremely serious. She was looked after by the local authority - in an excellent foster home - but suffered major post court trauma. Her abuser had

been found guilty of numerous counts of rape and other sexual offences against three victims and received a 14 year custodial sentence. This did not ameliorate the effect upon the young witness.

The youngsters to whom I spoke described their self harm. Alicia for example, had endured both the original hearing and a retrial:

**... I used to cut my arms, when this was all going on. The time between the first and second courts was the worst. I like, thought it would kind of - get him out of me, and I felt better for a bit when I done it.**

*- And how do you feel now, are you still harming, cutting yourself?*

**Not so much now.** [To mum:] **It's quite a few weeks since I done it, isn't it? - And it's, like, better since I come home** [from Care], **a lot better. But, when it's happened, you will just do anything - anything - to feel a bit ... well it doesn't last, and that was when I took the overdoses.**

*- Mm, I see. That's terrible for you. Is there anything else you'd like to say at all?*

**No. But it's good you come round and that, Mum told me about the thing the other week, 'bout that judge an' that.** [The judge at the NSPCC seminar in July 1998 who suggested that a not guilty verdict meant the assault had not occurred] **I wish the judges will listen, 'cos, you know, they've got no idea. If it was them.... [Alicia - not guilty verdict]**

III (iii) Impact of court hearing

A similar picture emerges concerning positives and negatives during the trial itself. Fear of seeing the defendant was an issue for a number of young people.

**.... I thought I was going to see that man. [Toyah - guilty verdict]**

Court rules, and especially separation from parents whilst waiting, were found to be arduous. Also, child witnesses were expected to be more restricted than the defendant, for instance during the lunch break. One participant's parents made their view clear that the defendant should have been restricted to one room, not their daughter.

**The bad things were, sitting in that room, locked up ... not allowed to speak to your family. And then going into the court and giving my evidence.**

***Dad: In the link.***

**In the link, yeah.**

***Dad: There was no-one really to support - okay, you've got the Witness Support, but that's not the same as someone in there holding her hand. They should put the defendant in the locked room and let him wait in there, and let the children be able to sit with their mum and dad, and have a cuppa tea or a soft drink in the canteen, and not feel so guilty about it all 'cos they're locked away.*** **[Shelley & Shelley's dad - not guilty verdict]**

On the other hand, some witnesses such as Dawn, were able to draw out the positives from their evidence giving.

**I know a bit more about what's involved in a court case, in some ways that's good ... in other ways it's not nice to go through the reasons ... but I know a little bit more about it now.**

*- So in what ways is this a good experience?*

**Um... I can help others .... If ... my friends had to go to court, I could explain to them what it's like. And maybe people could learn things. [Dawn - guilty verdict]**

There was excellent feedback regarding the input and impact of the Witness Service. In the opinion of several participants and their carers, the Witness Service was the only part of the court machine who were conversant with what was planned, or taking place. There was generalised criticism of the court system, especially concerning delays. In two instances, these were solely due to defendants sacking their barristers at the last moment and thus achieving trial delay. In several others, legal argument and resulting altered protocols accounted for the deferment.

Some youngsters preferred the closed circuit TV link to give evidence, emphasising the importance of this assistance in telling their story.

**It was better 'cos I didn't have to go in the court room. [Jessica]**

Others wondered if being in open court to recount their information would have affected the outcome; unsurprisingly, this was more often the case where a not guilty verdict was returned. Furthermore, for some, the relief of being able to tell their story was also very important.

**I haven't had to keep a secret any more. I hated that. An', 'cos of that, I'm not so worried now. [Susan - guilty verdict]**

A minority found the court experience reasonably acceptable. Young people described a variety of difficulties, concerning the emotional impacts of the period immediately surrounding the hearing. Sleep disturbance, nausea and various stomach upsets in particular characterised the sorts of common problems encountered. The amount of negative impacts recounted far outweighs the positives.

However, one of the major aspects which struck me was that court impact for children was very much bound up with the personal nature of the incidents which had led them to give evidence. By chance, one of the Witness Support referrals was for a young woman, 'Jill', whom I discovered in the course of my talk with her, had been a witness, not a victim; she is not formally part of my sample. However, although her account reflects a general dislike of the court and evidence-giving process, the impact upon her can in no way be compared to that of young people who were forced to speak of their own abuse, as the quotation below demonstrates.

*- And did they upset you at all with the questions?*
**Not really - I got annoyed. 'Cos he intimidated me - it was annoying.**
*- Right. So ...did he know that he was annoying you?*
**Probably, [laughs a little] 'cos I was on the video link and I made a face and that! [Jill - guilty verdict]**

It is essential to note that Jill appeared not to be traumatised by the hearing; she disliked it but she saw her role as giving evidence to support her friend. It was not a question of her handling a difficult situation well, such as Dawn had been able to; rather it was the fact that for her, the court was not a traumatic matter for which she had been obliged to bring coping skills to bear; rather she saw it as merely unpleasant. Although the only non-abuse-victim, I

find Jill's account very significant in that her description was worlds apart from all the other participants to whom I talked.

III (iv) Conviction versus acquittal

My results show that it is in the realm of after the trial - most especially after an acquittal - that major suffering of young witnesses took place. Although a number with both guilty and not guilty verdicts tried to put the court behind them using very positive coping mechanisms, this was by no means a possibility for all. Sleep and/or appetite disturbance were described by several. A high proportion of the young participants whose defendants were acquitted suffered extreme reactions, together with a sense of impotence that their efforts within the prosecution system had proved to be in vain. The issue of self harm as a major problem has already been cited. Additionally, rejection and mistrust of loved ones was reported regularly. More worryingly, some subjects reported counselling and psychiatric professionals whose input has been unhelpful and at worst, actually destructive for the youngsters concerned. In a couple of (one hopes) isolated occasions, one can see as a social work professional, where the impetus for the counselling approach was emanating from, but the intervention proved unhelpful in the extreme. I have already discussed a number of the issues mentioned, in Part I of Chapter Five concerning witnesses' experiences.

Numerous other issues were raised by my study participants. The female to male jury ratio was another matter of concern for some:

*- Do you remember if there [were] more women or men on the jury?*

**There were more women than there were men.**

*- And do you think that helped you at all or do you think it ...?*

**I thought it would help but it didn't; there were eight women, four men. I thought they'd *realise*.... [Ellie - not guilty verdict]**

Other impacts of the effect of a court trial for young victims were raised indirectly. The example below illustrates how just the prospect of the court proved too much:

**Maybe there was probably not enough evidence, 'cos there was this girl, yeah, that it happened to as well, but she didn't come into court.**

*- Was she meant to come?*

**Yeah. But she didn't come cos she couldn't get there, cos she's got... [to mum] what's it called?**

***Mum: Agoraphobia.*** **[Shelley - not guilty verdict]**

III (v) Young witnesses' views of justice

The young people to whom I spoke discussed, at my request, what they felt had happened at court in terms of fairness and justice. Although many of the younger participants did not understand fully the idea of 'justice', most were able to comment on what had been fair, and the effects, whether positive or negative, upon them.

*- What would have been fair?*

**For him to of been found guilty.**

*- What has been the effect on you of having to go to court?*

**... We had to move out** [of our house] **- about two or three days before the court date. Before, he'd been in a bail hostel, and they'd made sure he couldn't do nothing - but then, after the court, they said if he didn't get done for it... the police insisted.**

*- So how long have you been in the safe house, now?*

**About three weeks, I think, is it mum?**

***Mum: Yes, it is.***

*- Can you tell me - it was* him *who harmed* you *- but it was you that's had to move out of your home.*

***Mum: The house is in his name. We moved in when we got together.***

*- He was your partner?*

***Mum: That's right. We'd been together seven years. He was like their step dad.*** [indicating her daughters]. ***And it's been terrible.***

*- Can you tell me?*

***Mum: She's different now - especially since the court, and that verdict. She's been having nightmares; she's much quieter - she used to be full of life, but now.... And it's getting worse - it carries on at school as well. It's been bad.*** **[Vicky & Vicky's mum - not guilty verdict]**

Some parents took a wider view than the young witnesses themselves. One of the noticeable issues was that impact was not necessarily a function of the outcome, as Sam's mother mentions:

*- So do you think it was fair?*

**Yep. 'Cos they put him in prison.**

***Mum: No. It wasn't. They took away his childhood. They should have locked*** [the defendant] ***up; instead of that, it was really intimidating knowing he*** [defendant] ***was gonna be there, with his father and all his mates. Sam shouldn't have had to go to court as well. The video he did, that should have been enough.*** **[Sam & Sam's mum - guilty verdict]**

Although most participants had family support, the effects of the abuse and from it, the trial, were shown to be serious and far reaching. In some cases, families had been fractured as a result of conflicts following abuse by family members:

*- So can you tell me how [it has caused a lot of damage]?*

**Well my younger sister's not talking to me. My older brother is completely on my dad's side, and he's now not talking to me or my mum. And my older sister is trying her best to "stay neutral". Basically the position is no one in my family is prepared to talk to me - for the sake of staying neutral they ignore me - which isn't really staying neutral. [Peter - not guilty verdict]**

Other children and young people have become very emotionally needy; again, the verdict does not always ameliorate the effect upon them.

*So what's it been like - what's been the effect on you of having to go to court? Do you think its had a big effect on you?*

**Yeah.**

*- What sort of things?*

**I don't sleep OK.**

*- You don't sleep OK - what happens?*

**When I go to sleep... I can't... or I dream. Bad dreams.**

*- What happens when you have bad dreams?*

**I go into mummy's room. [Naomi - guilty verdict]**

**Fact is, I feel guilty 'cos I take most of it out on my mother. The only real emotion I've got is anger. That's all I do - get angry. People that I know, love me, but I'm you know, hurting them, it doesn't make sense. [Ellie - not guilty verdict]**

Fortunately there is a proportion of young witnesses whose recovery was already well underway at the time I interviewed them.

*- What's been the effect on you of having to go to court?*

**It's been okay.**

*- Okay. Has it had an effect on you, in your life or anything like that?*

**Um, sometimes in my sleep but not much. That's it.**

*- So the effect on you of going to court - was it OK, or reasonable, or a bad effect, or terrible?*

**Reasonable. [Jessica - guilty verdict]**

I discuss possible reasons relating to witnesses' post-Court responses in the following chapter.

III (vi) Counselling

Some children and young people were offered counselling following the hearing. Shelley's response was typical of many who expressed the feeling that they did not want to reopen the court wounds.

*- Do you want to have counselling?*

**Um, not really.**

*- Can you tell me why?*

**The thought of seeing a counsellor, it's so many months.... [Shelley - not guilty verdict]**

Some young people were placed on the waiting list for counselling after the trial was complete, as a matter of course. Sam's view of counselling was pragmatic. It was also

noteworthy that he was able to talk about events which took place after the trial far more fluently than when I asked about his experiences of giving evidence.

**It's [counselling] just started. It's all right. It's - I had to have it.**

*- Can you tell me why?*

**I been through a lot in my life. I shouldn't of had to go in there and say about it....**

**[Sam - guilty verdict]**

**III (vii)** Views of outcomes

A number of witnesses spoke very candidly about what they considered the trial outcome should have been. Some whose trial had culminated in a guilty finding expressed relief and a positive feeling about the sentence the defendant had received.

*- And now he's [in] prison, do you know how long for?*

**Five years.**

*- And is that long enough, do you think?*

**Yeah. I'll be 14 then.**

*- ... Are you really glad you went to court or would you have felt better if you hadn't gone?*

**To go was a lot better. [Naomi - guilty verdict]**

The reaction of Naomi (at eight, the second youngest child I spoke to) appears straightforward. However, one of this little girl's concerns was that her father would never be able to abuse her sister, (then five) as he had abused her. Her feelings, expressed so matter-of-factly showed a concern and awareness of her sister's need for protection which is rarely encountered in the non-traumatised child. The weight of responsibility she carried prosaically moved me a great deal.

For some participants, their awareness of the court process, summing up and sentencing, meant that other considerations were brought into play:

**When his barrister come on and said all this stuff, I did think he was gonna get 'bout a year. How he was speaking to the judge about it all, his dad dying and all this stuff... you know how they do?**

*- Oh, yes I do.*

**Basically ... I just cried - when he was saying [it], I thought oh no, he's only going to get 'bout a year. Or he's gonna walk out 'cos of something silly. But... after I heard that, when he gives him five years, I was chuffed, though, I'd hoped for more than five years.**

*- Right, so that's what you'd have preferred - longer custody?*

**Yeah.**

*- How long did you think ...?*

**Er... I won't say life 'cos.... About 10 years. [Brian - guilty verdict]**

Whilst Naomi and Brian, amongst others, were very clear about what they wanted to happen, some young people expressed more doubt and ambivalence about their wishes:

*- What sentence do you think he deserved? As far as you're concerned?*

**That's one question I haven't really been able to answer for myself. I mean there's part of me wants, like, him to be locked up for life, you know. And there's another part of me that's thinking, well, he is my dad and really I think locking him up's a bit too mean and nasty and horrible and destroying. Um, I really just wanted him to get some help, you know? I can't decide. [Peter - not guilty verdict]**

For some young witnesses, the imposition of custody was considered very important, regardless of the verdict which was handed down. The examples below illustrate this:

**Custody and him sitting with his conscience and knowing what he'd done. [Alison - not guilty verdict]**

**I think he's in prison at the moment awaiting a sentence.**

*- How do you feel about that?*

**I think it's good, because he knows now that this is real and I think he thought he was going to get away with it, I'm glad he's somewhere where someone says, You watch what you're doing. [Dawn - guilty verdict]**

**He has to stay in prison for at least three years. And that's what I wanted, because he shouldn't have done it and the judge believed us when we said. [Susan - guilty verdict]**

Several young people suggested that sentences were not sufficiently long. Jessica proposed a five year custodial period would have been right; whereas the defendant was sentenced to two years. Toyah thought the sentence should have been longer than it was; James complained that the custodial period had been reduced despite his abuser being found guilty of all seven charges.

Perhaps not surprisingly, a number of the young people who recounted a strong desire for harsh punishment were those where the defendant had been acquitted.

*- What would you have like to have seen happen, in terms of the sentence?*
**[Laughs] He should be sent to have his bits cut off! Um....**
*- That's perfectly OK, because there's a lot of people who've gone through sexual assault, and they do actually feel that way.*
**Mm. I mean, OK it's not realistic, but I wish he could have Life. Still.... [Ellie - not guilty verdict]**

**[Angrily] I'd have liked him to be whipped. By me. For what he did. [Vicky - not guilty verdict]**

*-And what did you want to happen to him, what sentence did you wish for him to get?*
**I just wish, even if it was a two year sentence, I know that he would have got beaten up, because prison wardens would have gone round and said to another warden in earshot of somebody else, 'Oh you know _____'s [name] in for rape'. An' he would have got so many beatings for that. And I want him to get beatings, I want him to but I don't want him to die, because I want him to live with what he's done as well. [Alicia - not guilty verdict]**

The quotations above represented some of the strongest feelings expressed, and I find them significant, especially in view of the judicial attitudes suggesting disbelief in many of the accounts of sexual assault which culminated in a not guilty finding.

The issue of jury deliberations was also of concern to some young people. Catherine described the process as she understood it.

**The Police woman came and told me what had happened. The first charge, he was found not guilty 'cos they couldn't prove my age at the time. We had expected that. Then the jury came and said they couldn't decide on the other charges, and the Judge said, go away and think again, and I can take a majority verdict if you cannot make a unanimous finding. And they went away and came back and said, Not guilty. [Catherine]**

**PART IV - Changes**

This section is connected with young people's expressions about alterations in the court process which they felt would have improved, for them, what took place concerning the judicial system. Of necessity, some matters the young people raised have already been touched on, but I report the issues the young people themselves identified as requiring change. Delays and adjournments were a problem for many youngsters, as well as their carers. Catherine's case was altered five times, and finally set for a Tuesday, yet it was still delayed because of another case. Vicky's experience was similar, involving three changes of the start day.

Lack of information was also regarded as a problem in some instances:

**Um, I should, like, be told what's going on with the case. Instead of having to sit there and wonder. Um, I know it's impossible to avoid the delay but I think it needs to be speeded up a bit. [Peter]**

Young people's concerns about seeing the defendant's family or supporters were cited regularly as the sort of features which youngsters suggested should be changed.

**His family was there. I couldn't avoid seeing them at lunch and things. Twice I had lunch in the Court, twice in Winchester. My brother laughed at me. He's on my dad's [the defendants'] side. [Catherine]**

*- What are the most important things to get right about the court process?*

**Not seeing the defendant. At lunch time, as we were coming out, he was stood by the door with his solicitor, and he turned around as we went past, and that was horrible. [Vicky]**

**Yeah, they just came and found us in the restaurant, and they said, Do you realise he's walking round? .... And then they said, You don't know what he looks like, do you? and I said, No. And they said, Oh thank God for that, that's okay then.**
***Dad: It was quite farcical really - what you needed was Brian Rix and you'd have had a winner, I think.*** **[Jill - non victim - & Jill's dad]**

The court facilities, too, were raised as a problem issue by some young people.

**I think they could've had more rooms, and games and things. They only had three rooms. But there were five families that day, and we had to share.**
*- How many people was that, all together?*
**One lot, there was the mum, and about five of them, and another two. And they should've put everybody in the right places for their ages, with the right games and things - stuff like that. [Vicky]**

A few also raised the closed circuit television and video link as a matter which could or should have been better handled. Issues cited included disorganisation, staff unfamiliarity with the way the equipment worked, and the unreliability of the equipment, all of which they felt ought to be improved.

Additionally, a number of children voiced concerns about their isolation from family and friends once they arrived at court:

*- So what do you think could have been made better when you got to court?*
**I think... I couldn't see no-one, we all stayed apart - my Auntie went in court, listening, but I couldn't see my mum. She was giving evidence, and my other Auntie, up the road. She wasn't allowed near us, it wasn't good. [James]**

**I would've wanted to have mum with me, all the way through. [Sam]**

Perhaps more worryingly, some children noted that the court itself was so intimidating that they could not properly express what they wished to say:

**And they could do it better differently. I know what I wanted to say but I didn't. I wanted to be allowed to say, Stop a minute, I want to say something. The language was the adult type too, I said I can't understand, but some kids don't want to stop the guy 'cos they'd look stupid. Even adults don't speak like it, its a different language. [Alison]**

*- So what would have made it better?*

**If they could just show my video, and if I didn't have to be at court... if they asked us all those questions at a different place so I could have just made the video. [Anna]**

In some young witnesses' accounts, the major issue identified which needed to change was the mode of questioning by, and attitude of the defence barrister:

**[H]is barrister was just so bad. Really terrible, the whole time. He shouldn't be allowed to be so horrible, like I was the criminal, instead of the one he raped. [Alicia]**

*- So can you think what could have been improved?*

**The defence barrister to learn some manners. To get some decent people on the jury. Stick with the judge cos he was really nice. An' a better prosecution barrister. [Ellie]**

As my study revealed, the defence lawyer was not always considered solely for blame.

Several young people spoke of feeling divorced from the court process, and yet subject to the court's requirements. They regarded knowledge of, and involvement in, the whole trial process as essential both for their own edification and to enable them to see for themselves that justice was truly being done.

**One thing... I would have liked to hear the barrister sum up. I'd like to know if my barrister was as hard to him as the other one was to me. [Alison]**

Some children and young people were unsure about any desired changes. Although certain aspects of the court process were felt to be helpful, the good things were at times tainted by the unpleasantness of the whole experience. In particular the court clerks and ushers in the CCTV room were complimented by several young witnesses. Alicia's vernacular is indicative.

**[The usher] was spot on, she let me have a fag every time the judge went off. [Alicia]**

Ellie was more ambivalent. She had described feeling certain, before the trial, that the defendant would be convicted; and her belief was confirmed by positive comments from the ushers about the case after she had given evidence. Thus the acquittal, in her view, seemed worse as a result.

There were almost no criticisms expressed concerning Witness Support Service, who were described, amongst other comments, as 'brilliant'; 'organised'; 'supportive and helpful', by various youngsters and carers. One male participant felt less sure about the timing of their support to him, but he had no adverse comments about Witness Services' helpfulness when it came to the trial day.

The ongoing physical security of young people was noted as of particular concern for three sets of parents; with the problem of the defendant's settling in his old locality after an acquittal an especial worry.

***Mum: We were told, he does not know where she lives, but it was only after, we found out - this was when she was in care - we found he lived just 200 yards from the children's home. The social worker said she'd ask him to move out. But he never did move. Worst is, this bloke raped my daughter and she is the one who has to prove her behaviour to the social services, before she can come home*** [from care]. **[Alicia's mum]**

Many of the study participants' understanding and belief in justice had been shaken severely where the verdict returned was not guilty.

**Justice should mean when someone does something wrong they get found guilty, and innocent people don't get found guilty. There was no justice in my case. I don't know if any changes would have made it a guilty verdict. But it was terrible. [Catherine]**

On the other hand, some youngsters experienced a positive effect from a verdict of guilt, despite the traumas of the case:

**What happened to me was pretty terrible, actually... well... that experience... and to see him put away - I think that's the best thing I ever had, cos that's justice... an' I helped a lot of people he could've done it to.... But they didn't actually come to court. We asked them to, but they wouldn't, 'cos they were a bit scared... it was me who done everybody else a favour.**

*- That's even better that you got the guilty verdict just on yours.*

**Yeah I know.**

*So... is that justice? Is that what justice means, d'you think?*

**Yeah, that's it. How you get that bastard done for what he's done to me. [Brian]**

**Conclusion**

This chapter of data presentation firstly describes impacts of young people's court experiences upon them. The final part regarding changes offers some ideas which youngsters themselves suggested might have assisted them in the court and evidence giving process.

The level of impact the young participants described was, for the most part, major and significant. A considerable number had self-harmed either directly as a result of their anticipation of the court trial, or afterwards, when the post-court effects came into being. For some, this was as a result of the verdict, although naturally, witnesses concerns and interpretations varied.

Nevertheless, whether from the trauma of not being believed sufficiently to achieve a verdict of guilt, or their concerns about defendants' future careers in abuse, a number of children and young people spoke of ongoing physical and emotional impacts in their everyday lives. The strength of feeling which some young participants identified regarding their expressed

preferences for defendant's punishments, suggests a high level of anger and a desire for justice as they understood it. I find it significant that not a single child suggested that the sentence actually handed down was too harsh. Despite some extremely positive comments about court staff, the unpleasantness - at times humiliation - of their court experiences and the identified shortcomings of the juridical process, appears to have left some young witnesses with a legacy of anger.

The opinions of participants regarding court process, changes, and types of assistance they would have wanted, together with their views on positive aspects, are discussed below in Chapter Seven.

# Chapter 7

# Discussion

**Introduction**

From the data in Chapters Five and Six, numerous themes have emerged. In this chapter I shall consider a number in more detail, although the list is not of course exhaustive. My aim instead is to take forward a flavour of the arguments which are most apposite. This is especially relevant in the light of new provisions for younger and vulnerable witnesses of the Youth Justice and Criminal Evidence Act 1999.

Drawing from my study, firstly I consider matters of child centredness within the judicial system. Following this, issues of power and the construction of sexuality are discussed. Finally I discuss the ways in which all of these converge upon issues of justice.

**CHILD CENTREDNESS: a study of deficit**

A variety of issues arise regarding the practicalities of court conditions for young people who need to give evidence. Although two of my sixteen respondents recalled their court experiences primarily as positive; the overwhelming majority of the young witnesses to whom I spoke regarded what they met with in court as chiefly negative, regardless of final outcome.

**(a) "Wigs & gowns": small concessions**

Some participants spoke of the apparent concession made to them as children, that barristers and the judge did not wear wigs and gowns in the course of the trial. The problem, as I find, is that this does not address the concerns and attitudes of the *child*. The idea that a judge and barristers 'not wearing their funny hats', as one participant termed it, will be less intimidating for a child is nonsense - unless the child is already a seasoned witness. Children in my study

did not recognise the changes and any attempts to make things less formal for them as much more than 'the way it is'. Regardless of the personal dress of the lawyers, this usually meant extremely hard, traumatic and upsetting.

The idea of reform conceived by the judiciary who agree, sometimes reluctantly, to make concessions concerning their non-use of traditional dress, does not necessarily even touch the consciousness of the child. It is facile, and really quite condescending, to assume that court fear will be reduced significantly in children by such minor alterations. I wondered if this was seen as one of the more acceptable overhauls of court protocol for children's evidence giving *precisely* because it means so little to the adult players. In my practice experience, youth courts and civil courts have become more informal - yet for many individuals, unfamiliar with courts' protocols, all things legal can still be intimidating. I would argue this is the case for most of the young people to whom I spoke.

**(b) Lack of known support: evidence contamination**

Equally, the CCTV room is far from being as friendly as it might be. Sitting with the usher, whom the child probably met twenty minutes earlier - if s/he was lucky - is no substitute for the love, care and support of family or known trusted friends. Again, there has been a tacit suggestion amongst barristers with whom I have spoken over several years' practice, that if a person the child knows sits with them in the video room, grounds may exist to suggest something underhand or inappropriate is perhaps taking place. Such an notion is warned of, and disallowed, with the explanation that it might lead to an acceptable ground for appeal.

Again, these attitudes need unpacking and considering if the system is to move on and become truly more child-friendly. Why cannot a nominated child supporter, an aunt, say, or perhaps an older sibling, who is not to give evidence, be the person to sit with the child in the link room? Little appears to be gained from continuing to refuse this, especially as the cameras are set to provide a full view of the CCTV room. From the evidential viewpoint, the insistence upon an usher only can really have no substance; yet it is adhered to as an apparently 'necessary' matter in the trial.

I have looked at possible explanations. Why this might be a problem in the court building where it was not considered so for the months following disclosure is not stated. In the apparent quest for just, uncontaminated evidence, court officials under legal jurisdiction are permitted to act as they see fit. If contamination were truly a problem, the child would have to be removed from home and no family contact allowed between disclosure and trial. Unsurprisingly, this is not suggested as necessary: the outcry that would probably ensue means this cannot realistically be demanded. Given that anything may be discussed with a child in private at home, the insistence on separation within the court building smacks of imposing it simply because the 'court machine' can get away with it. Indeed, on consideration, I am forced to the conclusion that perhaps the enforced isolation has roots in a form of misogyny - in this case a loathing of the (young) 'not-man'. Yet these separations do not prevent defence barristers from suggesting that the young victim may have been 'coached', as a counterattack during cross-examination.

For young witnesses, reassurance and support consistently came out as one of the most important aspects, if they were to be able to cope with their court experiences. In the course of the actual court evidence giving process, however, this is denied them. In some instances, no member of the child's family was even allowed to *wait* with them - apparently for fear of possible evidential contamination.

Within the prosecution process, however, there is no-one to advocate for the child. Sometimes the family (or a part of it) may be on the child's side, but in matters of familial abuse conflicts are inevitable. As with adult sexual assault, (French 1992; Lees 1996; Smith 1996), the closer the relationship between defendant and victim, the less likely child sexual abuse is to be prosecuted. I spoke to only one participant where the prosecution had still proceeded, but the abuser's partner - her mother - had not believed her. Young witnesses need the strength of known, trusted adults in order to cope. In addition, the disbelief with which some young people's disclosures of abuse are received by family members is significant in itself. Whether non-abusers or colluders, their lack of support deprives any potential prosecution case of their testimony as a witness who is likely to have detailed knowledge of the circumstances. Additionally, lack of belief and support for the young person renders the latter more vulnerable, and particularly, less strong as a court witness.

Furthermore, from a more generalised viewpoint, the rarefied atmosphere of the court acts as a major enforcer of protocol. It is usually impracticable for witnesses or their families to question judges, court clerks and other officials, simply because it is impossible to speak informally to them. Only a tiny minority of individuals would feel able to make an approach, even were the opportunity there. As well, few judges and only a minority of barristers came to introduce themselves to young witnesses before the trial. My study demonstrated that children and carers were often too nervous to broach topics of concern, even to the approachable Witness Service. In twenty-five years I have come across only two or three individual social workers who have openly opposed a judge, and then shaking in their shoes as they did so! An easy familiarity with court is only achieved with forthrightness and long practice.

Let us examine what is taking place here. Life for many non-powerful actors is littered with numerous occasions where persons with greater power in a situation use it in a petty fashion, often simply because they can, as for example French (1985) and Greer (1999) argue. The ease with which many of my study participants were intimidated by the lawyers is significant. Child witnesses, like adults, have to suffer the foibles, dramatics and the ruthless rudeness of the defence counsel. Nine times from ten, as my accounts suggest, the child feels unable to answer back. The view of the legal profession on such information would be interesting: whether they have mostly forgotten what it is like to be a child with the accompanying vulnerabilities; or does such an idea pass them as irrelevant? Or is it perhaps seized upon as an effective means of introducing doubt into the jury's minds? The result in any event was that defence lawyers seemed content to use any means to secure their client's acquittal.

I consider this idea in relation to other relevant legal proceedings. I would argue that the similarity in tactics to rape trials is inescapable, yet it must not be forgotten that in the cut-throat setting that is the court trial, a child is a child; by definition vulnerable, requiring protection-in-the-world as a minor. Although an adult equally may be a victim of rape, the two should not be considered in the same terms. Any adult is better able to stand up for themselves than the same person as a minor. Studies of rape trials show the humiliating fashion in which adult victims are treated. That my research has demonstrated a bevy of similarities in the treatment of child sexual abuse victims reflects, (having regard to their

powerlessness and potential malleability) that the treatment of young people has been comparatively *worse*.

### (c) Conditions for evidence giving: permission revisited

It will be recalled that Dawn's personal preference to give evidence in court with screens around her was permitted by the judge. In contrast, Ellie was not allowed the CCTV link, and for her friend, as a non-abused witness, it had been suggested that giving evidence in open court would be appropriate.

The conditions for evidence-giving were also argued in the case of one of my younger participants, Susan, who was nine at the time of the trial. She was almost denied the benefit of the closed circuit link as a result of the defence barrister's demands. The Witness Service's role was seen by Susan's mother as crucial in obtaining permission for the CCTV. However, I found it disturbing that attempts had been made by the defence to deprive a young child of such protection, to the extent that she was obliged to stand in an empty court witness box so that screen positions could be checked.

Following from a number of the participants' accounts - I have tried to fathom the reasoning behind attempts to refuse CCTV or screens, which attempts to turn back juridical modernisation to pre-Pigot times. The picture presented is of an almost godlike judge, in charge, in every sense of the term. The physical height at which many courtrooms place the judge is significant on its own, but the *use* of the power available, allied to the deferential attitudes expected, add up to a view of the judiciary as an overweening force.

Placing the use of the CCTV link within the context of young people's concerns, I surmised possible rationales that might lead courts to rule *against* protecting the witness from the defendant's gaze. Perhaps Dawn's wish to avoid the closed circuit link was agreed because she was seen as properly respectful to the court? Some commentators have discussed the fact that social work clients are obliged to 'please' the practitioner in order to get full access to services (see for example Dale and Foster 1988): is the same the case for the judiciary? Does their partiality - their lofty condescension - allow the granting of certain rights and privileges for 'good citizens' as a special favour? I have found it difficult to exclude such an idea. Did

Dawn's preference happen to concur with the judge's views about the historical 'need' for all witnesses to face the accused in open court? In such a case, the apparent concession was in truth another potentially oppressive construct. Possibly he (all such instances in my study involved a male judge or barrister) holds any of a range of, what might be considered 'old-fashioned' prejudices, suggesting doubt that the young person has undergone the experience alleged - and that the truth - if indeed truth it be - must be rooted out in traditional adversarial style, regardless of the complainant's pain and dilemma?

The problem appears to be that whilst changes in defendants' rights have taken place over centuries, a corresponding need for witnesses' conditions to be modernised appears not to have been considered necessary. I contend that the ordeal for a vulnerable young witness has changed very little in real terms, if a judge is prepared even to entertain submissions moving for refusal of CCTV link for a nine year old child.

Ellie tried to circumnavigate the judges' ruling by threatening not to proceed. In considering the power implications of instances like this, I have examined the work of, for instance Diamond and Quinby (1988) on Foucault's discussions of power as a concept which can be productive. The idea of power as an enabler, emanating from the lowest level upwards and including the possibility of resistance, assisted me in thinking about the power that may be available to young witnesses.

The idea that an adult was able, potentially, to force young witnesses into particular ways of testifying adds to their already exploitative experiences in the most invidious way. I would argue that juridical power was being wielded without full care and attention to Ellie and her friend's, or Susan's, needs and status as minors, which could have been avoided if legal rules were matters not of discretion but of statute. The matter of non-binding decisions in Directions Hearings is one which has regularly been argued as prejudicial to young people (e.g. Plotnikoff & Woolfson 1996). The fact that the trial judge may decide at the last minute what will or will not be allowed to assist young witnesses in court causes them further uncertainty and anxiety.

From the opposite viewpoint, it might be argued that the judge was protecting the young person from the ordeal of actually being in the courtroom. I would argue that the wishes of

the young witness, if competent to understand the nature of a request, should be respected. Those of Dawn had been, as disucssed above. The importance of listening to children views, especially following trauma, is emphasised in the 1989 Children Act, in the social work world and in the realm of civil proceedings. I would question why this does not occur in criminal court when children are witnesses. However, it is only on speaking to young people direct about the effects this form of decision making has on their well-being, that one begins to appreciate how very much it adds to their inability to give best evidence.

### (d) Self-harm by young witnesses: direct effects from the justice system

I note that a substantial number of my older participants reported self harming behaviour. As the data illustrates, Catherine, Brian and Ellie, as well as others, had harmed themselves, mostly cutting and overdosing; some young people had been identified more generally as suicide risks. It seems extraordinarily significant that self-harming behaviours had begun, not with *disclosure* of abuse, but with the gearing up of the court system toward a trial, with the - apparently - inevitable delays and pressures involved. The largest number of instances occurred at crisis points in the *court* process, following adjournments representing trial delay, or after acquittal of the defendant. This finding represents one of the most important of my research.

Although designed supposedly to achieve justice, the logistics of the court process result in a substantial proportion of teenage witnesses - with or without family support - feeling so appalling that they turn to self harm as their only effective means of catharsis. My research suggests that even wholehearted and unequivocal family support is, in truth, often insufficient to ameliorate the strains upon young witnesses of change, delay and fear of the hearing.

Whilst only two young women - Alicia and Catherine - had been accommodated during the material time, both had seriously self-harmed and were certainly exhibiting ongoing emotional difficulties at the time I interviewed them following their respective court cases. Whilst I do not have sufficient accounts from young people to reach clear conclusions about correlations between self-harm, local authority 'care' and abuse trials, it is interesting that the two participants who had been in Local Authority accommodation had exhibited highly self-destructive tendencies.

Alicia was cutting three or four times *a week* between the first and second trials. She described the catharsis she felt upon doing this, although the effect lasted for shorter periods when her stress levels were at their highest. When the cutting became insufficient to relieve some of the emotional pain, she took overdoses as well. I have discussed the possible effects of being in Care upon witnesses' (for example Catherine's) emotional health, above. For a young woman like Ellie, despite the fact her family were very supportive and accepting of the degree of trauma she was suffering, the amount and severity of her cutting was indicative of significant disturbance. The fact this was brought about by the combined effects of her court experience and the knowledge that justice was denied her places major responsibility upon the criminal justice system.

Many of the stories recounted by young people described their pressures and despair, especially relating to perceived disbelief by the court system, either from individuals or by wider society, in the persona of the jury. For the majority of young witnesses, however, unless serious self-harm is identified as a problem, little action seems available. As has been discussed in the report for the NSPCC 'Portsmouth Project' (Green & Katz 1999) in which I collaborated, '...one of the most telling issues is that psychiatric referral only occurs in the most serious of circumstances'. The study identified that although a child recorded on the Child Protection Register had been referred immediately to counselling; for unregistered children, some displaying the same range of behaviour, referral did not take place. They concluded that children were not assessed for psychiatric, counselling or social work need as a matter of course following their disclosure and the *Memorandum* ('joint') interview.

### (e) The nature of investigations: pre-court decisions and prejudice

Despite moves to make investigations of alleged sexual abuse against minors more child-friendly, my study revealed that this was not always the case. The reflections of, for instance, Vicky concerning the attitude of the (female) police doctor illustrated that professionals are not always as helpful toward children as they might be. I thought about why this should be. Perhaps in an effort to maintain a disinterested approach, a police doctor may become so apparently emotionless that vulnerable young people may regard it as unacceptable. It would have been interesting to speak to some of the professionals who deal

regularly with victims of alleged child abuse, in order to gauge their views. However, the scope of this study did not allow secondary investigation following from the interviews with young witnesses.

During the course of my interviews I was struck repeatedly by the partiality with which some police investigation seemed to be carried out. On several occasions it was apparent that some guilty verdicts were obtained in spite of, rather then because of the police's approaches. I found this especially concerning as moves to treat victims of sexual abuse more sympathetically and equably came largely from police initiatives: the development of separate 'rape suites' and sympathetic victim reception, for example. Young participants' view of the approaches of police and social workers in their joint 'Memorandum of Good Practice' interview was not a question my study posed, and none of the young people commented upon it. Equally, I made no particular reference in my research interviews to the police role throughout the court process. Participants' (and parents') references to police input arose largely when I asked what they saw as the positives and negatives of the court experience. Sadly, the young witnesses I spoke to reported far more negatives than positives about the role of the police.

I was drawn to compare the investigation by professionals in child sexual abuse cases with that in rape trials for adult victims. Lees (1996) notes that in one of her rape trial observations, forensic analysts had failed to test the car covers in the vehicle where the attack had occurred. In this case, the victim was alleged to have initiated sex with the defendant, yet a discrepancy about *where* exactly in the car the sexual activity took place was sufficient to introduce doubt into the jury's mind concerning her whole account.

In addition the issue of disallowing pre-trial counselling was another that arose in the course of my study. Despite the clear expert message of Gerrilyn Smith (1996) that early counselling does *not* contaminate evidence, the practice is rather differerent. Professionals who hold a different opinion were able to prevent counselling from taking place, leaving the vulnerable child without adequate support during the lengthy lead-up to the trial.

Furthermore, young witnesses' views of counselling caused them confusion and distress at times. Some professionals were seen as supportive and helpful; for other young witnesses,

professionals surrounding the case, ostensibly providing support and/or counselling proved to be of little help: at worst they caused additional emotional damage. Some young people wanted an alternative person to work with them, but this was not always possible, for whatever reason. Two of the more unfortunate outcomes were those in the cases of both Catherine and Alicia, whose counselling before the trial was advised against, and neither case resulted in a guilty verdict.

**ISSUES OF POWER AND SEXUALITY: strength and weakness**

I now turn to the roles and constructions of power and sexuality within alleged perpetrators' trials. I examine what is happening and how unequal power has continued to hold sway despite often intense criticisms.

During the more 'liberated' final third of the twentieth century, societal expectations of both adults and young people have relaxed. With the advent of, for example, technology, mass communication, state welfare (however imperfect), easier social and geographical mobility, amongst others, change has become more acceptable, even fashionable. Spender (1983) and Schneir (1994, 1996) annotate the means by which groups of 'not-men' gradually have achieved emancipation. As Haste (1992) remarks, during the course of the twentieth century some discriminations have been addressed. State legislation enshrined female enfranchisement and universal male enfranchisement between the two World Wars, and has focused, purportedly, against racial, cultural and sex discrimination, and discrimination on the basis of sexual orientation.

The belief, however, that once the illegality of discrimination is enshrined in law, practical matters will improve commensurately, is a false hope. Instead, once legislation has been enacted, the law can boast it has done 'everything possible' to eradicate inequalities. For a discussion of the practical effects of policy reform, see for instance Goldberg-Ambrose (1992); Hudson (1998).

Given what are seen widely as improvements in 'fairness', It can be argued that as evidence giving for young people has been supposedly de-traumatised, the fact that so few disclosures lead to prosecution and conviction supports the suggestion that young people 'must' be lying

about their abuse. Responsibility can be placed on the indiviudal; it is no longer the 'fault' of the system - as that is purported to have been 'put right'. The power construction ostensibly has allowed change toward equality - for which the powerful are able to congratulate themselves - but changes are actually so narrow and qualified as to deliver little practical improvement. In view of the maximisation of legal and courts' powers, my study has offered a way of seeing a range of young people's concerns and anxieties. Children, I would argue, are one of the last groups to have their specific needs, which differ from those of their adult counterparts, addressed.

But children represent a transient group; they grow to be adults; they do not remain in the domain of suppressed youth forever. Some - white boys - grow to be the dominant, adult white males in whose grasp the perpetuation of patriarchy is vested. From an historical viewpoint, I would argue that not only does it pay hegemonic society in general to disregard the needs of young people, it is also to the advantage of dominant adults to carry on suppressing youth by establishing the fact of stifling as a right of passage, or a way of life, dependent on one's gender, race or social situation.

### (f) The significance of character: influence and confutation

One of my major concerns was the unequal significance and variation in meaning ascribed to different portions of evidence. I had been very interested in the feelings of participants about the effects upon the case of the defence's 'character witnesses'. In the sexual abuse indictments in my study, among others, a common tactic seemed to be to discredit the young witness - whilst at the same time offering evidence that the defendant was a fine, upright individual. Whilst it was put to most young study respondents in cross-examination that they were lying, Catherine's personal credibility was also attacked directly; a contrast was drawn between her father, the defendant, as a 'lovely dad', and Catherine herself as a 'horrible girl'. Again a comparison to rape trials proved fruitful; Lees (1996:134) notes that it was frequently insinuated in her trial observations that the victims had told 'nothing but lies'.

Two issues arise. First, there is the idea that a defendant who is a reliable employee, and an honest, agreeable person without previous convictions will be less likely to have carried out sexual abuse as alleged, than someone who can be proved, demonstrably, to be undependable

or without integrity. Such information centres around aspects of the defendant's life which in the main, have nothing to do with sexuality. Meanings, however, become assigned by the milieu of the court as relevant to the likelihood of the defendant's being an abuser. Such assumptions derive at least in part from the model of abusers as 'sick' people, thus centering a part of the defence case upon the defendant's reputation. Rape trial studies such as Adler's (1987) and Lees' (1996) discuss the relevance of complainant versus defendant credibility. In both studies, weight was shown to be given by jurors to the belief that defendants who 'didn't look like rapists' could not be guilty.

Peter's father had sixteen witnesses, of which fourteen were solely 'character' witnesses. It was clearly not believable to the jury that such a regular man, obviously well-thought-of in the community, could be a sex abuser. Fourteen individuals who knew him, presumably were persuaded of his innocence. After that the twelve jury members must have been easily convinced.

Much of this has to do with standing in the wider community. In the past, incest was considered stereotypically as something which occurred largely in families where conditions were cramped, with sexually unavailable, childbearing wives, (see Haste 1992). This linked poverty and a working class culture to incidence of familial sexual abuse. Although generally frowned on, in some degree this was tacitly accepted. Archibald (1997) discusses the effects of medieval folklore where the heroine of stories, often a daughter, although making the 'correct' choice by avoiding incest, is inexplicably punished, often by marginalisation. As she points out, 'the late medieval taste for stories of victimised women may seem ... very disturbing'. As a further observation, arguments put forward during Parliamentary debates concerning the Punishment of Incest Act 1908 have been rehearsed frequently, dismissing family abuse as rare, and legislation as an 'invitation' to mischief and blackmail by children or those with some axe to grind (Smart 1989).

I would argue that the allegorical slant of these scenarios, which places much of the blame upon the victim, albeit indirectly, is of major significance. When repeated in the modern court setting, such stories demonstrate that little has changed in key actors' allocations of culpability. Stigma still attaches primarily to the victim, and no clear boundaries exist

concerning the relative merits of punishments as compared to acts - still less as compared to victim trauma.

Secondly, no evidence of the integrity of the young *victim* is introduced regularly. There were no instances where, for example, a young person's school teacher, a professional family friend, or a rector, say, was called to evidence the good character of the child in question. The defence found out in Shelley's case that she had been fighting in school, and brought that up, yet no attempt was made by the prosecution to rebut or explain the circumstances and the bullying she had been subjected to. Possibly they were not even aware of these. Rickford and Dyer (1999) discuss similar instances, where, in one case, defence tactics caused the child to react with hysterical distress to the line of questioning which amounted to an academic spelling and numeracy test designed to test intellect and thus apparent credibility.

The difficulty from the juridical angle lies partially in the nature of the indictment with which any defendant is charged. Prosecutions are represented as the Crown versus the defendant, not the victim versus the accused. Thus the integrity of the victim is supposed to be immaterial: it is purportedly the evidence alone which is considered, and its testing by way of cross-examination is the vehicle by which testimony is divined as reliable or otherwise. In reality in matters of sexual assault, the victim as a person is already disqualified. (See for example McColgan 1996). The nature of the accused as an individual, however, remains important in the defendant's case. Historically, therefore, the potential 'unreliability' of the victim is as much a part of the case as the integrity of the accused. Weight is given, untested, to the supposedly high likelihood of the complainant to have lied, as a function of the purported and generalised reasons why any young victim 'would lie' about sexual encounters. This takes place without a clear unpacking of reasons why a *defendant* in their turn might lie, as Lees (1996) argues. The prosecution does not seem to question why a stepfather might have, say, entered his stepchild's bedroom late at night. In contrast, the defence is usually quick to suggest any quantity of dubious motivations giving weight to the young person's apparent propensity to have lied about alleged sexual abuse.

### (g) Empowerment: practical meanings and hegemony

In their study of hegemonic heterosexuality, Holland *et al* (1998) discuss the empowerment of women within negotiated mutuality of relationships. They note the generally low levels of agency and control enjoyed by women in the context of intimate relationships with males. For example, in their study, female sexual pleasure was largely ignored or constructed by males as a by-product of their own. Despite positive attempts by some women to reflect upon and enact decisions concerning the nature of their relationships, self-empowerment is difficult to achieve in practical terms. Women are obliged regularly to renegotiate their degree of equality within each relationship; overall, male reality has the greater currency; it is men who are able largely, to set the rules and who accrue benefits over the longer term.

My study results, too, suggest that this applies in particular to the relationship between young witnesses and the hegemonic judiciary, dominated by masculine values. Juridical reality, rules and versions of the truth all give credence to male veracity, with the result that the great majority of young witnesses to whom I spoke reported their disaffection with the system. When, initially, I read Lees (1993) accounts of rape trials and the high incidence of retrialing, I felt it most unlikely that I would come across any instances where a retrial had taken place with a young victim. However one participant in my study, Alicia underwent the experience twice due to the defendant's retrial. She made the essential point that, whilst the defendant was alleged to be the perpetrator of quite terrible abuse, the court's behaviour, although purported to be neutral, gave weight to the defendant's side. The similarity between her experiences and those of victims in Lees' observations was striking. She was required, for instance, to hold up clothing for the camera (like some of Lees' adult victims).

It seems to me that there is little to choose in terms of the treatment of those sexually assaulted between Lees (1993) study and my own. Considering that society is supposed to have 'moved on' (however that is defined) in the course of several years, there is still a significant congruence between the experiences of Lees' adult female rape victims and my study participants. One wonders what it would take to alter things for women and children in real terms.

This slant in criminal proceedings is intended both to uphold the legal 'presumption of innocence' and to disarm any prejudice within the court system which might tend toward the

defendant not receiving a fair trial. In the case of a sex crime, however, the combination of defendant power, the powerlessness and, very often, intimidation of the victim - added to the tendency to disbelieve victims - more usually places the prejudice firmly against the abused witness, with the corollary, of course, that it is the defendant who becomes empowered. On the subject of constitutional power, David Spicer for example, argued (1996) that appeals were allowed in convictions for child sexual abuse often on the flimsiest of grounds. He also noted that the legal profession is the only one controlled largely by individuals whose views were formed over fifty years ago.

I have contrasted widely held societal beliefs with the immediacy of a trial. There would seem to be enormous differences between individualised accounts and the general view of the effects and prevalence of chid abuse. For instance, sympathetically recorded media stories can lead to very strong reactions *for* a particular victim, often depicted as very vulnerable or wronged. I was drawn to compare my data with accounts of rape victims such as Jill Saward (1992) and Julia Mason, who waived her anonymity to describe the ordeal she suffered when her (unrepresented) rapist conducted her cross-examination personally over a period of six days, (*Times*; *Independent*; *Guardian*; *Telegraph*: all 23.8.96). According to media accounts and leaders, there was much admiration for the sheer indefatigability of these and other identified individuals. This contrasted sharply with information focussing upon generalisations which emphasised the so-called tendency of (especially) women, to make false accusations of sexual assault. For instance, following the Mason case, the right-wing *Daily Mail*'s editorial (23.8.96), returned to the notion that "false accusations are easy to make and hard to disprove", amongst rhetoric that the newspaper backed plans for reform (proposing to disallow defendants in rape trials to defend themselves). In the *Times* editorial, Jeffrey Gordon (23.8.96) championed the right of self-defence, arguing that exceptions disallowing it could not be made for rape trials, whilst agreeing that personal cross-examination of child sex victims should *not* be allowed. I find the similarities between these comments, and attempts to refuse permission for the CCTV, striking.

It would appear that the media's ability to manipulate public opinion is inevitably a (political) part of the judicial process. The pattern appears to reveal a belief in abuse against 'others'; this has been shown to change where personal details, such as in the Saward and Mason cases, are revealed, usually after a guilty verdict, adding weight to the respectability and

often, chastity of the women victims concerned. The net result of this culture is that the judicial system continues to be vested with an omnipotent power to find 'accurately' in sex assault trials. The concomitant is that the level of evidence which is required for a verdict of guilt in such cases, both for adult and child complainants, would appear far greater than the set standard, 'beyond reasonable doubt'. I return to the issue of burden of proof below.

**(h) Belief versus reality: 'consent', juror experience and attitude**

In arguing the centrality of belief and accepted versions of 'reality' to all sexual indictments, I turn to the role and concept of consent in rape law. The defence of consent by adult victims is commonly used, but there is more to it than just that. A man who *believes* consent has been given, however unreasonable his belief may be, is not guilty of rape. (Sexual Offences Act 1956). I am drawn to make comparisons between this and juries who *choose* to doubt witnesses' accounts, however unreasonable it appears that they should reach such a position. As I conceptualise it, juror doubt transforms from the juridical idea of 'reasonable' doubt to a place of *unreasonable* doubt, where the position of disbelief taken up by some jury members is unequivocal. This can result in either an acquittal - which clearly seems to them entirely reasonable - or a no-verdict, which (although many jurors may be unaware of the fact), will lead to either a retrial, or to acquittal of the defendant, as Lees discusses (1993).

The defence of consent by an adult victim (or its belief by the defendant), can serve a purpose for the accused. Whilst the issue of consent *per se* cannot be used in child sex trialing, Alison's account demonstrated that her former rape, at the age of six, had been used against her in the course of the trial. Rickford and Dyer (1999) indicate that previous instances of a child's sexuality or allegations may be used to discredit them. They argue that reasons for not prosecuting are rarely as a result of doubts by police that abuse had occurred, but because the uncorroborated and perhaps unclear evidence of a child (especially under the pressure of cross-examination) would be unlikely to secure a conviction. Consequently there is reluctance to put children through such an ordeal. The Crown Prosecution Service does not even go ahead unless they feel the witness can stand up to the pressure.

However, weight seems to continue to be given to the more generalised perception of society that prosecution and incidence rates for child sex assault, particularly of a family origin, must be proportional. Accordingly in turn, the higher actual incidence of abuse by family members

(e.g. Dobash & Dobash 1998) remains less likely to be accepted. Naturally this has implications for the jury's view and verdict. If many children say they are being abused by family members, yet so few relatives are prosecuted, the jury may be more easily persuaded by a competent defence barrister that they have an especial duty to avoid convicting defendants unless they are completely sure that the child is not lying. If this notion is added to the lower levels of belief invested generally in the statements of children as compared with adults, the chance of conviction also lessens.

The problem with the legal presumption of innocence is that a supposition of non-guilt is an easier position to maintain. In particular, where the case is seen as carrying a potentially serious penalty, the jury seem to need to feel what might be described as 'extra-sure' before they convict. Whilst it would be in no-one's interest for persons who are genuinely innocent to be convicted, the difficulty is that the standard of proof has so much more to do with the process rather than the crime itself. The evidential process excludes as much, if not more, than it allows. Furthermore, taking an example such as Catherine's mother preferring her husband's account to Catherine's, I considered the disbelief of young people's accounts of sexual abuse. If a young person's mother refuses to accept what has happened, is it any wonder that jury members question it also?

A further defence against child sexual assault or unlawful sexual intercourse, available to defendants under the age of 24 who have not formerly been tried for like offences, surrounds the declaration that the defendant believed that the young person was of the age of consent (Sexual Offences Act 1956). This was used successfully by the defendant in Alicia's account; although she did not look anywhere near sixteen, as I was able to verify during my discussion with her.

Additionally, one of the measures defence barristers often employ is that, if the child was indeed abused, the perpetrator was not the defendant. Rickford and Dyer's (1999) opening account of the witness experience of an eleven-year old girl at the trial of her uncle notes that it was 'agreed' that the child had been abused, but the defence argued the defendant was not the culprit. I have cause to wonder how the conclusion could be drawn that a child could somehow be mistaken about the identity of an abuser well-known to her. The effect of acquittal here is that once again, overall, the child was disbelieved.

I would argue that if the police and social work 'joint' training for child disclosures is vested with even an average level of credibility, levels of acquittal cannot tally with it. Jurors, however, are never informed of the care with which allegations are investigated, nor of the careful training and experience of the officers and social workers whose remit, amongst others, is to satisfy themselves of the truth, or otherwise, of the account being given by the young person. Additionally jurors remain uninformed about the nature of sexual abuse, and of the range of reactions that abused individuals often experience when giving evidence. The fact that ratios of women to men jurors of two to one still acquitted the defendant was - to me at least - a further shocking aspect. One might hope that women would empathise with the ordeal described by for instance, Ellie. The exact reasons why they disbelieved the prosecution account - if not Ellie herself - will never be known, but it caused me to question and consider some possible reasons. Was Ellie herself not credible in some way because of her demeanour? Having spoken to her and her mother at length I doubt this, although of course the pressure of the hearing may have made her present to the court quite differently. More probably, was the defence lawyer so skilled in his job that he was able to cast the necessary degree of doubt upon Ellie, and other prosecution witnesses' accounts?

When the jury decided to acquit, did the possibility occur to them that they might be letting a serial rapist loose to terrorise again? How did they think Ellie would feel; did they even consider that aspect? Did they really think she made the story up? Why, against a total stranger? These and similar considerations for both guilty and not guilty verdicts kept occurring to me during the course of my analysis. In view of the jury indicating that initially they could not agree, some jurors must have suggested a guilty verdict for at least one of the charges. It was somewhat frustrating not to be able to know the ways the minds of juries work; the impermissibility of questioning jury members mitigates against a fuller understanding of what drives their opinions.

Instances which do not fit into the pattern of the so-called 'ideal' rape (McColgan 1996) further increase the difficulty of obtaining a verdict of guilt. I firmly believe that if judges and jurors were made aware of the sorts of things which young people such as my study participants have endured personally, particularly after a not guilty verdict, they might consider the evidence rather differently.

On many occasions I am still struck very forcibly by the children's courage. What I find more difficult to come to terms with is that we - as a society - still *expect* that sort of courage from damaged young people if they are to have any chance of seeing their perpetrator punished. The jury expect it: witnesses must be neither too emotional nor too blasé. The judge also demands a certain quality of evidence; this is referred to in his summing up.

Possible rationales for juror disbelief exercise my thoughts, the more so because accounts related to me by the participants is so extremely credible. Despite the fact that some young witnesses saw their abusers convicted, societal reliance upon youngsters' personal emotional strength, and their requirement of what I term a strong 'survivor mechanism' does not sit easily for me with the idea of a fair and truly just trial. In trials involving child victims, testimony becomes personalised by the presence of the witness. Jurors 'on the spot' can no longer hide behind possibly comforting suggestions that sexual abuse happens to 'others' when they have been confronted by first hand evidence. Nevertheless, there does, in some instances, appear to be an attitude whereby although the court itself is regarded as a serious place, witnesses recounting sexual stories are not accorded the same respect. Parts of the legal machine have indeed moved on, but much remains formidable.

Furthermore, jury service, unfortunately, is not something most individuals relish. It takes them away from their normal occupations and routines; they may lose money through missed opportunity if self employed, and many employees fear getting behind with their usual duties if they are obliged to take a week or more away from work, albeit for legitimate civic reasons.

### (i) "Not naming" of sexual abuse: legal implications

The naming of sexual activity by abused adult women has been, historically, a problem issue. Smart (1989) amongst others, has focussed on women's reluctance to identify forced sexual relations under the designation of sexual assault or rape. Equally, in studies of marital rape by Painter (1991) and Russell (1984, 1990), it is seen that many women have not regarded forced marital sex as rape. Research studies such as the British Crime Survey (1996) suggest that many more instances of sexual violence are occurring than are reported to police. In 2000 it was reported (*The Guardian* 18.2.00) that in UK, up to 295,000 women each year

suffer rape or sexual assault, of which a fraction only are ever reported to police and a smaller proportion still, prosecuted.

That many of the women do not name their sexual assaults as rape, (see for instance Lees 1997), leads me to consider the impact of particular cases. The nature of so-called 'real' rape is discussed by McColgan (1996) and Smith (1989), and how responsibility is placed firmly back on the victim, first for complaining and secondly for thinking there is in fact something worthy of being complained about! Women's respectability in history was compromised by open discussion about sexual matters: especially by mention of those matters in a public court. Thus attempts to recount a rape - without details of which no case could be proved - immediately placed a woman outside the protection afforded for 'respectability', and in doing so, voided any complaint she made about her abuse.

Nowadays, there is greater acceptability by society of women speaking about sex issues of all types. Nonetheless, open discussion by juveniles about sexual activity in which they have actually been involved (in contrast to dissemination of theoretical information which can be dismissed as academic and thus acceptable), may in some cases hanker back to a similar double bind as adult women experienced in the past. In addition, I also draw significance from the refusal of some of my participants, such as Toyah and Dawn, for example, to name the abuse they suffered, or their perpetrator as an 'abuser'. If suggestions of the prevalence of undisclosed child abuse (e.g. Abel & Becker, 1987) are accurate, there is clearly a huge amount of 'not-naming' going on. Feminist texts can offer an awareness of the significance of naming oppressions, in order to reach an understanding of the effects of patriarchy, (such as discussed in French 1985). The naming of personal bodily violation is especially important, I would argue, if societal responses are to reflect accurately the potential traumas inherent in such infringements.

In the case of youngsters, I posit that it is the issue of loss of innocence - rather than loss of respectability - which may be seen as important. The still-common response to sex as a wholly adult exercise had placed Jessica (in her own self-estimation), in the role of someone who had stepped beyond the realms of allowable child behaviour. The result had been that both she and her mother appeared to have struggled to come to terms with the *sexual*, rather than the *abusive*, aspects of what had taken place.

I considered, therefore, what for instance Dawn's account would have been like if she had had a very poor support network, similar to Catherine's. I do not know how much 'witness success' was actually attributable to the natural demeanours of young witnesses, and how much to the sound preparation and parental support which Dawn, and at the younger end, Naomi, benefited from. Having spoken in depth to my participants, I felt that for any child to give evidence they had to be quite forthright in any event. The disclosure process and time span, as I have already discussed, places young people under enormous pressure. To this may be added additional delays, adjournments, and at times the whole court machine grinding to a halt. Perhaps the wonder is not the effect this has upon youngsters, but the fact that it is not still worse. This reflects a different emphasis of abuse, and one that appears, from my study, not to have been examined from the trial viewpoint for young people. It also suggests possible reasoning for the occasional comments of judges which have focussed upon the so-called 'seductiveness' of young girls, excusing abuser's behaviour. Judge Starforth-Hill's infamous comment (in Winchester law courts) that an eight year old who had been abused was herself 'no angel' is a case in point.

Bifulco and Moran (1998) discuss differing definitions of child sexual abuse which researchers studying the phenomenon may use. Some studies, as they note, restrict fields to certain types of perpetrators (such as natural family, partners of birth mothers, strangers); others include only abuses which fall into pre-set definitions. Given the difficulties which academics encounter in defining classes of abuse, it is really no surprise that ordinary citizens who are called to jury service find the task extremely difficult, and often hugely emotional. The combination of confusion and uncertainty, coupled with strength of feeling, is known to impact upon decision making by experienced professionals. Why should we be surprised that the same problems shadow jurors?

I queried the impact for *young witnesses*, of tendencies by persons such as jurors toward not-naming of abusive experiences. In the context of a hegemonic society, with a high prevalence of sexual violence, could it be likely, therefore, that *a proportion of jurors who themselves formerly have been abused have never identified their experiences as 'abusive'*? I would argue that, influenced by the culture of minimisation (Dobash & Dobash 1998) and accusations by the defence that the witness has lied, some individuals may be minded to

refuse victims - whose response to abuse has been to pursue the matter to trial - the opportunity to name *their* sexual violations as worthy of criminal conviction. When the prosecution also overlook quite prejudicial assumptions by defence lawyers about the nature of so-called 'real' sexual abuse, one begins to discern a pattern of practical detraction and a tacit almost-collusion, always against the object of the abuse, who may be seen as no more than that - an object.

### (j) Defence tactics and cross-examination: power and doubt

Added to the arguments above, the idea that children - or women - lie about sexual abuse is itself a patriarchal construct. If one considers carefully the possible reasons for lying, it becomes clear that a person alleging abuse would lie only to obtain power-over (the defendant). (For a discussion of the concept of 'power-over' and 'power-to', see French 1985). In fact, it is the criminal courts which practice power-over the witness in the course of their functioning, in the exercise of the judge's usually proprietorial attitudes, and inherent in the defending barrister's mode of questioning.

In my study, much can be adduced from participants' reports of their cross-examination. As noted by numerous commentators (for example Lindsay *et al* 1995), the use of video evidence-in-chief means the young witness has to go straight into cross-examination by the defence barrister. Although in theory, the prosecution can ask additional questions following the video, in practice this happens only rarely. Twelve of the sixteen young people in my sample reported being blamed for their abuse or harassed significantly during cross-examination. For each of these twelve, their emotional well-being was fractured as a result.

To achieve a not guilty verdict, the trickle of both doubt and confusion into jurors minds are the intended effects of cross-examination. With the criminal standard of proof, such a level of incertitude may be relatively simple to achieve, as for instance Rickford and Dyer (1999) argue. By encouraging jurors' minds to focus upon issues other than the 'mere' facts of the case - disputed in any event - the defence barrister's chance of securing his client's acquittal increases. An attacking style of questioning was shown on numerous occasions to introduce an *impression* of doubt and loss of wholehearted belief in the young person's account,

centering upon how much - or little - proof has been evinced by the prosecution. As several participants reported, defence tactics, used to cast doubt upon witnesses for the prosecution, are not repeated by the latter to raise doubts in the defence case. In trying for acquittal, some barristers employ a no-holds-barred technique, and are prepared to use whatever tactics may achieve their desired result, such as the child's fear, regardless of the effect upon the youngster. By tapping direct into the nature of the abuse trauma, in which the child has been obeying the perpetrator, sometimes for a considerable period, the barrister is potentially re-creating similar scenarios in the child's mind. Recreating the child's compliance with the perpetrator may operate almost to mesmerise the child into agreeing with the barrister's suggestions that events did *not* take place as reported; yet this style uses the double-bind of the child's recall of perpetrator power - thus employing the truth of the allegations *against* the young victim.

Attacks on the credibility of the child by the defence barrister may be furthered by the often troubled demeanour of the child witness. Long-term abuse, in particular, is likely to produce a young person whose behaviour may be quite significantly disturbed, and who may fail, thus, to win the sympathy of a jury. Indeed, it is difficult to see how exposure to cross-examination could be argued as undamaging for any youngster, let alone an abused one, as my study repeatedly demonstrated.

Upon closer inspection much cross-examination appears actually to be irrelevant. My study illustrated that available opportunities were often seized upon by the defence. Indeed so many exist that it is sometimes astonishing that *any* child sex case achieves a conviction. In particular, the use of stereotypical attitudes serves to plant doubt into the jury's mind ... it is only a 'reasonable' doubt which is needed to secure acquittal. The clothes Ellie was wearing were in point of fact, irrelevant; but known and long-standing attitudes to rape suggest that it is the fault of women for leading men on by their use of clothing or behaviour to seduce, and then 'cry rape' after the fact. Additionally, Ellie's cross-examining barrister raising the location of the garage was a further case in point. At first, I was puzzled by what I assumed must have been an error by the defence; as time passed, gradually it dawned on me that producing the wrong map had probably been the barrister's master stroke.... He would only need a few jurors to doubt, to misunderstand, to *wonder*. Ellie was treated by the defence - and by the jury - as indistinguishable from an adult rape victim.

Several of my participants found one of the most difficult parts of their cross-examination was being called a liar. They became upset by defence arguments that their stories and feelings were untrue; that they were mistaken; that they were making it all up - at best exaggerating. In many cases, the jury goes along with this: Catherine's account for example reveals that despite her perpetrator agreeing certain events did take place, the jury regarded these as sufficiently acceptable and not 'actually' sexual abuse, and acquitted the defendant.

For young witnesses, however, a kind of circular trial-by-ordeal theory operates: the 'real truth' voiced by a child is supposed to shine through. Purgation achieved by truth telling is an end in itself, with the process somehow seen as cleansing: witches would float; the innocent would drown. There is a myth that if the child has truly been harmed, speaking of the defilement will somehow purge them of it; that a truly 'innocent' child cannot be corrupted. In fact the prejudice which branded women complaining of rape as defiled by their speaking of it, holds the greater weight, as Haste has argued (1992). Thus the ideal of the return of innocence remains a figment; and with no innocence regained, how could the child be untainted? By use of a combination of notions which feed into prejudice (however irrelevant they may be) - evidential red herrings, and witness intimidation, the tiny level of doubt needed for a not guilty verdict may easily be slipped into the minds of jurors.

Aldridge *et al* (1997) have discussed the effects of language upon young witnesses in child abuse prosecutions. They suggest how easily younger children can become confused by mishearing or misunderstanding, particularly legal terminology. It is not just the language of cross-examination which can be a difficulty for young witnesses, but the nature of its delivery. It is essential to recall that when the matter is investigated initially, the young person is seen and interviewed in a special suite, where her or his needs are addressed to assist disclosure. The contrast between this and the court, even in the closed circuit link, is enormous, and disables young witnesses from imparting best evidence.

Young witnesses rarely approach court with an understanding of the tangible effects which the opposition may have upon them. Some participants, like Ellie, felt it would have helped to be warned how rude and hectoring the defence barrister could be. In my interview with Dawn, she emphasised how valuable her knowledge of the court process and legal tactics would be, in preparation, if anyone else she knew was obliged to go through it. From my

interviews with witnesses whose abuser was convicted, such as Brian, his view was that the fairness derived from the outcome, not the process.

This tendency to intimidate witnesses is by no means confined to younger witnesses nor solely to cases from a few years ago. In some media accounts of a recent case, (the so-called 'Railway Rapists'), it was noted following conviction, that the police were considering making a formal complaint to the Law Society and Bar Council concerning the vicious style of cross-examination used by the defence barrister in the questioning of rape victims in the case, (*Daily Mail* 3.2.01).

Such abusive treatment of complainants has been described vividly by numerous adult rape victims as the 'second assault' (e.g. Stanko 1985). Many writers, for instance Lees (1993;1997); Scutt (1982) and McColgan (1996), have discussed the effects of rape trials upon the victim. But as they note, the court can be more harrowing still: this time it is an entirely *legal* assault. As French notes: "Attorneys are not ashamed of winning freedom for murderers and members of organised crime.... [L]awyers feel that any strategy is legitimate in defending a client" (1986:406). In sex trials, particularly, the court becomes a battle forum to see who has the greater power: usually this is the defendant. (See for example Hariman 1990; Cuklanz 1996). Added to this, the defence case often is conducted by the more experienced and eminent barristers, who pose their contentions for the most part, very convincingly. Many barristers appear to have studied the psychology of group behaviour as well as acting technique - if their court performance is anything to go by. Ideologically, the nature of the defence's job is to be adversarial and argumentative. Their role as a vigorous advocate for the defence is incumbent in the judiciary's expectation of the manner in which they conduct themselves.

Even so, the treatment of children in the same fashion as an adult witness is not only unfair, but additionally begs the question of how it can be passed off as *just*. Some young witnesses accepted that reality, expecting to be treated as lesser individuals in a power-driven setting like the legal system. In any other profession dealing direct with children and young people, codes of conduct are set down: education, social work, police questioning of young people's involvement in criminal activity - all have their procedures designed to protect juveniles from

advantage being taken of them. Yet barristers defending alleged abusers have free rein to use or ask whatever they wish.

The fact that a few young participants in my study were treated courteously by the defence confirms that it can be done, given the lawyer's will. There must, however, be concerns that legal changes which merely deprive defending barristers of one method - even if that were possible - are simply likely to foster the development of new ones, equally as effective in achieving acquittal. The outright bullying of witnesses, as demonstrated in my study; no allowance being given for their youth nor for personal trauma from the abuse, all conspire toward the success of the defence barrister's task. In particular, the repetition of questions during cross-examination struck me in a similarly oppressive fashion as the tendency by some British people abroad to shout at people who do not understand English, apparently on the grounds that they will make headway eventually!

### (k) The nature of guilt: criminal proof and punishment

The problem of achieving a finding of guilt is that it is only after the most blatant abuses of power does the (less powerful) child see the perpetrator 'punished', thus obtaining some power-over for themselves. Some of the young people in my study felt that their abusers had received sentences they deserved; others, though, would have liked longer periods of imprisonment imposed. The young people who said they wished for the harshest punishments with an element of vengeance in them - castration, whipping, or a prison punishment regime - were those whose defendant's verdict was acquittal.

Judges do not always hand down harsh sentences for sexual crimes: as in the recent case of the Internet child pornography case. *(The Guardian,* 13.2.01, 14.2.01). Under the then law, a three year term was the maximum allowed, but all seven offenders were given significantly shorter sentences, Judge Macrae noting that (much) credit had to be given for guilty pleas. As can be seen from legal reports as well as in popular culture there are numerous accounts where a judge failed to make an 'appropriate' sentence despite a guilty verdict. The recent BBC1 television programme produced by Coughlan (2001) *'Raped'* noted the 'credit' given by the judge to a defendant who admitted in court he had lied previously. He was acquitted.

One of the interesting issues for me, is that despite widespread condemnation from sources as diverse as the popular media to alternative political comedy[4], there appears to have been no concerted, publicised effort to address either the attitudes of judges, or sentencing issues.

I find this interesting in respect to the *implications* of conviction. A guilty verdict against a sex offender turns the patriarchal order of society on its head, and curtails sexual access. In a hegemonic society, not-men are 'supposed' to be subordinate - so it is their exercise of personal power - through conviction of sex offenders - which tends to be curtailed. Thus verdicts are not achieved unless the evidence is so strong - or the defendant so obviously 'sick' - that the prosecution account literally overpowers the defence, and the accused is vested with the status of a stereotypically dangerous criminal. To illustrate the point, one has only to consider the tiny number of instances in any sphere of everyday life where 'not-men' are empowered over men.

I felt that a further examination of the ground rules, and thus the constitutional nature of criminal trials, might shed light upon this aspect. In a criminal indictment, it is for the prosecution to prove their case, not for the defence to prove it untrue. The presumption of innocence, therefore, can be something of an anachronism - albeit a tempting one, given the climate of disbelief in cases of sexual assault. This presumption implies so much more than the idea of simple non-guilt can convey, fostering belief of the defendant's accounts, and rendering conviction increasingly unlikely. The resulting societal concern has led to attempts lately by the judiciary - and Parliament - which suggest there may be justification in altering the law so that in rape cases, the defence would have to show proof of consent, rather than the prosecution demonstrating non-consent.

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[4] Comedian Ben Elton starred in the BBC TV series *The Man from Auntie* in the 1980s. In one programme from the first series, he presented a countdown of the 'Top five' worst judgements, of which two cases concerned child sexual abuse of a six- and seven-year old respectively, and a further one followed a conviction for rape. Furthermore, the *Daily Mail* (4.11.95) reported the sentence handed down by Judge Christopher Young, for an offender's 6th indecent assault conviction, noting Judge Young's criticism of the sentences of Magistrates in former indictments. Lees (1993) additionally notes that 'Judges often regard male violence as regrettable but understandable'. For instance, Judge Pickles in a TV interview (BBC2 1991) commented that "every man has a bit of Jekyll and Hyde in them or a bit of the beast.... When he is bad he's terrible - he's Jekyll and Hyde, all men are, perhaps." The implication is that men cannot help themselves; they are victims of their own negative sides.

I have contrasted how many other sectors of society demand that same level of proof or truth. Other legal and juridical requirements are far less rigorous. For example, a guilty plea to criminal counts is not tested exhaustively; the facts of an unchallenged case are merely outlined by the prosecution. The standard of civil proof - the balance of probabilities, when given circumstances are considered more probable than not - can amount to not much more than 51% likelihood. There remains a vast gulf between this and 'beyond reasonable doubt'. In most other areas of life, too, fortune allows a greater leniency. If one imagines academic or vocational tests which demanded a pass mark of perhaps 95% or even 98%, it is difficult to see how success could be assured. Furthermore, although the meaning of 'balance of probabilities' is relatively easy to understand, the concept 'beyond reasonable doubt' can test both the intellectual and reasoning capacity of a jury and the explanatory skills of the judge. In essence, then, there is no certainty of conviction which can comfort the child after the stress of the wait, the giving of evidence and the inequitable cross-examination. Ellie for instance, noted how the ushers said her prosecution case looked '*good*' - and she was all the more devastated when the jury acquitted. The reality is that often in criminal sex-abuse trials, if the defendant admits nothing, a strong likelihood of acquittal exists.

### (l) Heterosexuality: dominance and the 'masculine'

At the heart of the debate concerning sexuality issues is the problem that appears unresolved: the masculine interpretation of sexuality is seen as the preferred, at times the only, way in which sexuality can be framed in a patriarchal society. In the course of my professional experience (to say nothing of popular culture), many men have wrestled openly with the position that for them, despite an awareness of so-called modern women's views, 'sex' *means* penetration; acts which do not incorporate it are not 'proper' sex.

Smart describes the "remarkably constant belief" (1989:28) that rape must be in some way pleasurable for women, given the meaning of penetration as the paramountcy of male pleasure. The dominant nature of penetrative intercourse (as described for instance by Schacht and Atchison 1993) is accepted merely as a biological given. Smart argues that female sexual pleasure which is non-coincidental with the masculinist construction is regarded as unfathomable by males, and can lead to a pathologising of women. The term 'masculinist' is one I use here to describe the views of some males who espouse the

patriarchal world as the natural or 'common-sense' order: such individuals are often 'macho' in outlook, and protective and proprietorial toward women with whom they have close relationships, although not necessarily so. For a discussion of what such a term may mean for sexuality and female/male relationships, see Holland *et al* (1998); Brownmiller (1975); Greer (1999).

Hollway (1984) has argued that the discourse of an insatiable male sex drive empowers men, and renders women merely as passive objects. Her discussion of the male view speaks of their resistance to women, on an emotional level, coupled with an exploitative physical/ sexual level. She argues that women's sexuality can thus be constructed as separate from women - and thus from young people - themselves. Such privileging and perpetuation of this masculine view renders female sexuality problematic, and most importantly, unknowable. This includes, purportedly, an inability by women themselves to recognise their own sexual response - because it differs from the male 'truth'. (See also Lees 1993). Such disempowerment renders women as capricious and thus 'incapable' of consent, (as they 'cannot' know what they want), allowing men to act sexually according to their own wish. It would appear that a woman is allowed to 'change her mind' only to say yes, with any other option open to punishment.

Elaborating this contention, the defence may argue that physical contact which is 'accidental' or 'affectionate' has been misunderstood by the young person as sexual abuse. This manoeuvres the responsibility onto the child, who, by their apparently insatiable preoccupations, sexualises 'perfectly unwitting' acts. Additionally, in speaking of such actions, the child is seen as defiled and shameful, with the defendant as the injured innocent. This argument was used successfully in Catherine's evidence, for example. Commentators such as Myers (1994) and Smart (1989) have noted the knock-on effects of these tactics, which at times have fostered the belief that a father cannot cuddle his own child without being hauled up in front of the courts for abuse.

In my study, many allegations, especially from respondents aged fourteen plus, were defended as 'seduction' by the young person. In Ellie's case it was implied that she had not returned home but walked past her house to meet the defendant at the garage; then 'cried rape'. This

argument suggesting the validity of the unknowable and changeable female desire, undoubtedly contributed to the defendant's acquittal.

Holland *et al* (1998) and Plummer (1995) argue that sexual behaviour can be revealed as a continuum, rather than an either/or of fixed meaning and action. In feminist terms, the use of persuasion, seduction, inducement, argument, assertive suggestion, and emotional blackmail are but the first tranche toward a heterosexual instrumentalism. As Schacht and Atchison (1993) argue, heterosexuality (as a social practice) is employed as a form of male dominance which achieves gender inequalities. Such blurring of boundaries between coercion and consensus was also encountered within my study: constructions are seen, in legal terms, either as wholly negative, or not sufficiently serious to be worrisome.

I would argue that MacKinnon's (1983) statements concerning the dominant and controlling nature of sexual relationships (see p28), may be equally as applicable to young people as to adult abuse victims. If defendants allege they are accused wrongly of 'para-incest' (which I define as any stepping outside the realm of morally allowable sexuality with a minor) *they* are construing the complainant's sexuality as an insatiability of desire, or fantasy, outside the realm of allowability. Such allegations must, therefore, for the sake of credibility, rely on *male* interpretations of sexuality.

Therefore the construction of child sexual abuse, like the construction of rape, when viewed within the trial setting, places the victim in the wrong. The use of defence tactics paints the victim as culpable; additionally, perpetrators often choose to see a child whose behaviour is 'normally' loving as sexualised, and place all child-to-adult affection within a category of desire. The sexual outcome is then passed off as a reaction in which the perpetrator, once aroused by the young person's behaviour, has no free choice. A further emotional difficulty for the young victim arises from societal expectations of behaviour. (Holland *et al* 1998). Alison and Susan, for example, both felt to some degree that they could have avoided the incident by behaving differently; and although both their mothers - and I, having heard their accounts - refuted this strongly, their feelings remained.

The majority of sexual abuse reports are disqualified by a variety of responses achievable within the male constructions of sexuality and power, placing, I would argue, a high

weighting upon the (usually) male, alleged abusers' view as more powerful than the victim's. Hudson (1998) discusses the role of sexuality and power in violent crime against the disempowered. Greer (1999), also discusses these and associated issues of power and sexuality. Child sexual abuse thus, becomes another form of power abuse, where no matter what, the defendant always has an argument.

From my study, I would argue that 'feminine' applications of sexuality, however, *not* relying on 'power-over', and thus contrasting with the masculine model, are ignored. Not only does patriarchy see sexual behaviour in a given fashion, it assumes there is no other way of seeing it. Women, sometimes young girls, as sexually insatiable and all-powerful can only be explained as transference: a commentary on masculine power which, together with the idea of female sexuality as unknowable and unfathomable in male terms, places the whole argument firmly within the knowledge of masculinity, thus patriarchy - and moreover, as disqualifying any but the male account. In other words, women and children are apparently prone to behave in ways which are so strongly seductive as to render them unable to be ignored. If this be so, how is it that some men *are* able to exercise choice, avoiding the (apparently unavoidable) power of 'not-men' in *every other* section and area of society?

Defence arguments attesting to the masculine viewpoint were illustrated in the sexual abuse trial I observed in 1999. During it, the defence barrister questioned Hannah about a 'lesbian' relationship in which she had been engaged with another of the victim witnesses. He asked basic questions about how they had met, the length of their relationship, and so forth. He then alleged that they had met on a particular occasion "for sex". Hannah refuted this, admitting that she and her girlfriend had been kissing, but had never engaged in further sexual activity.

The barrister was a fluent cross-examiner, yet he was taken aback by her reply. He returned to the length of their relationship, emphasising that their association must have been sexual, or at very least, that the witness wanted it to be so.

*"I don't quite understand"*, said he. *"Would you have this court believe that when you and your girlfriend met and regularly engaged in kissing, you did not intend that it should develop into sex - er - of some kind?"*

She replied: **"It's just not *like* that, when you have a relationship with a woman. Sex isn't always part of it. We just kissed."**
He tried again: *"I can hardly believe that."*
**"No"**, she answered. **"You're a bloke".**

The disqualification of non-masculinised accounts of (hetero)sexuality places the male realm as unequivocal, as my study repeatedly confirmed. In contrast, attempts to disqualify masculine accounts in *any* sphere of society are likely to be met with amazed derision.

**JUSTICE: Meanings, realism and phallocentry**

I now consider justice issues following from the foregoing discussion. The nature of jurisprudence is an important issue in the critical consideration of the trial machine. Smart argues that the law "embodies a claim to a superior and unified field of knowledge" (1989:4). In practical terms, as she notes, in denying victims' accounts because of a narrow legal 'truth', "law sets and resets the parameters within which rape is dealt with more generally in society" (1989:26). The disqualification of especially female voices and sexuality under the banner of the law positions sex abuse trials as a microcosm of problematic jurisprudence, including legal method, the 'maleness' of the law, the disempowerment of not-men - and the public celebration of all the foregoing as just. Smart links these to the phallocentric culture which shapes the masculine as positive, particularly when compared to the feminine. The dominance of masculine versions of experience and the meaning of sexuality is reflected in society's understanding of sexual abuse trials, especially where young people have been the victims.

**(m) Disbelief, backlash and the maintenance of family power**

In considering the variables surrounding belief and disbelief, it is helpful to examine historical perspectives of the court trialing of child sex abuse. In the UK, a tranche of cases involving the medical diagnosis of sexual abuse (most combining other diagnostic methods) became known as the Cleveland Crisis. The facts can be confirmed in the report of Lord Justice Butler-Sloss (1988). As much as the received public wisdom suggested a moral panic

of the first water, however, the public concerns, as shown for instance in Smart (1989) were more about the threat to the patriarchal family than worries about the actual incidence of familial sexual abuse. Crises of a similar type have also happened elsewhere; see for instance, Myers (1994) on child abuse backlash. Faludi (1984) has discussed societal backlash against wider female emancipation, the effects of a more open adult sexuality and greater female autonomy.

Plummer (1995) suggests that the issue of child sexual abuse has conjoined modern themes around sexuality; gender relationships and the role of the family; and crime and justice. Mottl (1980) discusses the importance of the *means* by which much sexual assault trialing can be passed off as aggressive or overzealous, whilst allowing the contention that 'real' sexual abuse does, of course, require to be prevented. The idea of young people jumping onto a 'bandwagon' of false accusations against innocent, loving adults continues to hold some sway. There exists the proviso that if a child is - in fact - abducted and assaulted, perhaps murdered by a stranger, the law will swing into action to punish the perpetrator. There remains however, a tendency by police to 'no-crime' or convert to lesser charges a large number of sexual assault reports. Furthermore, the reluctance of the Crown Prosecution Service to proceed (see for instance McColgan 1996), can give victims and wider society the impression that their experience was unworthy of the commotion.

**(n) Gender issues: normalisation, underreporting, effects of 'the body'**

Numerous studies (e.g. Brownmiller 1975; Field & Bienen 1980; Finkelhor & Yllo 1985; Scully 1990; Brown 1992; Lees 1993; McColgan 1996), have demonstrated that sexual assaults of both children and adults are much underreported. Likewise, Dobash & Dobash (1998) note there is a tendency to minimise and normalise experiences of abuse. This can apply, as they argue, to the whole range of violent behaviours, whether sexual or not. The work of Lundgren (1998) concerning violence and gender power is also significant. She discusses first, the concept of resistance by, especially, pro-feminist individuals and groups who have struggled to fight against and change the male dominance embodied in violence to women. Yet she also suggests that there is an acceptance of gendered power and violence, whether sexual or otherwise, perpetrated against weaker members of society, as inevitable and unstoppable. Like the (post) post-structural arguments introduced in earlier chapters and

discussed further below, Lundgren's project seeks to move to a theory of gender that is dynamic, not static. In doing so, she discusses the play of difference between what she describes as 'constitution' (fundamental rules) and 'regulativity' (applied rules).

This 'normalisation' of sexual violence is also cited by Kelly & Radford (1998), amongst others, as the experiencing of such behaviours as acceptable; furthermore, victims may see themselves in some way culpable, with their own behaviour a contributary factor. In my study, Alison commented that she felt she could have prevented the attack (by getting out of her abuser's van sooner). The fact that the defence barrister suggested that she had brought the attack on herself also shows the institutional acceptability of this thinking. Her mother noted that some young people might have refuted the barrister's comments more forcefully, but Alison was not so outspoken. This too, alludes to ideals about how women, whether adult or not, are 'supposed' to behave, with the emphasis upon submissiveness and deference to those with greater power-over, in speech and behaviour.

Developing this, I would argue that there is some congruence with Marxist-feminist concepts (see Tong 1989), where false consciousness can be sited as a means of acceptance by not-men of sexual violence. The viewing of the legal system as an acceptable passage to justice for *some* victims, also can be compared to proletarian beliefs. The Marxist concept of 'alienation' (see Wood, 1981) is helpful too in unpacking the understanding by not-men of the justice system as a suitable response to (child) sexual abuse, as it can be maintained as an illusory meaning to the societal questions which sexual assault raises. Many youngsters report feeling they are 'damned if they do, damned if they don't' - the truth of which, when translated into the judicial sphere, is confirmed in a very low conviction rate in the light of prevalence.

Let us construct what this might mean for the young people who find themselves as witnesses within the justice system. I would argue that the legal system has made sustained efforts to avoid changes in basic patriarchal ideology, (whilst paying lip service to the importance of improvements in testimony-giving conditions). In view of this, should we perhaps consider whether children are, in reality, 'entitled' to say 'no', sexually, to their closest male relatives? There remains widespread belief that sexual perverts are almost always strangers; and a contention that 'real' child sexual abuse (as well as 'real' rape of adults) is perpetrated by

paedophiles in dirty Macs in the case of the former, or psychopathic strangers, in the case of adult women (see for example, Smith 1989). Such strongly held perspectives both help to explain societal belief in sudden sexual assault by strangers, and allow the appearance of an apparently proper level of social control whilst both hiding and condoning occurrences much closer to home (Jacobs 1994). The fact that stranger-assault is much more frequently prosecuted, despite its (actual) lower incidence confirms and perpetuates the trend. Studies asserting the actual prevalence of sexual assault by familiars, (e.g. McColgan 1996; Cuclanz 1996), continue to be disregarded by the same process that the attacks themselves become normalised. Despite many organisations' - not least whole local authorities - acceptance of levels approaching truer incidence and need, nevertheless societal attitudes of denial persist.

In my view, the political acceptance of child sexual abuse as a high-impact problem for families seems still to be a long way off. The powerlessness of women as 'the other' in the family structure, as argued by de Beauvoir (1949) persists. Additionally, the inevitability of that position, due to attitudes and the effects upon women of the responsibilities of child rearing, continues to allow sexual and other abuses within family and pseudo-family structures to persist largely unchecked. The focus of my study, child sexual abuse, continues to meet with acceptance; often what amounts to a tacit encouragement by the lack of effective societal sanctioning. The accompanying and widespread disbelief by the judiciary becomes marked through as a norm, and the reality of not guilty verdicts becomes embodied in the faces of twelve jurors.

### (o) Truth versus impression: impacts of discourse for children

There remains an implicit belief that somehow sexual abuse is not that harmful, unless it is violent and prolonged. The opinion that women are somehow 'supposed' to be available for men's sexual gratification is just as prevalent now as in past decades (see for instance Brownmiller 1975; Lees 1996; Dobash & Dobash 1998). As McColgan (1996) argues, given that historically women were supposed to resist sexual advances, attempts by males merely to break down resistance, if necessary by force, is often seen as applying to juveniles in the same way.

Thus the activity is renamed as a sexual 'encounter' - rather than aggressive or abusive - and its nature is drawn into relevance during the trial. The most innocent sounding descriptions speak of older men as having 'affairs' with under age girls, minimising the abusiveness of the behaviour and marking the juvenile as an equal partner, with the self-determination of an adult female. The fact that an *adult* female is not even an equal in the negotiation of a sexual encounter is not even alluded to.

The effect of discourse too, on case outcome is significant. Foucauldian theory (Gordon 1980, for example) has dissected how some discourses can successfully claim to speak the truth, thus obtaining power in a society that values this kind of 'truth'. The law and the judiciary have powerful discourses, their own esoteric methods and systems of results. Law, as Smart argues (1989), sets itself above sociological and other forms of knowledge. As she notes, the adversarial system is considered to be a secure basis for findings of guilt and innocence. Whilst the skills of the primary investigators of sexual abuse are generally (and separately) applauded, when matters arrive at court, no reference appears to be made to the nature or professional assessment following those investigations. Unless police and social workers who carry out video interviews believe the account of a child unequivocally, they would not suggest that the matter be allowed even to reach the Crown Prosecution Service. Yet the effect of the adversarial system upon young victims is to render the hearing an all-or-nothing gamble, where the views of knowledgeable professionals become immaterial.

### (p) Effects of acquittal

The development of child protection services over the past quarter-century or more has, as Morrison argues (1999), focussed upon the best interests of the child. In criminal proceedings, by contrast, because of the judiciary's faith in its own system, no systematic consideration has been given to any aspect beyond the trial itself. In cases where the defendant is found guilty, presumably the knowledge that justice has been done is supposed to sustain the young person. In matters where acquittal results, the belief that a court will root out the truth *infallibly* in the end, means that no unconvicted child sexual abuse, and thus no trauma, is supposed to exist.

The question of witnesses' versus defendants' rights is a major area of debate concerning policy and practice. Whilst trial fairness is essential, methods of cross-examination in particular do not amount to a fair hearing of the account of the young witness, as the trial focuses on the rights of the defendant. This paramountcy within the criminal justice system ignores the effects upon the child of potential acquittal, and makes no allowance for the injustices of erroneous not guilty verdicts. Reforms to improve conditions for the child's testimony, intend to focus on the facilitation of the young person's giving best evidence.

In view of the foregoing, it is essential to question why, given the protective responses to children of untried abuse of all types, the weight attached by society more generally, to *criminal* proof in sex abuse matters is so pressing. Where instances of cruelty or serious physical harm are perpetrated by a parent, conviction appears to be seen as an optional extra; fine if it is achieved, but not a cause to doubt children's stories if it is not. However, concerns for the child's well-being, and identification of physical abuse often are noted by professionals direct. Furthermore, the prosecution of child cruelty more often centres around very young children, whose testimony is not required, and where expert assessments of the causes of injury do much to strengthen the prosecution case.

Given the serious levels of self-harm carried out by several of the older participants in my study, especially after defendants were acquitted of the charges, should such extreme reactions not be a matter for rigorous investigation in the tradition of independent public inquiries? Alicia and Catherine had both been in public care. In particular, Alicia's mother had extreme worries about her daughter's well-being given the lack of personal support she was receiving. Alicia was either on the brink of, or had actually been involved in, a significant amount of criminal activity she was whilst she was placed in a Children's Residential unit. Her mother told me she had been obliged to negotiate at length for Alicia's return. Catherine, by contrast had been cut loose by her family after her disclosure and the threats it posed to her mother's relationship. Both young women had seriously self-harmed once a court hearing (the first of two, in Alicia's case) had led to a not guilty, or a no-verdict.

Such factors, I would suggest, should have resonance in debates both concerning legal and professional contexts, as well as in current social policy. The Department of Health 'Quality Protects' (2000) programme, for instance, focusses upon an holistic overview of the

requirements of children and young people. They focus on interagency co-operation and development, the importance of listening to children, and of outcomes for the safeguarding of young people who are in need. However, as Green & Katz (1999) suggest, 'need' is not always identified unless major high-tariffed concerns are also present.

In short, problems of communication breakdown are evident in the responses of the criminal legal system to young people who allege sexual abuse. Within the realm of the various agencies involved in the Child Protection role there is mainly an acknowledgement of the need for improvement. In the case of the judiciary, by contrast, one of the problems must be that the criminal court system does not see itself as a stakeholder in child protection. Thus, acceptance of a role beyond criminal conviction would be a necessary precursor to change.

### (q) Trial judges: faith in the system

Notwithstanding the insistence that jury trial by ones' peers - a selection of 'ordinary citizens' - is the basis of criminal justice, the legal professionals are, in fact, the ones fully in charge of the court. Trial judges' opinions sway the outcome by the manner in which the case is summed up and the directions given to the jury. Their adherence to esoteric ideals places the court system in the position of being unapproachable, whilst purporting to be accessible to anyone who may have a legitimate complaint. Appeal and Higher Court judges presiding over the judicial appeals structure often regard convictions 'unsafe' on spurious grounds.

However, unless one is to give up entirely the notion of bringing to justice child sexual abuse perpetrators, which would, by itself, involve a massive cultural shift, difficulties remain. A major concern must be to ensure a higher proportion of convictions, having regard both to a fair trial for the defendant, as well as to the court ordeal undergone by the victim. This should apply in equal measure, of course, in sexual assault trials where the complainant is an adult, as McColgan (1996) and Lees (1996, 1997) amongst others have stated.

Some judges appear much enamoured of the 'true' justice of the current court system, and place unerring faith in it. I recall vividly a comment from an eminent judge, very experienced in trying child sexual abuse indictments, commenting to the effect that if the verdict was not guilty, the attack could not have occurred as alleged. Having just interviewed Ellie, whose

account spoke volumes, not least for the skill of the defending barrister in obtaining an acquittal for his client in the light of extremely strong evidence, I found it very difficult to accept the judge's words.

In the course of my study I also discovered a trend which was unexpected: there appeared to be a definite attitude to the cases' conduct which varied from court to court. In Winchester, the major objective seemed to be to get a conviction if at all possible, worrying about the appeal process at a later stage, if it was raised. In Portsmouth, by contrast, cases were designed to be as 'appeal-proof' as practicable, with a greater emphasis on not allowing any chink which might give grounds for review and thus possible quashing of a conviction. I had by no means appreciated the arguments and differences; however, speaking to other Witness Service personnel whom I met over the course of my study, I realised that most courts have their own slants and sometimes quite subtle differences in approach.

The faith of the judiciary in the system places enormous regard upon the defence; in effect saying that a good defence 'roots out' the truth, not that the barrister may be extremely clever at making issues appear other than as they are. The introduction of doubt is thus elevated to a certainty, with the meaning of 'not guilty' and 'innocent' becoming one and the same. Moreover, doubt and innocence become interchangeable. I become very concerned when, following the acquittal of a well-known individual of charges of sexual abuse, one hears of the defendant crowing that their 'name has been cleared'. Are the public so gullible as to believe that every child whose alleged abuser was found not guilty was actually lying?

This raises further questions when appeals are allowed after a defendant has served a lengthy custodial sentence, as opposed to appeals allowed on points-of-order issues. The point which concerns me here, is not the exact issue upon which a conviction may be quashed, but the resultant effect upon the judiciary's view of the 'truth' at any given moment. Judicial faith in the system appears to sit, if not comfortably, then at least tolerably, with well-publicised miscarriages of justice, and with convictions overturned on appeal. When 'legal truth' becomes the only currency of truth, the status of judicial decision making - the Truth as eventually divined - is raised to apparent insuperability, as Smart (1989) argues.

## Conclusion

Beginning with the work of, for example, Dobash & Dobash (1998) and Holland *et al* (1998), I have developed ideas further with respect to the question of child abuse trials. When the nature of this juridical Truth is unpacked and examined, in opposing accounts, the weight given to the masculine (and thus more often the defendant's view) is far greater than that accorded to the view of the 'not-man': in other words, usually the victim; the least powerful of the two. In the next chapter I develop theoretical themes and ideas pertaining to the study.

# Chapter 8

# Theoretical perspectives

## Introduction

This chapter deals with theoretical insights which have been gained as a result of this research, together with further discussion linking other relevant research and theory, to place my study into context. I have already stated my personal starting position when prosecution follows sexual abuse disclosure by young people. Some relevant arguments and theoretical bases are now rehearsed more fully, and I posit my own constructions of the problems.

## Feminist approaches to the court experiences of young people

The tradition of qualitative research is well documented; the interpretive tradition has influenced my thinking. The contrast between meanings which are seen as fixed, and pluralities which are suggested by a post-(post)-structural stance kept striking me as I considered the data. Brid Featherstone notes (Fawcett *et al* 2000:121) that 'understandings of one's past are indeed provisional and fluid'. Her critique of 'feminist' approaches which presume women's powerlessness also struck a chord. Like her, I feel comfortable in accepting and examining the complex and uncertain relations between women, and between women and men, or children, or power. The feeling of not being able to grasp meaning conclusively is one I fully recognise, and have gradually learned to accept as not only inevitable, but necessary, if I am to gain the maximum from my personal research programme.

In my estimation, the topic which Featherstone posits as a feminist research [mothers' violence toward their children] has much in common with my own area of study. My aim of considering anger, pain, power and powerlessness, in an area which was, certainly at the time I embarked upon it, relatively neglected, meant that Featherstone's study had a feel of congruence with my own. She discusses hers as a somewhat 'politically incorrect' choice of

topic. My research does not throw up quite the same problem issues, but until I read her work, I had not seen my relationship with feminisms as ambivalent.

I have however, been obliged to accept that, with its main focus not as women but *children* - who can be male as well as female - my work may not be seen as truly or entirely 'feminist', despite my methodology originating from a desire to "powerlyse"[5] what I see as archaic jurisprudence. I would argue, however, that my objective to analyse power and abuses of power inherent in sexual offences pertaining to vulnerable young people, renders my subject matter a feminist study, given its focus of analysis. I do not accept the idea that anything to do with the oppression of any group not wholly female cannot represent a true 'feminist spirit'. In particular, the parallels between rape trialing and child sexual abuse trialing are apparent when one breaks down and examines the range of witnesses and victims experiences identified in rape trial studies (e.g. Lees 1993).

**Overview of my study**

My onflowing task has been to derive and develop some helpful theoretical understanding about what has been going on within criminal court settings. In my reading of Fawcett *et al* (2000), I was very taken by Lindsey Napier's view (ibid: Ch 9) which speaks of some knowledges and understanding [of death and dying within her study] being beyond reach; she maintains our best hope is to engage in dialogue with a preparedness to listen, learn and reflect. My start point, albeit without Napier's concise affirmation, has been just that: to listen actively to children; to hear; and to reflect.

The dangers of embracing some singular truth are equally inappropriate. I have accepted, throughout, the stories which young witnesses vouchsafed me about their court experiences for what they were: a few essentially all right, many incredibly traumatic, others quite mixed. Despite this, when analysing my data, I encountered a terrible tendency to feel that unless one hundred percent of the accounts revealed trauma of the most diabolical sort, there was a danger that readers might suggest that 'It's not so bad for children, after all'. Just because all

[5] I have used the word *powerlyse* as an amalgam of 'power' and 'analyse'. It would be especially useful if my study also served to paralyse some of the ongoing patriarchal practices inherent in courts!

my participants have not, fortunately, been scarred for life emotionally by their court experience, it does not make it acceptable for *any* child to be so affected.

Naturally, some children and young people manage better the reality of evidence-giving than do others. For every young person who was able to cope with the evidential process, my study threw up many more whose lives were further decimated by court, and, perhaps most importantly, for whom even the magic guilty verdict was no panacea. When one examines the view of my study participants, 'Brian' for instance, regarding his cross-examination, one is struck by the pressures with which any young person, male or female, is obliged to deal before a conviction may be secured. It is, therefore, essential to resist any temptation to minimise the difficulties suffered by even those who appear to cope, and who, with support of family, friends, or their own inner emotional strength, have been able to progress with their lives after court.

My study is not statistically generalisable; it is not intended to be. What it does illustrate is a range of stories of young people's experiences of court and evidence giving, as a result of personal sexual abuse. The results provide no weight to any suggestion that giving evidence of sexual abuse does less than re-traumatise the majority of respondents, and as a major overall conclusion, I would question why such pain appears to remain a common feature of the quest for justice.

It is important to emphasise that I would not wish to devalue the magnitude of evidentiary process; courts are serious places where major and life altering decisions are adjudicated upon. But my study results question whether it is acceptable for children to be so exposed to the cut and thrust of the adversarial legal system, where one of the chief concerns of those fighting hardest against the child is the enhancement of their reputations as superb defence lawyers.

**Issues of power, gender and identity: powerlessness as a signifier of youth**

My reading of Moore (1994) and Weedon (1997) has assisted my examination of the bases which I can consider and develop in the search for theoretical insights into the treatment of young witnesses in sexual abuse trials. Moore (1994) discusses issues pertaining to power,

considering how identity can be affected by constructions of gender, race and violence. She explores how resistance and complicity may both be placed within the structures of power and domination. Moore argues that individuals' intersections with discourses, and with individual and social structure, mean that resistance and complicity are forms of subjectivity which are influenced by difference, such as race, ethnicity, gender and so on. I would argue that these differences form a hierarchical structure which pervades every aspect of life, and whose placement may also be affected by issues such as power and fear. Thus the very system upon which we shape our justice is affected by the various defining differences which appear powerful at any given juncture within the criminal process.

Moore notes anthropological work concerning gender discourse, drawing for instance on the work of Sanday & Goodenough (1990); and Strathern (1987). I want to posit, however, that whilst the construction of gender is incredibly useful to my study and theorising, it is at once less and more than these arguments. It is less because the abuse of children is not only a female/male power struggle; it is more because it is a power differential that is or may be gendered, but is not always so. This is inevitable in taking abused young people of both sexes into account.

To provide a theoretical framework which is relevant to the treatment of young witnesses in court, and embraces both a feminist and, most importantly, a non patriarchal stance, I have developed Moore's position (1994). Her theories concerning difference provided me with moments of understanding, which I have found very relevant, inspiring me to further some arguments of my own. Moore's concept of difference being about forming and maintaining group boundaries - with the "brutal and bloody nature of this maintenance work [being] everywhere in evidence" (1994:1) set the scene for me. This early statement allowed me to position the struggle not in the quasi-controlled, rule bound court setting, but in the frustrating and emotional maelstrom surrounding sexual abuse *victims* and often families.

My research results show that young witnesses' range of emotional court agonies are the outcome of the legal privileging of power. They also suggest institutional subordination of anyone entering the juridical purview who is actually or potentially vulnerable: that is to say, all those on the receiving end of sexual assault. Such treatment of individuals, following

from their physical and emotional subordination, purports to reflect a 'fair' trial system which parades as the envy of many less 'advanced' cultures.

In fact this justice lie, as I term it, serves to excuse the vast majority of sex abuse; perhaps worse, it entices continuing litigious subordination by the patriarchal hegemonic framework that calls itself justice. I was very much struck that in 11-year-old Anna's case, she spoke succinctly about one of the major problems for her, which she felt should be changed:

**If they could just show my video, and if I didn't have to be at court... if they asked us all those questions at a different place so I could have just made the video....** [Anna]

**Institutional powerlessness of the 'other'**

Much has been written of gender being the 'chief' inequality in an unequal societal structure, (see for instance de Beauvoir 1949) behind which all the other operating attributes are ranged. In modern post-structuralist terms, this tends toward a hierarchy of decreasing power, the further one moves away from the able-bodied white male adult. The differentiation of women and men, of whatever ethnicity, religious belief, age or other grouping always places the female of a given group in a position of relative powerlessness when compared to the male. This applies to young people also: minors from the same groupings as their adult family members will be less powerful than individuals born one generation earlier.

The difficulty is that, historically, this state of affairs has been regarded absolutely as the appropriate one. For generations, 'youth' has been considered properly to be subordinate to adults. However it must not be forgotten that this too was considered to be the 'proper' place for women. The short story by Gilman, *The Yellow Wallpaper*, published first in 1892, portrays one woman's reaction to a message of subordination, practised in individual family structure, but applauded by society as a whole. In its modern edition discussion, Elaine R Hedges (1973) also notes Gilman's comment from *The Home: Its Work & Influence* (1910), concerning the lot of women and children who were, effectively imprisoned within their homes. As she discusses, children often suffocated, "noticed, studied, commented on, and incessantly interfered with... How can they grow up without injury?" (1973:58).

One important task following from the data gained in my own study was to draw to attention resonances from our historical treatments of women and children - 'not-men' - which still influence much of society, and from which many prejudices of today derive. Drawing from these insights and bringing theoretical considerations up to date, I have returned to Moore's arguments concerning identity and discourse. She states:

> 'Forms of difference are mutually imbricated, and ... can never be truly separate from each other ... the relationship between gender identity and gender discourses, between gender as it is lived and gender as it is constructed'. (1994:50).

She continues,

> 'All the major axes of difference, race, class, ethnicity, sexuality and religion, intersect with gender in ways which proffer a multiplicity of subject positions within any discourse.' (1994:57)

These quotations demonstrate the generalised lack of structural theorising regarding the needs of children and young people specifically. Of equal concern, however must be the tendency to ignore the issue of age and the effects of discourse upon the power differentials operating in the specific realm of child sexual abuse. Whilst my terms of reference place gender as a vital difference, I am also concerned to develop the arguments relevant to my study matter. I would therefore add the term "and youth" where Moore mentions 'gender' in the final part of the quotation above. Discourses about sexuality and gender which construct women and men as different sorts of persons may be equally applied, I would argue, to younger individuals versus either older individuals, or adults.

Whether Moore would accept the addition of 'youth' to the quotation is a moot point; however, the inclusion of the category of youth alters the 'purity of oppression' - by this I mean the constancy of powerlessness in the differential of the discourse binaries - because of the fact that some young (male) people will develop into the proponents of patriarchy in the future. What I describe as this purity of oppression for *women* is not questioned by feminist theorists; women are considered 'oppressed' whether they realise it or not, and those women

who agree with the patriarchal construction of society - as the proper fashion for society to be organised - are nonetheless still oppressed. See for example, Tong (1989). The gendered discourse of oppression accounts for a large, and some would say, the first and most basic, power differential. All the same, when other 'power-binary subjects' are included, such as race and age - whether older or younger - it is then possible to construct ways of thinking about power which go beyond just masculinity and dominance, whilst retaining their leading edge.

The problem from the feminist viewpoint is that young males sometimes are considered as 'small patriarchs'. In the late seventies when I was working in a Hertfordshire Women's Refuge, no male over the age of seven was allowed on the premises, and an overall hostility to males (including professionals) pervaded much of the work. This radical separatist line was one of the much publicised strands of feminism which opened the movement to ridicule and the more uncomplimentary descriptions. Gradually over the last two decades, a more pluralist line has developed, taking into account the specific concerns of, for instance, black feminists (see New 1991, hooks 1984). The recognition of powerlessness of any not-man, I posit, allows the recognition of the oppressions of youth.

In addition, New (1991) notes:

> All oppressed groups have their experience dismissed as imaginary, exceptional or exaggerated. This is an integral part of the oppression itself, and an inevitable one, since all those with an interest in the status quo (or simply frightened of change) will defend a viewpoint which minimises or denies the oppression'. (In Abbot & Wallace, 1991:3)

French argues (1985) that gender is the paradigm for all modes of oppression, and that sexism paves the way for all the other discriminations. I want to argue not only for recognition of the straightforward oppression of classes of people such as women, or blacks, or older individuals; I want to discuss ways to see oppression as a continuum, where within a given encounter, one is less and one more powerful. I deem it too facile to view victims as wholly powerless; indeed it may be that the young witnesses to whom I spoke were some of the more forthright: the Crown Prosecution Service decision to prosecute on their evidence gives

weight to this suggestion. Moving from French's position, I therefore developed the ideas of Moore, substituting issues surrounding power and powerlessness more generally, taking gender oppression as the start point but thinking about what meanings could be developed which would assist consideration of the more specific issue of youth. Thus in the same way that discourses on gender demonstrate that women and men are defined by difference, so discourses concerning young people and powerlessness are marked through in the same way.

Moore's critique suggests that generalities may be appropriated easily, despite the poor correlation between dominant representations and the actual attributes and self-images of the individuals in question. The foremost argument in Moore's essay is the assertion that once *defined* by difference and by the workings of signification and discourse, gender difference and categorisations are them easily produced. Moore invites the acknowledgement (and I coincide with this) that the categories 'woman', 'man' [and, in my developed argument, 'child'] and the discourses employing those categories are involved in the (re)production and (self)representation of personhood and agency. She also questions the ways in which dominant discourses and categories become so powerful when so few people appear to acknowledge that they support or believe in them.

**The positioning of young people in discourse and domination**

When I was considering how to describe young witnesses, I began unconsciously to assign meanings to terms, and found that 'child' seemed to mean young, immature and 'not conversant with the ways of the world'. In speaking the required evidence, however, children and young people who have been sexually abused are dealing with and naming a supposedly adult phenomenon.

**... I felt that I couldn't say it in ways that I would just generally [have] said it.... I thought they'd judge me on that, I didn't think they would believe me.... Cos, he was older, and - it's his word against mine.** [Alicia]

The draining away of the child's innocence, and their placement within adult spheres of reference in trials against alleged perpetrators, appears to have the effect of introducing a kind of culpability into the equation as seen from the viewpoint of those receiving and deciding

upon the information - jurors. Nevertheless, the description or awareness of youth as the witness' chief attribute, inclines the child to being regarded, naturally and as a matter of 'common sense', as of lesser account than adult witnesses.

These twin difficulties of powerlessness and disbelief appear difficult to shift. Hierarchical representations of dominations allow the 'most' dominant to be seen as 'naturally' top. Opposition to this structure in real terms, by jurors in court cases concerning sexual assault means taking the huge step of positioning the dominant as subordinate. As Moore argues:

> "It is through engagement with and investment in the subject positions offered by discourses... that individual[s] ... succeed in reproducing the dominant cultural discourse, whilst simultaneously standing at some remove from the categories of that discourse.... By feminizing and pacifying that which is dominated, in order ... to establish a hierarchical relationship of domination which appears as natural as gender difference itself." (1994:61-2)

It is extremely difficult, both emotionally and practically to oppose the effects of phallocentry; opposition to the 'natural' and 'common sense' can lead to unease. Potential disagreement with set norms and values is anathema to members of the judiciary, whose beliefs and customs embrace patriarchal values so thoroughly. Such tendencies make it viable - indeed easy - for jurors in their turn to ignore the realities of sex abuse and the effects upon children. The following examples are illustrative:

**I felt like I was on trial. Although I'd been told I had done nothing wrong. But it still felt as though I was on trial.** [Catherine]

**I mean, if the judicial system in Britain is like that, like it was with me, all the time, then there *isn't* any justice.** [Ellie]

In short, whilst laws may change, practices do not keep pace. Why, otherwise, do so many children suffer in the evidential process, screens and video links notwithstanding?

**Wider societal concerns & the politics of reform: viewing small changes as enough**

It is all too easy to suggest the struggle is won, whether for sexual equality or for fair and equitable treatment for young witnesses. Indeed, throughout the period of feminist struggle (which I am defining as the past century and a half, ever since calls for emancipation and enfranchisement began to rally the feminist cause at Seneca Falls in 1848: see Schneir, 1996), the patriarchal structure of modern society has demanded a measure of reform once difficulties are identified, to avoid uprising that would truly threaten what is taking place. But once the societal structure is pacified and appeased by the stirrings of change and the hope of improvement, the cultural practices continue, often more subtly than before.

The practices of 'talking about change' and 'pretences of change', stand *for* change in society with so many institutional forms of inequality that it takes a while to identify that nothing very much actually alters. Yet the so-called popular 'post-feminist' culture abounds, (e.g. Faludi 1992), ridiculing those who still label themselves feminist for suggesting that there is further progress still to be achieved. Thus constant agitation for reform; even in some cases for evaluation, may be marked through - and dismissed - as unnecessary over-reaction.

Where male 'failure' becomes an issue, however, such as in the public examination results of 2000, it is seen as a cause for concern (*The Guardian* 21.8.00). Despite cultural constructs that may have brought it about, it is male, not female failure which threatens the societal order because the success of a section of the developing young male generation is a required attribute of continuing hegemony. Yvonne Roberts' article in the same paper (22.8.00), criticises the concerns, noting continuing overall success in the world of *males*, superior female qualifications notwithstanding.

Whilst societal concerns occasionally centre upon children, there is often speedy growth of media disinterest in children issues. Public interest in reports into the death of children centre more upon the *adult* inquiries than upon the youngsters as individuals. The low status of child rearing and caring roles, and of children in public life also reflect this. It is worthwhile to note that despite the claims the justice system has made for itself over decades, addressing of young victims' social needs has never been one of them. In such a 'youthist' familial setting is it any wonder that sexual exploitation is such a regular feature? As Moore suggests:

> "Violence... is strongly sexualised, and the distinction between perpetrators and victims of violence is often represented as a genderized difference, [which] comes to stand for very real differences in power between groups of people and between individuals.... The personal experience of gender and gender relations is bound up with power and political relations on a number of different levels.' (1994:63).

**Female/ male divides: attitudes to sexual availability**

From the viewpoint of young people, one of the more puzzling features of the prosecution of child sexual assault which I have encountered anecdotally as a general trend - although I have not gathered quantitative evidence - is the higher incidence of conviction of perpetrators against young male victims. Of the four young males I interviewed, only one experienced a not guilty verdict. It may be that young males in child sexual abuse trials *do* come off better in terms of court result, that is to say, likelihood of conviction, as my study suggests might be the case. Perhaps in a proportion of cases, young male victims are considered nonrepresentative of genderised difference. I have questioned whether perhaps a 'younger male' to 'adult male' 'relationship' may even be regarded as indicative of a greater level of 'equality' - as might be considered the case where two [adult] males agree mutually upon a homosexual relationship. In the event of a less powerful male complainant and a male perpetrator, is it possible that the power hierarchy may be more easily demonstrable as dysfunctional, and thus seen generally, by juries, as more 'deviant' and thus more likely to be worthy of conviction?

This also caused me to question the nature of power differentials operating in 'traditional' child sex cases, between an adult male and a young victim, leading me to consider the societal 'role' of females for male sexual gratification, which does not appear to apply in the same way in matters of male abuse of males. The postmodern feminist approach to social work argues that the normal is constructed by reference to what is deviant and 'outside': (Fawcett *et al* 2000). These two suppositions together make way for the idea that whilst sex abuse offenders are overtly the 'baddies'; in practice, the role of 'baddie' is placed upon the victim regularly. In the guise of acceptable norms, there is an expectation that women especially, (but in effect any 'not-man' including young people) will provide sex uncom-

plainingly to men on demand, and those that complain are treated as unacceptably churlish. The societal attitude, and the juridical response emphasises access to subordinates by any sexual predator, with the psychological input provided to complainants, especially in trial settings, loaded accordingly.

I hypothesise that sexual abuse is still not being seen as a 'real' crime: servicing the male sexual need is seen as tacitly acceptable; this satisfying of male desire applies even where the *perpetrator* is a female, where she is often seen to be addressing male needs. Women are not construed as a sexual threat because of their 'biological' place as the sexual receptor. A case last year, of a woman being gaoled for a year for having sex with teenage boys (*The Times*, 29.9.00) made the point that both she and the boys saw it as fulfilling *their* sexual needs and fantasies, not the other way about. How much is it seen by society to be about the use of power by the perpetrator - (a woman) - negating the self-determination of the young male victims - and how much is it seen as the operation of the hegemonic potential of those young men? I am drawn to suggest that sexual abuse of young men by adult women is regarded as too non-powerful to be considered truly threatening to society; conversely, the abuse of young people by males is too powerful and rights-driven to be challenged consistently. The abuse of females by females, I suggest, continues to be categorised by society in similar fashion to historical attitudes to lesbians, which has never formally been legislated against. The 'unreality' (i.e.non-masculinist nature) of lesbian relationships has served to render them effectively irrelevant and as good as invisible. If their non-masculinist quality is rendering them as not 'real' (i.e. potentially penetrative) abuse, and abuse by males is being classified generally as a male right, the reasons for non-prosecution and prosecution failure start to be more easily understood.

**Post-structural and post-post-structural approaches**

Post structuralism and post modernism are treated as largely interrelated in Fawcett *et al*'s publication of social work research and theory (2000:Ch1). Their approach serves, nevertheless, as a reminder of feminisms' embracing of numerous and diverse orientations over time, which can be divisive as well as dynamic. The various perspectives occupied by feminist theorists are considered, together with the disparate reactions generated. Of these, it

is the creative responses which have provided opportunities for postmodern debates to be reconsidered in ways which retain feminisms' critical edge while rejecting notions of objectivity or a universal Truth.

I have preferred the term 'post-structuralist' instead of post-modern. In my use of the former, I refer to Weedon's view of it as:

> 'a way of conceptualising the relationship between language, social institutions and individual consciousness which focuses on how power is exercised and on the possibilities of change'. (1987:19)

Weedon (1987) makes the point that not all post-structuralist forms are productive for feminism and discusses a 'feminist view of post-structuralism'. She regards the implication of a concern with historical perspectives as important, noting that a theory may be considered useful if it addresses:

> 'the questions of how social power is exercised and how social relations of gender, class and race might be transformed' (1987:20).

Weedon emphasises the importance of language in the social construction of reality, and for me this is key within my study, impinging as it does upon so much of the spoken content of the questioning and evidence-giving of young people. The meaning which, she argues, is produced within language is demonstrated repeatedly throughout my data. For instance, Catherine's abuse was constructed as 'horseplay'; it immediately became that.

Moore (1994) speaks of the post-post-structuralist as a 'feminist rethinking of the post-structuralist', but both she and Weedon (1987) see identity as multiple and even self-contradictory. I would posit that both schema have useful perspectives to offer, but for the purposes of debates generated as a result of my personal research findings, I prefer the term 'post-post-structuralist'. Although perhaps a little cumbersome, I regard it as helpful in embracing the differing meanings generated by my study of both female and male young people, whose status as 'not-men' is a pivotal issue. The major aspect, particularly when trying to develop arguments which are transient to young people because of the temporary

nature of the space those individuals occupy in the social structure, is that the post-post structuralist is not fixed, but created, altered, and recreated as a continuous flux. In positing this I would draw out the point that if the fluidity of feminist thought is grounded in reality, it *must* be unfixed. This contrasts with the 'one truth' empistomology of traditional philosophers.

Moore notes that:

> 'The post-post-structuralist subject ... is the site of differences ... which constitute the subject and are internal to it. This notion of an internally differentiated subject constituted in and through discourse is analytically powerful... [particularly] in analysing how individuals become engendered and acquire a gender identity in the context of several coexistent discourses on gender which may contradict and conflict each other'. (1994:58)

Thus the basic premise of post-structuralist thinking on the concept of the 'subject' (De Lauretis (1986) in Moore, 1994) is that discourse and discursive practices provide subject positions, and individuals take up a variety of positions within different discourses, so that the subject exists as a set of multiple and contradictory positionings and subjectivities, constituting their sense of self through several subject positions.

I would argue, then, that within the post-post-structural construction, each level of meaning differs for each individual as a result of the whole of what went before. Those differences should not be seen as negating any part of the data: it is the diversity of received and properly analysed data which makes the arguments so powerful.

In this way theoretical slants represented by post-post-structuralism can respond to the varying levels of understanding which are generated by differing opinions and shades of emotions. This can form what I described in Chapter Four as the 'lattice of qualitative analysis', such as my data has presented. This allows the views of all young people, as a disempowered group, to reflect and be reflected by post-post-structural constructs without the overweening need for other states of differentiation, such as the gendered, to assume an exclusive or foremost importance. The very nature of grounded theory developed from

discursively analysed research findings can point towards relevant directions; but cannot provide a theoretical stance which offers full explanations for everything, because the nature of epistemic, grounded knowledges must form a variable. Thus, grounded theory, I would argue, exists in a state of flux because of the multiple and unfixed nature of discourse. I would therefore view my data-generated discussions as both grounded and most easily understood and reflected using a post-post-structuralist approach. In other words, the whole range of meanings generated by my data can be regarded as relevant to the understanding of my research questions and the subsequent arguments I have posed.

**Developing a post post structuralist position for the consideration of child witnesses' experiences**

Using Moore's discussion of multiple subject positions, I have developed the argument a stage further. I contemplate how the effects of a jury's belief is structured by what they hear; by the ways in which the witness is viewed within in the minds of those receiving the information, and by how s/he may self-construct. The contradictory nature of 'selves' enables the jury at once to feel sorry for the victim; yet they may mark the differentials between victim and defendant as 'less-belief' versus 'belief', thereby falling short of the 'beyond reasonable doubt' proof standard. This takes place regularly despite the strength of the prosecution case and the high assessed chance of conviction which must exist before the matter is even brought to trial.

The means by which contradiction and conflict are able to construct a 'reality' is, I would argue, much affected by what I have termed a dominance paradox. By this I mean that the further the child appears, in purely evidential terms, to have complied with the perpetrator, the less chance there may be of a prosecution proceeding. As Alison said:

**I felt I could have prevented the attack - because I didn't get out of the van, though I might have been able to - and he [defence barrister] kept on as if it was my fault.**
[Alison]

The citing by the defence of so-called 'seduction' (by the victim) as a feature of the structure of the encounter has implications for the powerlessness of the young victim, in the same way

that consent becomes an issue in adult sexual assault. Furthermore, the ambience of the legal culture surrounding the trial may invoke fear and doubt. In turn, a heightened perception of the perpetrator's power, which has an effect upon the young person waiting - over months - to be a witness. Peter's experience illustrates this:

**...[T]he leadup was terrible.... [When] I was due in court the first time, they phoned me up at five o'clock to tell me it wasn't all going to happen.... [A]nd when it came to ... the time it actually happened, we were sort of sitting there waiting ... they phoned my mum; I'd gone out to try and calm down 'cos we'd had an argument... and they put it back a couple of hours, and I was convinced they were gonna cancel it completely.** [Peter]

The existence of abuse within a familial or other close relationship, can further render the investigative material less believable. At times too, family relationships appear as a backstop against conviction, apparently keeping the incest taboo intact through denial. Thus the good character of the witness in a sex trial becomes a variable upon which levels of belief can also hinge. These too are not singular and set, but variable, having regard to the other discourses operating in that especial case, and taking into account numerous markers which tend the hearers toward a low or high level of reliance upon the indictment. Some of my participants' accounts suggest this may be the case; other data has also tended to indicate this (see Plotnikoff & Woolfson 1995 for a quantitative discussion; for qualitative accounts concerning sexual behaviours, see Holland *et al* 1998).

**Yeah, they showed my evidence, and they read out my criminal record, that they had.... Um, they read it out to make me look bad.** [Alicia]

At one end of the communication continuum are young non-disclosers, and at the other, where a complaint of abuse is so solid as to have been deemed worthy of trial, one sees the effects of dominance positioning *vis a vis* defendant and witness, so that even the empowerment of disclosure is rendered void for young sex abuse victims. This can apply equally to other witnesses who, as I found are often female parents or carers: I would argue that despite their often significant personal strength, the structure and positioning of the *child* - with whom they are almost always bound up - causes them to be particularly non-powerful as witnesses. When one compares matters of rape trialing, the work of Lees (1993) shows

clearly the construction of disbelief of the female (non-powerful) witness against whom sexual violence has been perpetrated.

**Like, he kept saying things like, 'Are you sure Jill didn't tell you to lie' ... and things like that. And he kept repeating questions, but in a different way. To try and make me change my answer. And intimidating me. And the judge was intimidating as well, when he asked questions.** [Jessica]

The traditional patriarchal stances, however, begin from the position of the powerful, in this case the whole gamut of the legal and jurisprudential frameworks, which accede to change only reluctantly. This can help to explain the contradiction between generalised concern for 'children who are sexually abused' and the doubt and at times incredulity - emerging as the not guilty verdict - which is encountered by individual young witnesses finally reporting their abuse in court. This final trauma occurs after the considerable personal 'emotional erosion' - as I term it - achieved as a result of the delays, lack of information, and, not least, the very nature of the evidence.

The preparation offered by the court structure was very variable; it is clear from my data that this too had the effect of changing the witnesses' comfort and thus their potential for believability. Dawn's professional support networks were excellent:

**The Witness Support is the best ... they went through [it all] with me... I was shown what the process was. Everything was explained to me, like the cameras in the room.... They were really friendly; they were always there.... The detective in the case, he was really good as well, he would come round and tell us what was going on. And ... he drove us to court, ... stayed, and drove us home as well.** [Dawn]

She was calm and level-headed during her evidence, although given her quiet confidence, I feel it is probable that this might have been her demeanour in any event.

Often, however, it was not the structure of supposedly child-friendly court practice that made a difference. As I noted above, concessionary positions by the court machine towards children such as Naomi, who was eight, often mean little to the child. Naomi's coping skills,

her steadiness giving evidence, and self-belief all came from the extraordinary emotional strength which her mother communicated to her so beautifully:

***Mum: So the night before, we said to her, He thinks you can't do it, but we know you can do it. You stand up and answer those questions and show him, and everybody else in that courtroom, that you can do it.... [T]hat's what I said, I mean, to get her through it.... I said to her, You stand tall, ... you tell them you're right, and I'll tell 'em the truth too. And I said, You can say whatever you like, you can swear, you can say rude words ... you can say whatever you want, all day. Don't be frightened to say whatever you want. And I think, 'cos we said this to her, that's what got her through.***
[Naomi's mum]

I cannot imagine anything further from the often dry, disinterested attitude of the legal system.

To place this into context I have looked at the work of Harding (1991), who argues that the world as historically constructed by men does not in fact reflect male objectivity, but sexism. To provide an example of this, it would appear that the questions emerging from such a male position exclude the real interests of 'not-men' as being of no account. Like the adjective binaries which privilege the male, the scripting and interests are all constructed from the masculine viewpoint, rendering the 'not-male' interest as defined by and with respect to that of the male. Further, feminist standpoint theory emphasises the importance and distinctive-ness of women's emotional lives, suggesting women's positioning is less partial or distorted than that which emerges from conventional research. For instance, the arguments of Catherine MacKinnon (1993) as discussed in Moore (1994) noted that women suffer crimes at the hands of men because they are women. She spoke of women being '*universal* in their *particularity*' (*ibid*:16-17; emphasis in original). The line between this and the 'post' perspectives seems to surround, for me, the issue that obvious divisions in the worlds of women and men (or more importantly here, men and not-men) reflect gender- or power-specificity. I find the pull of these ideas can be very strong and circuitous, sometimes because of their very simplicity: "It is so because we see it is so, and we see it is so because it is so". Thus the set of structural oppositions within legislature mean that the courts belong to

men and male perspectives, and from there the whole patriarchal nature of the juridical system flows, constantly constructing the not-man as properly less privileged in every aspect.

Harding (1991) has also argued that the standpoint theories are not of necessity grounded within women's experiences, because of the role of social construction in shaping how women's experience is viewed. She illustrates the point that women have to *learn*, for instance, to define as rape those sexual assaults which take place within marriage - rather than accepting such occurances as part of the sexual experience wives could expect. I would argue that Harding's position is of equal relevance to young witnesses. Yet this position does not account for the unbidden 'feelings of wrongness' which some sexually abused youngsters develop in spite of their not having a societal norm on which to base their view. I would posit that abuse can be represented by a continuum of unacceptability, rendering what is termed as 'severe' abuse - usually by a stranger and often including serious physical harm, torture or killing - as wrong. In contrast, the child's positioning of 'wrong' comes into play earlier, at the point of the initial discomfort for the child - and much sooner than society accepts as worthy of a criminalising response.

Neither does it explain adequately the level at which the young person's 'construction of wrong' may overtake the abuser's attempts to hide sexual behaviour, so opening the way, in a proportion of instances, to disclosure. There can be a proclivity within postmodern approaches to see feminist knowledge as problematic, such as argued by Sawicki (1991); I would posit that feminist research also must be problematic. The construction of wrong is distorted by abusers whose relative strength derives from their positioning as a perpetrator whose accuser normally occupies a position of less-belief. When attempting to consider what is taking place, a difficulty which arises for me is the misunderstood nature of the apparent contradictory positions, which permit the minimisation and marginalisation of non-partriarchal constructs, whilst allowing the continued promulgation of the binary which privileges the male bias.

Therefore the difference between generalised societal 'belief'- as reflected by the whole gamut of Child Protection procedures - which appears to wish to protect children and young people from sexual abuse; and the court system which privileges the empowered (and thus

largely adult male) truth over any other, thus becomes the site of tension concerning the justice system.

**It was okay, a bit, in between. And then there was the horrible parts, being like accused, myself ... when he accused me of lying, when he was asking questions.... It was the saying, going on about it - was horrible.** [Shelley]

Rossiter's work on ethics in Fawcett & Featherstone (2000: Ch 4) illustrates the point. This critique of Trevino's work on ethics (1986) demonstrates the ease with which it is possible to 'go wrong with confidence'. Rossiter notes the failure of Trevino to consider the power issues operating within the hegemonic realm, arguing that the latter's stated 'ideal characteristics of independence' for ethical decision-making are the very descriptors which in fact privilege white male power. Such an argument also models the attributes of the legal system, reflecting the socio-legal problems inherent in the trialing of (amongst others) child sexual abuse cases. The excuse of being 'ethically' unaware or non-susceptible to outside influences is exactly what occurs with respect to children's legal treatment in court, leaving the set power-structures in place: powerful and representative of privileged forms of Truth.

The difficulty may be resolved to a degree by a move toward plurality and acceptance of the concept of multiple, situated knowledges, as suggested by Hekman (1996). As Fawcett & Featherstone (2000) suggest, there is a tendency for feminist thinkers to wish to retain some large scale theorising in order to understand systemacity and diversity of women's oppression - whilst rejecting the project of universal theorising concerning the root causes of it. Some writers (e.g. Fraser & Nicholson 1993) have asserted that these two approaches (seeing the larger picture whilst refusing it universality) need not be inconsistent, and indeed that they tend to counteract one another's weaknesses.

Postmodernism may be seen as the retrospective, self-critical and aware reading of 'modernism' (Huyssen 1990). Within this construction, Lovibond (1989) counsels against rejection of the emancipatory aspects of modernism, in which the liberal, and to some degree socialist feminsms have been rooted. It would appear that my study results argue for a newer slant upon postmodern or post structural perspectives - which owe much to Moore's (1994) post-post-structural concept. Nonetheless, I feel it is important formally to acknowledge the

need for a progression of theory to address emerging issues over time, as well as to consider the tensions between timeliness and traditionalism.

The need for a multi-stage paradigm can be demonstrated here, reflecting social change at a pace which may be sustained by society. Thus to oversimplify, historical recognition of 'woman as person' was followed by the enfranchisement and emancipatory demands of the liberal thinkers. This has developed over time, encompassing ideas about equal treatment, attempts to legislate for equality, and toward an ideal position where there is 'treatment as an equal' throughout society. In such a position, differing needs would be acknowledged and 'woman', though already the unacknowledged chief player within many social groupings, can aspire to be more than either a non-person or an honorary man. Despite this ideal, current social reality allows that where- and whenever the binary of the male is dominant, deviation from that male norm continues to be used as evidence for unworthiness. The comments of Alison are illustrative.

**My boyfriend, who gave evidence, he was asked, Had I ever stolen any money, and he knew I had one time, off my dad. So he said yes. And they called me back to ask me in evidence, about stealing. You see, the guy, the bloke that done it, he pushed about £10 or £12 I think it was, yes, £12 into my hand after, and went, Here. And the defence barrister made out I'd stolen the £12 from the guy. I never stole it, he made me take it from him. But it was like, "Oh maybe you stole it, so...."** [Alison]

However, the debates develop taking in far more than merely the gendered aspects. I allude to the female as only one actor of many 'disadvantaged' groups of persons within society's structure. Debates on racial equality have moved onwards, for example, considering, amongst others, the differing focus and arguments of black women and/or feminists. Ageism is being placed upon a social agenda to be tackled, and 'youthism' seems to me to be an appropriate target for a shake up of mores and thinking. The outstanding difficulty remains, however, that within our 'post-' prefixed state of flux, no fixed positions can be relied upon, and the acceptance of this, and thus of ongoing uncertainty serves at once to focus as well as to deflect attention having regard to the constructed plane at any given time.

As a product of my time and upbringing as part of 'society', I struggle to discover new ways of theorising without the 'fixed' becoming a desirable part of my unconscious. The patriarchal is so strong, so all-pervasive, that it creeps up stealthily, and one can find oneself back, 'going wrong with confidence' all over again. I constantly question what I am thinking and why I might see it - albeit temporarily - as I do. Despite this, I am only too aware that theorising with the aim of assisting young witnesses feels like turning a rubber glove inside out: it may fit the other hand well enough - but it is uncomfortable, it has no soft flock lining; and worst of all, people keep turning it back the other way because they think it looks better, and they assume it has only been turned 'wrong' way around by mistake.

**Conclusion**

My study has examined current aspects of young people's court experiences; however the background illustrates a gradual development of society's perspective, to the point where it was even possible to embark on a study of this nature. Considering historically, the court system has altered, but every revision is seen immediately as a change too far. This is evidenced for example by the negative reactions within the court system: the refusal to enter wholeheartedly into the spirit of reform toward equality, as evidenced in my study by, for example, the attempts to try to refuse nine year old Susan the video link. A major difficulty in the process is that no consensus can exist about what equality is, may be, or should become.

The pluralities, the state of flux of themselves create further tensions. These may be seen as a problem of misunderstanding for which male rhetoric provides no solution. When the white adult male enjoys - or at least strives for - the 'ideal of society', it is perhaps not so difficult to understand that any desires different from that ideal may occasion much male brow-furrowing. It is only with a willingness to examine not just what the ideal means for the male, but what it may often mean for the 'not-men', that it can be possible to unravel the competing discourses.

What I have termed the youth-equality agenda, like the feminist agenda, is bound to create numerous contradictions which fail to win approval by congruence with the hegemonic masculinist line. This reflects, I would argue, a societal ambivalence where media attention

on particular cases sits ill with more 'liberal'concepts, (i.e. open to change). Public opinion at once moves things forwards and holds them back and although this research is not a study of the role of discourse in court system history, I regard it as vital to at least acknowledge that it has an important role to play.

# Chapter 9

# Conclusions

**Beyond power: thoughts on law reform**

I turn now, to my conclusions: to views of legal change, and to suggestions for further research.

Past attempts at reforming the law and judicial process for sexual assault and rape charges have proved less successful than the victims of assault may have hoped originally. Efforts to reform the system for young people embroiled within it as victim-witnesses, such as the recommendations of the Pigot Committee (1989), both in development and in usage, became watered down. In similar fashion, proposals for reforms of adult rape law reflect diluted thinking, where often lip service only is paid to identified needs for change.

At the time of writing, the Youth Justice and Criminal Evidence Act 1999, despite apparent readiness and assent has still not been implemented. In any case does not yet deliver 'the full Pigot', as Spencer argued in his critique (2000). I am moved to wonder whether this 1999 Act might become, for young people, what rape law reform legislation proved to be for adults? The new provisions which relate to improvements for young people and vulnerable adults who give evidence will also require evaluation. Some research is already planned, such as the Bristol University project headed by Andrew Sander. Whether it will deliver a model of evidence giving for vulnerable people which reduces trauma, whilst furnishing justice, remains to be seen. I would argue, however, that qualitative accounts from witnesses should be regarded as an essential part of any study purporting to measure juridical effectiveness.

In order to move the issues forward I return to a trawl of the effects of legal reform on the criminal justice process concerning rape. I compare Carole Goldberg-Ambrose's (1982) arguments with the data obtained by Lees' studies, (1993, 1996), as well as the findings of

McColgan (1996); Cuklanz (1996). Much of the discussion is relevant to child sexual abuse cases.

Historically, as awareness grew of the prejudicial attitudes towards women who reported rape, as well as the degree of emotional distress caused them in the course of trying their abuser, alterations both in the legal definitions of rape, and in the way it was addressed at criminal trial were demanded. See for example Haste (1992), Smith (1989). Bumiller (1987) argued that legal reforms of rape law delegitimised women's experience of violation and legitimised male claims of sexual access and overall dominance. Numerous studies such as Horney and Spohn (1991), suggested that restrictive interpretation of rape law reforms by a largely male judiciary resulted in the continuing non-prosecution of, for example, cases where evidence of resistance or corroboration were absent. Their study noted that rates of rape reporting remained unchanged. Furthermore, the lack of alteration in administrative practices of prosecutors offices (Chappell 1984; Loh 1980) thwarted change for the better. For example, prosecutors still failed to ask for instructions to be given to juries about the lack of need for corroboration or resistance evidence.

Different academic feminist positions place differing emphases upon legal reforms. The particular feminist goals desired by a given ideological position has an effect upon the slant of desired reform; it has been suggested that the competing demands upon proposals led to a watering down of reform drafting. In contrast, lawyers often asserted that case law had already achieved informally what the legal redrafts confirmed, citing as an example the supposed lack of need for victims' sexual history evidence to be introduced (Horney and Spohn 1991). Some research from the US such as Caringella-MacDonald (1985), cited by Goldberg-Ambrose (1992) suggested improved outcomes for women complaining of sexual assault; although some changes were said to have resulted in increased sentences for all felonies. Several years later, Lees (1996) rape trial observations certainly show very poor ongoing treatment for UK rape victims. I would argue that whether or not Lees findings actually represent an improvement for women is almost immaterial when one considers the major traumatic effects of court trialing which Lees uncovered.

During my research, I encountered many instances where rules were changed to suit the powerful actors but attempts were made routinely to deny the non-powerful individuals any

but the most basic rights. Routinely, if small changes have been enacted to improve basic conditions, they are then applauded by the court system as major concessions. There is, I would postulate, no more concerning aspect than the philosophy accompanying reform. If a trial is apparently child-friendly, the law may be seen as 'reformed enough'. Smart (1989) has also argued that when sexual abuse trials are reformed there is a general tendency to assume, if procedures appear to set out to assist young people, that the verdict must be the truth.

**The voices of witnesses: my study results**

I posit that my study represents a very similar position to that of Lees (1993, 1996): despite that child witness conditions and experiences may have improved following provisions of closed-circuit television and videoed evidence-in-chief, the fact remains that sexually abused children are still being seriously traumatised by the whole trial process.

The commentary of Kelly and Radford (1998) argues that thirteen major groups of physical and psychological responses to sexual assault have been identified. As a result of the additional trauma brought about by the court trial, the respondents in my small study described nine categories which marry up with those listed. These are: intrusive memories, anxiety, mistrust, depression, distrust of one's own reality, self-blame, self-harm, sleep disorders and eating disorders, (Kelly and Radford, 1998:68). The exceptions: chronic physical pain, venereal disease, HIV infection and unwanted pregnancy, are those physical manifestations which would not occur as a result of emotional trauma of the trial experience, in contrast to the physicality of the sexual assault. Furthermore, Kelly and Radford (1998) note the elements of sexual assault trauma from Koss and Burkhart (1989), such as "experience of the world as not safe, ... [and] an awareness of a pervasive and malevolent social context" (1998:68). I would argue that when the all-too rare potential resolution offered by criminal proceedings fails, the internalisation of blame may also lead to self-harm as a consequence. It is important to note that a guilty verdict may not necessarily neutralise the need to self-harm, as demonstrated by Hannah's experience, following the trial I observed.

Despite all attempts at reform, the fact remains that privilege - and in particular male sexual privilege - goes on largely unchallenged. One has only to examine the work of Lees (1997) and Brownmiller (1975) on legal and ethical reactions throughout society's fabric to rape and sexual assault, to show unequivocally that this is the case. My study concerning young witnesses' court experiences also confirms this.

Yet public opinion masquerades as a far more pervasive expert. The fact of rape continues largely to be accepted as a part of some marriages. Despite improved police reception of rape victims and a more sensitive investigation of young people's complaints of abuse, the fact of sexual assault is minimised and blame largely apportioned away from perpetrators. The largest proportion of reported sex assaults are not prosecuted. If the perpetrator is brought to trial, the justice system subjects the victim to a further, this time institutional assault, dressed up as a search for the Truth. My conclusion is that we accept rape; we accept child sexual assault, and the legal framework not only fails in provisions of justice but tacitly accepts it too.

**Major findings and further research: suggestions & possibilities**

I have debated a range of issues as a result of my study in Chapters Seven and Eight, discussing the theoretical implications in the latter. In order to complete this dissertation, I now draw together the major strands which derive from my findings.

Firstly, it is important to note the significance of support for young people who are obliged to give evidence in trials concerning their own sexual abuse. Although the unequivocal support of family does not mitigate against trauma by itself, nonetheless it may be said to pave the way for potential recovery, and its import cannot be underestimated. Further research, possibly a longitudinal study, usefully might be attempted to compare the impacts, over time, of abuse upon youngsters who do or do not receive emotional sustenance from their families.

Secondly, the tainting of young people through the discourse of evidential processes, when they are obliged to speak of their abuse, needs to be recognised, together with the impacts which loss of innocence has upon child witnesses. Although the Personal Social Service culture, by and large, tries not to hold victims as culpable, there would appear to be a role for

some form of psychological testing to gauge the influence upon ordinary individuals - who may serve as jurors - of children recounting sexual abuse. It would be useful to have data concerning the degree to which such young people are then seen as sexualised beings, with the potentially negative opinions which may lead from that.

Thirdly, I would argue that where a child or young person is giving evidence, the following changes to the evidential logistics should be considered:

(a) A named individual should accept responsibility for keeping the young person and her/his relevant family and/or carers informed of case progress, adjournments, bail status and living arrangements for the defendant. This could be an indiviudal from, for instance, the police; or a social worker (whether Local Authority, independent, guardian ad litem or probation officer); or a staff member from the court, such as from Court Liaison or the Witness Service. Clear protocols would need to be agreed so that no young witness 'fell between' the different services.

(b) When a young witness of 17 or under gives evidence, mandatory breaks in their testimony should be built in, say every thirty to forty minutes for young people of 12 plus, and every twenty to thirty minutes for younger witnesses.

(c) Where jurors serve on trials where there are young witnesses, they should receive clear and relevant information in a set, pre-agreed format concerning the pre-trial processes which have taken place. This might include for example, numbers and dates of hearings and in which types of courts, demonstrating the patterns and timescales which operate; number of applications for adjournments and the reasons for these; dates of trial notification to young people and whether or not further delays have occurred, with all reasons given. Furthermore the impact of no-verdict findings should be made clear to all juries. Jurors, and indeed juddges too, need to be aware of the personal 'endurance' of young people who are to be witnesses.

(d) Effective training should be mandatory for all jurors in the meaning of the proof standard 'beyond reasonable doubt'. The wording and received understanding of such explanation needs to be extensively and regularly consumer tested by all sections of the

population, to ensure language and discourse development do not alter meaning over time. The nature of this training should also be vouchsafed to young witnesses so they begin with an awareness of what training and understandings jurors have been party to.

Further, it may also be useful for subsequent research to take place into the effects of jurors own backgrounds upon their court deliberations. It would appear worthwhile to investigate (probably to begin with, upon mock juries) the relevant scale and impact of any history of personal abuse upon jurors attitudes and sympathies. It would also be helpful if work was carried out with mock juries concerning their attitudes and reactions to younger witnesses who allege sexual abuse and give court evidence in contested trials. In addition, I would argue that jury deliberations need to be freed up and exit surveys addressing their salient and deciding discussion points, be permitted in some cases. The jurors could be identity protected if required.

Finally, I note the finding which is perhaps of the greatest concern. My study suggests that the propensity for sexually abused young people to self-harm is often triggered by the trauma which is brought about *by the court*, especially by lengthy delays and adjournments concerning trial listing, and in Alicia's case, the period between the first no-verdict and the retrial. In the light of this finding, and bearing in mind the greater vulnerability of young witnesses than adults giving evidence of personal sexual assault, I would argue that the treatment of children who are obliged to give evidence against their own alleged perpetrator is comparatively *worse* than that experienced by adults in similar trials.

This study considered the opinions of sixteen young court witnesses, who gave evidence of the sexual abuse they had undergone whilst minors. In speaking to these young people, I had to overcome a corporate caution concerning what I was intending and why, in order to obtain the necessary permissions. The dual concerns - of the researcher with their hands, if not tied fast, then certainly restricted, and of the bureaucratic court machine, which allowed questions to be posed only following lengthy consideration, suggests a feeling that research carried out concerning certain groups may be the subject of some scepticism. Possibly new research with small numbers of younger females and younger males would prove helpful. To obtain the most useful information, perpetrator indictments and verdicts should be as similar as can be achieved. Also, as far as possible, court profiles (judge, prosecution and defence barristers,

and jury makeup) should reflect similarities, so that effective comparisons may be made concerning qualitative findings about young witnesses' court treatments and outcomes.

**Final comments**

This study set out to examine the experiences of young witnesses who gave court evidence of their sexual abuse in the indictments of their (personal) alleged perpetrators. I was also interested in the related - but distinct - issues of sentencing and justice, as perceived by young people themselves, as a result of their court treatment and outcomes. The qualitative, grounded nature of my research also set out to investigate victims' feelings about court, together with their reasons. In essence, the purpose of the study was to examine, by use both of the study results and discourses of (feminist) (post) post-structuralism, the contrasts between dominant discourses which privilege the current juridical framework, and more particularly sexual predators, over the experiences of youngsters.

In placing my findings into context, I mooted and later ratified a concept which I termed '**youthism**' - by which I mean a similar construction to those partialities that work against other less powerful members of society. Better known examples might include sexism - against women; or racism - against people of differing culture or ethnicity from the dominant in a given social milieu. I have categorised all individuals to whom these - and similar - constructions would apply as '**not-men**'. In essence, I argue that 'not-men' includes, depending on context specificities, all persons who are not white adult (excepting elderly) able-bodied males who enjoy personal economic autonomy. However, in line with post-post-structural conceptualisations, I emphasise the importance of a *continuum* of power which allows for relative and varying positions, or pluralities, of power-meanings to be occupied with respect to the fluid locations in which given individuals or groups may be positioned for the time being.

In situating the analysed results from my study, I have argued that the strength of dominant discourses can tend toward a culture of disbelief and refusal by more powerful 'others' to accept truths as expressed by younger individuals with a lesser level of power in the societal

continuum. I contend that this can apply equally to any individual or group which enjoys lesser power *vis a vis* any other.

As a result of young people's own accounts of their, often very abusive, court experiences, I have theorised that the juridical system, despite attempts to reform itself, continues to disempower children who have been sexually assaulted. A number of young witnesses have catalogued for me the awful impacts they suffered as a result.

Progressive attempts to work for positive change when young people testify have been verified in some instances, which is heartening. On the other hand, the level of sexual access by adults to children and young people does appear to continue largely unchecked, but given the the continuum of mistrust of children's testimony about sexual abuse and the enduring structure of the judiciary, perhaps those outcomes are what society feels to be just. As my study demonstrates, the evidence for this contention is no more clearly suggested than when the adversarial legal system swings into action, and children give evidence. The net result is that the proportion of sexual abusers being convicted by the criminal justice system remains derisory.

# Appendix I

Interview Schedule for Children/Young People who have been Court Witnesses.

The questions I would like to ask you about what happened at Court are below. Will you look and see if you feel able to talk to me about what Court was like for you?

Part A

1. What is your understanding and experience of the Court process?
2. How were your expectations about Court and the outcome different from what actually happened, and in what ways did any dissimilarity affect you?

(i) Prior to Court

- Did you *realise*/were told there would be a criminal court case, and you'd have to go? How did you feel about that?
- Why did you *think* you were coming to court and giving evidence?
- How did you *feel* about going to court and talking about what had happened?

- What preparation were you given before Court? By whom; was it helpful or not? Did you *understand* who was who, and what their jobs were? Before the Day, what did you *understand* about what would happen in court? How did you think a trial worked? Did you visit court?
- *Thinking* about your carers/family/friends, who supported you while you were waiting for the Day to arrive?

- Now court is over, do you truly *believe* that you were ready/prepared to give evidence?

(ii) Getting to Court

- Was it a long wait for the Day to arrive?
- Tell me about *what it was like* getting to court on the Day. What happened when you got there? Did anyone tell you what was going to happen? Did you feel you *understood*?

(iii) Giving Evidence

- What had you thought it would be like to go to court and give evidence? What were your *expectations* - if any?

- Tell me about *what happened* when you came to give evidence. What was it like?
- How were you treated and questioned? Was it as you *expected*? What was *different* and how did any differences affect you?
- Were you able to say what you wanted to say? How did it make you *feel*? Was it OK or not OK?

- Was giving evidence better or worse than you *expected*? How much better or worse? What was as you expected? What was *different* and how did any differences affect you?
- How did you *feel* while you were actually giving evidence? (Was it OK or not OK; help participant to identify feelings).
- How did you feel about going to court and giving evidence? The whole *experience*?

(iv) Outcome

- Before the case came to court, what did you *expect* would happen to the accused person(s)?

- Was the defendant found Guilty or Not Guilty? Why do you think that was, yourself? What are your *feelings* about it? (If G), was sentence/punishment OK? If not, what do you think should have happened?
- How would you feel if the trial *hadn't gone ahead* (defendant released)?
- Do you *think* what happened was fair? Why? What would have been *fair*?

- What has been the *effect* on you of having to go to court?
- Have you had any counselling? Have you talked to anyone else (carers/friends) about Court? Has it helped?
- Do you think your court *experience* has had a significant effect on your life?

Part B

3. How could the Court experience have been improved?

(v) Ideas for Improvement

- What would really have been helpful before the Day?

- Thinking about what happened to do with your whole court experience, what things could have been improved? What was helpful /okay /a problem /awful?
- What are the most important things to get right about the court process?

- Tell me your ideas about what "*justice*" means to you? In your view, did you get proper justice? If not, how might things be changed to make it better?

(vi) Additional Comments

- Is there anything else at all about Court: what you thought it would be like, what actually happened, or how you felt about it, or anything anyone said or did, that you would like to talk to me about?

Thank you very much for speaking to me about your Court experiences.

# Appendix II

RESEARCH SEQUENCE

Introduction & Explaining the Study

- Meet/greet young person & carers.
- Decide where to talk, who / whether anyone else should be there whilst I explain about my research.
- Introduce myself, who I am and why I am asking these things.
- Talk about Court, who's who. Provide a picture about what court is; who the people are and what they do, to aid understanding at the initial stages whilst research explained.
- Go through Ground Rules. Reassure child, deal with confidentiality, safety, ethical & 'comfort' issues - remind child that a refusal, or break, at any time is wholly valid & will be respected fully.
- Introduce Question Schedule to indicate type/range of questions being asked.
- Reassure carer, rehearse details. If child seen alone initially, check with carer that they understand/ answer questions/ ensure content for the child to proceed.

Young Person's Decision.

- Break/Space for child/young person and carer to think about and decide on their response.
- If young person is happy to go ahead, decide on time/date for interview: this could be "there and then", if the young person is happy to go ahead straight away, and it's convenient for the rest of the household. Otherwise, arrange further mutually convenient appointment.

Familiarisation for child - to introduce and assist child's focus.

- Help child to focus onto court; set the scene, especially if the young person is being interviewed on a seperate occasion from the explanatory session. Help child focus on impressions of what it was like; aim to familiarise child with own feelings.
- If child very nervous, may need to consider use of creative therapies, as appropriate for each individual, enabling child to feel as comfortable as possible prior to the main part of the interview.

RESEARCH GROUND RULES - for you and for me.

When you have heard from me about my research, if you are content to talk to me about Court, I would be very grateful, and I will listen seriously to what you want to say.

I would ask you a number of questions about what happened at court, what you felt about it, and how you think they could make it better. It would take about an hour or so, but we would go at your pace. If there was anything I asked that you would rather not talk about, that would be perfectly all right. If you wanted to take a break at any time, that would be fine as well. If you got worried or upset, I would check to find out if you wanted to go on or stop; whatever you prefered would be quite all right. If at any time you decided you didn't want to continue at all, that would be completely okay too. I would respect your wishes throughout.

You would be safe to say *anything* you wanted to about what happened or anything connected to it. You could express your real opinions, thought and feelings, without any misgiving or reprisal. Nothing you said would shock me; nothing you thought or felt would be too terrible to say - *if you wanted to say it*.

You - and what you have to say about your Court experiences - *count*.

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