

A Case Study: VSWAG Court Monitoring Program

by

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ABSTRACT

This feminist Participatory Action Research chronicles the development of a grassroots feminist initiative (a Court Monitoring Program [CMP]), assesses its effectiveness through the eyes of women who participated in the program, and locates the CMP's action and the research participants' theories within competing contemporary mainstream feminist perspectives on sexual assault and the law, specifically Carol Smart and Catharine MacKinnon.

The research includes archival data and 36 research participants (12 interviews, 24 questionnaires). The data were collected in Victoria, BC in 1994 - 95. The findings indicate that the grassroots feminists' theories and actions support MacKinnon and Smart's calls for action, but not necessarily their theories on power. It brings forward issues of communication between differing discourses and experiences of grassroots and academic feminists. The research supports further feminist attention to court monitoring as a method for supporting individual women while also effecting positive social change for women as a group.

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Preamble: How I Came to a Court Monitoring Research Project

To begin with, you need to locate yourself, so to speak, in time and space. A preliminary step is to begin a description of your living and working situation. Look around you, and begin by giving an account of what your world looks like.

Women's Research Centre, 1977¹

In my undergraduate program I wrote my honours thesis on women in collective action in El Salvador.² I visited El Salvador as part of a delegation of the Action Committee for Women in El Salvador and everywhere I went there was a tremendous emphasis on and desire for learning to read and write. A question arose for me: "Once having learned, what was available to read?"

The writers of history are predominately the winners of war and much of the history of El Salvador is written by the powerful right-wing elite that rules the country. This elite not only determines what is considered "history", but also the perspective from which it is presented. This elite history has a definite male bias, as does the "alternative" written history of the left-wing. While in El Salvador, I met wonderful women with amazing life stories who had developed thoughtful and insightful analysis. Who was writing down their her-story,³ their world view? There was a certain panic in this for me; a fear that their lives would be somehow lost through the lack of recording.

¹ Helga E. Jacobson, How to Study your own Community (Vancouver: Women's Research Centre, 1977) 7.

² Susan Albion, Women in Collective Action in El Salvador University of Victoria, Department of Sociology, 1992.

³ I have chosen to use the word "her-story" to denote the recording of women's stories from a woman's perspective. I have joined the ranks of feminists who chose to find alternative language/words to better reflect our experiences/meanings. Most notable is Mary Daly. In Gyn/Ecology she states, "Since the language and style of patriarchal writing simply cannot contain or carry the energy of women's exorcism and ecstasy, in this book I invent, dis-cover, re-member" (Boston: Beacon Press, 1990)24. Unlike myself, Daly does not choose to use the word her-story, but creates other alternatives that she feels are less congruent with the notion of male history and patriarchy. I do not share her concern. I do not use the word to replace the notion of history, but rather to reflect women's stories: her-stories as part of re-membering.

I wanted to facilitate collecting, recording and printing of marginalized women's her-stories in small booklets. I thought I could undertake this project as a master's thesis that would not only meet academic requirements but also raise Canadian awareness of Salvadoran women and their experience. An expanded idea was a Canadian/Salvadoran comparison of women's experiences from similar social positionings (e.g., single mothers, sex trade workers, and social activists).

These ideas may seem a long way from a case study of the Victoria Court Monitoring Program. In some sense they are, but in others, not. How did I make such a change in focus? While working in the solidarity movement and writing a thesis about Salvadoran women, my credibility was constantly challenged: I am not Salvadoran and my Spanish is marginal. How could I interpret the intent and essence of people with whom I do not share language or culture? How could I truly represent their position? I could write exactly what they said; but questions would remain: "Where do I fit into the research? How do I balance my integrity with the integrity of the participants when we share so little beyond a common dream as women?" I was overwhelmed by the criticism of my "outsider" status.

This struggle continued as I set off to El Salvador to prepare for my graduate studies. The answers I found led me back to my identity. In particular, I began to see how class plays a part in my life whether I am in Canada or eating *pupusas* in El Salvador. I realized that I had to come to terms with culture, language and class. I also became increasingly curious about my own culture.

My desire for Salvadoran women to have their stories written remains; however, I do not believe it is my story to tell. I began to see that I have my own stories to tell. In Canada, I found there is also a lack of recorded women's her-stories. Initially I

considered a research project that involved Anglo women's working class culture in my home town of Victoria. This would have been a personal, as well as an academic journey. Beyond being an "insider", I wanted a project that would support grassroots feminists or women in their everyday life. I began by going to the Victoria Status of Women Action Group (VSWAG) to ask for direction. I spoke with Joan Graves who outlined VSWAG's projects. She mentioned the Court Monitoring Program (CMP), which I had read about in the local newspaper. She suggested that if this project was appropriate, I should go to a meeting, explain my situation and become a monitor. I had mixed feelings about becoming involved with the program: I was impressed with the pro-active approach, but I had just begun long-term therapy to deal with my own her-story of abuse. I decided to go to a meeting to get more information.

From the beginning, my academic pursuit was not a priority within the Court Monitoring Program. There was no resistance, only mild interest, whereas I was excited and intrigued by this group of women. Although they lacked a structure and direction, the monitors shared common beliefs that the court and legal system were gender-biased, that women and children complainants needed support, and that the system required change. I was delighted with the variety of women involved. There were several older women, university students, middle-aged moms (some employed outside the home, some not) and young women. My excitement for the program kept me coming back, regardless of whether I could use the CMP for a research project. Political activism has always been a strong medicine for my personal struggle to deal with injustice and feelings of powerlessness.

The discomfort I felt in El Salvador about being a researcher continued. It was difficult for me to explain my academic pursuits to monitors and I felt uncomfortable with "studying" people. However, I am now the longest standing member of the CMP. I

have been an active monitor and administrator, and generally I do not have the sense of being an “outsider”. I still feel uncomfortable when I say I am doing research on the CMP, but my discomfort is not only about being an insider/outsider, but also about the role I play in the creation of “knowledge”.

I have included this preamble for three reasons. First, I believe the process in arriving at this topic is important; it has not only influenced the topic, but how I have researched it. This belief is in keeping with feminists’ and feminist organizations’ emphasis on self-reflective, self-critical research methods.⁴

Second, my dilemma as a researcher reflects concerns about research’s ability to represent “truth” and its tendency to obscure other ways of knowing. These questions are an essential part of my learning and bear consistent attention. In the introduction to Fragile Truths, William Carroll states that,

One of the most significant daily practices of Canadian social science may be the continual realization that truths are always fragile because their construction as “truths” depends on contingent relationships of economic, political, cultural, racial, and gendered power -- that every constructed “truth” has become so by virtue of concealing one or more layers of reality beneath it.⁵

The ongoing recognition that sociologists/ researchers create a limited and fragile truth from their unique her/historical and social perspective is both necessary for me to continue and questions why I do.⁶

Third, as a feminist, I believe in the relevancy of who I am as a researcher: my bias, my intent and what I bring into this research. Kirby and McKenna call these “conceptual baggage”: “information about the researcher that places her/him in relation

⁴ For further readings on feminist researchers and research methods that are self-reflective, inclusive of the researcher’s location, see Billson (1991), Barnsley and Ellis (1992, 1987), Gray (1989), Kirby and McKenna (1989), Maguire (1987).

⁵ William K. Carroll et al., eds., Fragile Truths (Ottawa: Carleton University Press, 1992) 6.

⁶ In 1992 I read the introduction to Fragile Truths and my floundering faith in Sociology was revived. For this I thank my undergraduate thesis supervisor, Bill Carroll.

to the research question and research process in an immediate and central way.”⁷ I used Kirby and McKenna’s “how to” book as a basis or check point for writing this thesis. Their influence and my conceptual baggage pervade this thesis:

Being honourable in the research process means openly recognizing our experience of marginalization and using it as our touchstone. What we are calling for is an exploration of that part of what we know which usually gets left out when our experience is translated into the language of the status quo.

Kirby and McKenna, 1989⁸

⁷ Sandra Kirby and Kate McKenna, Experience Research Social Change: Methods from the Margins (Toronto: Garamond, 1989).

⁸ Kirby and McKenna, 1989:31.

Chapter 1: Introduction

To say or even to suggest that ... law is unsullied by politics is a characteristic that can only be declared by those whose interests are totally guided by those in power. Only those people have the luxury of suggesting they need not have a concern for politics.

Marilyn Waring, 1992¹

Feminism is theoretically and methodologically diverse.² However, two common threads define it: the belief that, as a group, women are disadvantaged in relation to men, and the explicit commitment to improve women's situations. Thus, feminist theory addresses the issues of gender relations and power, as well as theorizing social action to change these relations. Yet there is considerable variation in how feminists define, locate and react to power inequities. Male violence against women is a source of oppression for women and an expression of male power; thus many feminists focus on it in theorizing women's experience and for developing strategies for change and political activism. Others concentrate on the legal system and laws designed to punish and deter sexual violence. This interest reflects feminist understanding that sexual assault trials represent the intersection of the traditionally private sphere of sexual relations and the most public domain: law. Moreover, it is in sexual assault trials that the alleged objectivity of legal discourse and the construction and process of the legal system are most called into question.

Grassroots and academic feminists have focused on strategies to make the legal system more accessible for women who have been sexually assaulted. They argue that women are denied effective access to justice and protection through the

¹ Marilyn Waring. "Gender and International Law: Women and the Right to Development," Australian Year Book of International Law. Eds. Philip Alston and D. W. Greig. (Canberra: Faculty of Law, Australian National University, 1992) 176.

² For an overview of different feminisms, see Josephine Donovan, Feminist Theory: The Intellectual Traditions of American Feminism (New York: Frederick Ungar, 1988) or Rosemarie Tong, Feminist Thought: A Comprehensive Introduction (Boulder: Westview, 1989).

courts in three ways. First, the court system is removed from the everyday experience of most women. It has its own language, rules, interpretations and physical space.³ In response, feminist scholars recommend and feminist grassroots organizations supply legal advocates to protect the interests of women in the courtroom and in the broader legal system.⁴ For example, advocates act as guides to familiarize women with the foreign environment of police stations and court rooms.

Second, the court system does not appear to be accountable to women victims of crime.⁵ According to Catharine MacKinnon,⁶ crime is only considered from the position of the male state and state representatives, not from the perspective of the victim. Critics argue that documenting women's experiences in court and raising public awareness about the political and cultural assumptions underlying the court's treatment of women in the courts will help bring the victim's perspectives into the judicial decision-making process.

Third, women complainants in sexual assault cases often experience painful, degrading and invasive questioning, as a "second assault."⁷ To improve the courtroom

³ The court as an "objective" environment, reflects patriarchal societal norms. For further discussion see Chapter 2 in Carol Smart's *Feminism and the Power of Law* (London: Routledge, 1989) and Chapter 3 in Catharine MacKinnon's *Towards a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989). This is also congruent with "proponents of the conflict model (who) contend that law is an instrument of social control used by the powerful to protect their vested interest." (Curt Griffiths & Simon Verdun-Jones, *Canadian Criminal Justice*, 2nd ed. [Toronto: Harcourt Brace, 1994] 11).

⁴ I use the word "legal" rather than "justice" to describe the court systems and the accompanying laws that govern Canada. The lack of justice in the legal system was and remains a primary motive for the creation of the Court Monitoring Program and the writing of this thesis.

⁵ This position does not appear to be limited to women. In *Canadian Criminal Justice* the authors, Curt Griffiths and Simon Verdun-Jones, discuss Canadian attitudes toward the law and the criminal system. They concluded that "Canadians view the criminal courts as treating criminal offenders too leniently" (1994: 41) and "At present, the majority of Canadians are 'outsiders' to their own criminal justice system" (1994: 44).

⁶ Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass.: Harvard, 1987) 87-88.

⁷ For a complete exploration of the second assault of women in the courtroom, see Audrey Savage, *Twice Raped* (Indianapolis: Book Weaver, 1990). In addition, since 1995 in Canada, a complainant's 'second assault' may be further inflicted by the inclusion of personal counseling, and institutional records. In some cases the complainant's abuser is given access to these very private and personal records. See Karen Busby (1997) and Katherine Kelly (1997).

environment and to make the courts more accountable, feminists promote gender sensitivity training (as well as other "sensitivity" training) for court room players and lobby for changes to existing laws, procedures and policies.

Grassroots feminists generally focus on support and/or advocacy. National organizations such as Legal Education Action Fund (LEAF), National Association of Women in Law (NAWL) and National Action Committee (NAC) lobby to improve the legal system through changing legal content and practice. In Victoria, organizations such as the Victoria Women's Sexual Assault Centre, Women of Our People and Victim Services offer courtroom counseling and advocacy to support women complainants. Another feminist organization, the Victoria Status of Women Action Group (VSWAG) formed the Court Monitoring Program (CMP) to address court accountability and the painful legal process for complainants. The CMP endeavours to have monitors present at all sexual assault cases.⁸ The monitors act in solidarity with the complainant and record gender bias. The CMP is using this information to build a database; these data are useful as a resource for complainants and as a lobbying tool for legal change and raising public awareness. The CMP's final aim is to take action as a group on issues that arise from monitoring.

This research project is a case study of the development of the Victoria CMP. I explore the CMP's and the individual monitors' strategies to effect legal change and compare these strategies with contemporary feminist perspectives on sexual assault and the law. I document the process and development of the Court Monitoring

⁸ The CMP's mandate considers sexual assault in its broader sense. Its first priority is to monitor sexual assault/abuse cases; however, whenever possible, the CMP monitors all cases of violent sexualized/genderized crimes where the complainants are women or children (at the time of the assault). For example, this includes wife assault and murder where the complainant/victim is a woman and the defendant is a man. As stated by MacKinnon, "Battery is often precipitated by women's noncompliance with gender requirements. Nearly all incidents occur in the home, most in the kitchen or bedroom. Most murdered women are killed by their husbands or boyfriends, usually in the bedroom. The battery cycle accords with the rhythms of heterosexual sex." (MacKinnon, 1989:178)

Program; explore how the CMP is perceived by the monitors and others (through the experience of the monitors); assess the perceived outcomes and consequences of the CMP; and conclude with an analysis of the program and its contributions to feminist activism and theory.

The importance of this research project lies jointly in the uniqueness of the Court Monitoring Program, and in its potential contribution to social change and theories of sexual assault and the law. The court monitors have no formal legal training, yet they are attempting to effect change and do research in a highly specialized area of law. The shift from the perspective of “expert on law” to “expert on the practical experience of women” offers a different view of the legal system and legal change. Information or research on violence against women and the law has generally been collected by “experts”,⁹ people with formalized training in the area of law and research.¹⁰ One of the CMP’s founding beliefs is that all women are experts on violence against women and so offer an important and unique perspective. This position is consistent with many feminist researchers who challenge the traditional concept of objectivity of research. These writers argue that as researchers or recorders we bring our own her-story and biases into the study:

Doing research is an activity which takes place “in a specific time and place and is engaged in by a specifically located individual, with a specific background, in a specific situation, for a particular series of ends.”¹¹

⁹ Feminist grassroots organizations do engage in research, however it is usually done by experts with training in research techniques and some academic background in the field. Often grassroots feminists are the subject or, should I say, the object of research. They are not the researchers.

¹⁰ Many researchers have endeavoured to include the voice of “consumers” of the legal system: victims of violent crimes. Perhaps most notably in this case is the Gender Bias Report (BC Law Society, 1992) which was very effective and in part the impetus for the formation of the CMP.

¹¹ Said (1981:156) cited in Kirby & McKenna, 1989:32. See also footnote #4 in the preamble for a list of feminist researchers and research methods that are self-reflective, and inclusive of the researcher’s social location and experience.

The non-legal background of the court monitors also limits the extent to which their analysis and perspective are influenced by legal theory or perspective. This is not to de-value or diminish feminist theorists who are experts on law; indeed, experts within the legal profession wrote the BC Law Society's Gender Bias Report, a valuable contribution to making the legal system more accessible and responsive to women. My point is simply that court monitors may have a different but equally valuable perspective. Increasing our knowledge of women's experience in the courts through exploring different perspectives offers feminists a broader understanding of these experiences and could lead to effective change.

Traditionally, grassroots feminists are seen as activists, whereas academic feminists are viewed as theorists and researchers.¹² The CMP and this thesis challenge this division. The CMP and its participants both theorize and research. In this thesis, I contribute valuable information to the continuing relationship between feminist theory and practice by describing the CMP's strategies to effect institutional change and by exploring how these strategies are or are not reflected in academic feminist theory.

1.A Purpose Of the Thesis

In addressing the thesis questions, I also have several additional underlying intents.

- 1) This thesis endeavours to create a space for grassroots feminists to speak about their experience, strategies and theories in an academic setting.

It recognizes and respects the value of grassroots feminists as experts in theorizing, strategizing and researching. It offers an example of grassroots feminists'

¹² Jeri Wine and Janice L. Ristock, Women and Social Change: Feminist Activism in Canada (Toronto: Lorimer, 1991) 254.

work and their contribution to theory in feminism; it emphasizes the similarities between the two rather than the differences. In many ways the CMP is the intersection of practice and theory: it stands as a respectful example of the struggle to maintain this balance while living daily with the realities of lack of funding and the continual onslaught of violence against women. This research will hopefully raise awareness of the Court Monitoring Program within the feminist community (grassroots and academic) and beyond.

As I listened and read the words of research participants, I was continually impressed with their thoughtfulness and insights; it has been difficult to edit their comments. Through this experience, my commitment to “de-formalize” this writing has grown. As much as possible, I endeavour to use the words of the women who created and maintained the CMP, rather than those of “theoreticians” I do not try to “make sense” of their words through theory, but allow them to stand on their own. I present the research participants as the “experts” and their words as a valuable contribution to feminist praxis.¹³ I deviate from the traditional notion of sociology as a creator of knowledge, to present this sociological endeavour as a facilitator of the production of knowledge rather than a source.¹⁴

2) This thesis also offers the Court Monitoring Program a documentation of its development.

¹³ Praxis is a central concept of feminism which originated in Marxist thought. From a Marxist perspective, praxis means “free, creative engagement in the world by the individual, who is changed by the experience and who thereby changes the world” (as quoted in Josephine Donovan *Feminist Theory* [New York: Continuum, 1988] 7). A feminist interpretation of praxis is “thoughtful reflection and action that occurs simultaneously. Praxis is the integration of knowing and doing” (Kirby & McKenna, 1989:34.) “Melding of theory and practice” (Wine & Ristock, 1991:254)

¹⁴ This approach is consistent with feminist pedagogy. For example, Gayle MacDonald asserts “A teacher’s job is to guide, to explain, to share and help create knowledge, not to ‘determine’ knowledge.” (1989:150).

This her-story provides a point of reflection for the program and hopefully for others. Records of women's organizational development typically are lost because we are busy working and do not have time to document things, yet people often express an interest in knowing the CMP's story. A written her-story helps to maintain organizational integrity, continuity and common knowledge to share with new monitors. There are only a few of us who have "the story" to tell. As with most knowledge, it has power. A written her-story diminishes and shares this power. This her-story provides a foundation for developing a "How to" kit for other organizations, and outlines the obstacles and offers helpful hints on shortcuts and allies. In a general sense, this research project contributes to the growth and advancement of the CMP.

3) This thesis is not directed towards either group: grassroots or academic feminists, but rather attempts to reach both.

The purpose and process of bridging the division of grassroots and academic feminism are instrumental to the CMP and this research project. The struggle to bridge between groups reflects my philosophical position and my commitment to understand the "in-between" where I believe all of us live and where answers to some of the important questions lie.

4) Finally, this thesis is a major component of my graduate studies and its successful completion is instrumental in acquiring my Master's degree.

This I perceive as a means, not an end. A Master's degree and its accompanying knowledge will enrich my ability to be an effective practicing/theorizing feminist:

We see research as part of an ongoing process of change. It's an aid to action and a tool of empowerment, not an end in itself. That's why we talk about the research process rather than research projects.

Women's Research Centre, 1992¹⁵

¹⁵ Jan Barnsley and Diana Ellis, Research for Change: Participatory Action Research for Community Groups (Vancouver: Women's Research Centre, 1992) 9.

1.B The Evolution of the Thesis

The development of the research questions bears mentioning, in part because it raises the issue of risk. One of the purposes of this research is to aid the CMP's political agenda of having a positive effect on women as a group and as individuals. One of the original aims of the CMP was to change the outcome of trials -- to increase convictions and the length of sentences in violent crimes against women and children. It is commonly believed that Mothers Against Drunk Drivers' (MADD) ongoing campaign to raise public awareness and their court watch program have been effective in increasing the sentences of inebriated drivers and decreasing the incidence of drunk driving. These beliefs played an important part in the development of the CMP. One of the original intentions of this study was to examine if the CMP had accomplished our goals of increasing convictions and sentence lengths of perpetrators of violent crimes against women and children and improving public awareness about the effects of these crimes and the court cases. I put considerable time into developing a tool/method to measure the CMP's effect on trial outcomes. We quickly realized the danger of this undertaking. What would happen if we proved that the presence of monitors in the court room affects the outcome of individual trials? The research could be used to argue that a defendant did not get a fair trial due to the presence of monitors. Thus, the judge could dismiss a case against a guilty offender and/or ban court monitors from the court room.

This experience led us to re-think our objectives. What is our intent, particularly with respect to the individual cases we monitor? Do we want to influence the outcome of the trials of individual cases? We do not. We want to influence the court system as a whole, how it perceives violent crimes against women and children, and how it

prosecutes offenders. We collect data on individual cases in order to get a “profile.” We lobby, not to change individual cases, but to address issues that arise in the cases. Within individual cases, our intent is to change the complainant’s experience by offering our support court room.¹⁶ In bringing forward this issue, this research began to fulfill one of its intents before the proposal was written: contributing to the growth and advancement of the CMP. This process increased my anxiety about research and its use. The creation of a research project can hurt the people it is intended to empower. This left me with some reservations and concerns about writing this thesis.

This process of clarifying our intent also led us to look more closely at the CMP’s goals: how it tries/attempts to accomplish them, and how the practices and beliefs of the CMP and its monitors fit within feminist theory of sexual assault and the law. Another change has occurred since writing the thesis proposal. Originally, I was going to interview people in the court system to see how they perceived the CMP, why they thought we were there in the courts, and how they feel about us being there. In consultation with the CMP coordinator, I decided against these interviews for two reasons. If court system interviewees said that monitors affect them, a defense lawyer could use our own documentation/report to remove monitors from the courts. I also believe that using the input of “court experts” to validate the program and the experience and perceptions of the court monitors undermines the integrity and philosophical perspective of this research. An underlying intent and purpose of this study is to recognize the credibility of the court monitors as experts on women’s experiences, genderized violence and the law; the court monitors’ perspectives stand on their own.

¹⁶ I return to this point in Chapter 6 under “Effects on Trial Outcome”.

1.C Language

When we come into possession of a voice, we sometimes have to choose with which voice (the voice of the dyke, the Chicana, the professor, the master), in which voice (first person, third, vernacular, formal) or in which language (Black English, Tex-Mex, Spanish, academese) to speak or write in.

Gloria Anzaldua in Haciendo Caras (1990)¹⁷

My experience of academe presents me with the difficult task of choosing language and presentation. Do I use the language of academe that “sets apart” or do I follow feminist principles that call for inclusion? Who is the audience I wish to address - - whom do I expect and/or want to read this thesis? What language and format do I use to best reach this audience(s)? What is my comfort level when writing? One intent of this thesis is to speak to the two non-unified audiences: grassroots and academic feminist.¹⁸ As a feminist, I believe in writing in the most accessible language possible, in a manner that is comfortable for me. However, over time and with years of university life, my everyday language has changed, becoming more formal and less accessible. Sometimes I see this when family members look at me strangely and suddenly I realize I am using “sociology language”. Often I do not realize what “language” I am speaking. I will forever struggle with this tension between my languages: this thesis is no different.

I wrote this thesis in my own words, hoping to increase its accessibility through use of simple language. However, the language and presentation vary depending on the section of the thesis. For example, the section on the development of the CMP

¹⁷ Gloria Anzaldua, Making Face, Making Soul: Haciendo Caras (San Francisco: Aunt Lute Books, 1990) xxiii.

¹⁸ For discussion of writing in different languages for feminist audiences, see Linda Christiansen-Ruffman, “Bridging the Gap between Feminist Activism and Academe” Women and Social Change: Feminist Activism in Canada (Toronto: Lorimer, 1991) 258-282.

uses less academic language than the section on analysis and interpretation of how the CMP “fits” into feminist theory.

At times, I use a gender specific pronoun when referring to a group that is predominately, but not exclusively, one gender (e.g., defendants in sexual assault cases are predominately male).¹⁹ I share this approach with the Women’s Research Centre, as demonstrated in their book Recollecting our Lives on women’s experience of childhood sexual abuse.²⁰ In this book they use the male gender when referring to an abuser and the female gender for the victim. This is also in keeping with Margrit Eichler’s definition of non-sexist language: “Language is non-sexist if it uses sex-specific terms to describe sex-specific situations; by the same token it never uses sex-specific terms to describe generic situations.”²¹ I make exceptions to this pattern when speaking about a specific case where I know the gender of the person and it is different from the stated norm.

I write this thesis generally in the first person. I am a story teller at heart and take that approach here. The process of the project remains as important as the end product, and as such is a major component in the outcome. In the process I try to integrate “parts” of my life: academe, activism and personal experience. *I write my struggles within this project, my personal experience and my position in the CMP process. I show this in italics in the text to set it apart. Throughout this project I have attempted to come to terms with my own her-story of abuse; at times it appears in this*

¹⁹ According to the Ontario Women’s Directorate, “Statistics indicate that approximately 99% of all sexual assaults are committed by men.” (in “Sexual Assault: The Reality” [1992])

²⁰ Women’s Research Centre, Recollecting our Lives: Women’s Experience of Childhood Sexual Abuse (Vancouver: Press Gang Publishing, 1989) 20.

²¹ Margrit Eichler, “The Relationship between Sexist, Non-sexist, Women-Centered and Feminist Research in Social Sciences” Women and Men, ed. Greta H. Nemiroff (Toronto: Fitzhenry & Whiteside, 1987) 21-53.

subtext, mostly it remains a silent undercurrent of the writing, as it has throughout my life.

1.D Presentation

Accessibility is affected by presentation as well as language. For example, the University of Victoria recommends a serif type for theses.²² I chose to use a sans serif; as it is more accessible for people with a visual impairment.

I struggled with how to reference the research participants without undue risk of disclosing their identities. In most cases, I note the data collection method (interview or questionnaire) and the time period in which the participant was involved in the program. If a monitor was still involved with the CMP and the end of the research period, ** appears as the end date. The one exception to this pattern concerns the original coordinator and creator of the CMP. I reference her by the date of the interview.²³ I also made the decision to present the research participants' comments in the present tense rather than the past. In researching the different traditions in introducing quotations, I found two references. The Writer's Brief Handbook refers to historical present tense "for events that occurred in the past for the special purpose of making the events or fictional happenings come alive."²⁴ A second source, Academic Writing for Graduate Students, suggests that a writer use the present tense to indicate that the quotation is close to the writer in some way or close to the current state of knowledge. It also refers to citational present tense that a writer uses when quoting a famous or

²² Instructions for the Preparation of Master's Theses and Doctoral Dissertations (Graduate Admissions and Records Office, University of Victoria, 1994) 3.

²³ Much of the information she supplied was relevant from her position as coordinator, which in turn reveals her identity. I received her approval to reveal her identity.

²⁴ Alfred Rosa et al. The Writers Brief Handbook: Canadian Edition (Scarborough: Allyn & Bacon Canada, 1995) 171.

important source.²⁵ I wish to bring the monitors' words to life as current knowledge and important sources of the experience of women in the courts.

1.E Assumptions

Three assumptions beliefs underlie this project, both in its inception and its writing:

- Our contemporary world is ordered by and functions in power relationships. These power relationships give power to men in relation to women. Women's experience of these power relationships is informed by and experienced differently according to race, class, sexual orientation, ableness, geographic location, ethnicity, age and other "classifications" that affect self-concept and treatment by others, as well as by the intersections, overlappings and changing dynamics of these classifications. There is nothing "innate" or "natural" about this world ordering. It can and must change.
- The court and legal systems reflect these biases and power relationships. Violence against women by men touches every woman's life, in the decisions we make, in what we do and do not do. Violence against women and children is a social norm that must be eradicated.
- All research is biased and political. All research has political will.

1.F Organization of the Thesis

In Chapter Two I review the chronological development of the CMP to present a background for the research project. This review outlines the three stages of the program, followed by a discussion of the organizational development of the CMP. I complete the chapter by summarizing the major points in the CMP's development.

²⁵ John M. Swales, and Christina B. Feak. Academic Writing for Graduate Students: A Course for Nonnative Speakers of English (Ann Arbor: University of Michigan Press, 1994) 184.

Chapter Three offers an overview of the methodology and process I use in data collection and the development of this thesis. Following an introduction to the methodology, I set out the time frame for the data collection and review the different aspects of the multiple methodological within approach: my role as a participatory action researcher, archival data, interviews and questionnaires. In the discussion of interviews and questionnaires, I review the data collection, outline the data processing and coding. I complete the chapter with an summary the time lines for writing of the thesis.

In Chapter Four I introduce the women in the research project. I describe their demographic backgrounds, their descriptions and definitions of feminism, their participation in the CMP and how they describe their personal relationship to sexual assault. I discuss the rationale for collecting the demographics along with the results. Similarly, other information is accompanied by a reflection on its relevance and inclusion.

In Chapter Five I review the three aims of the CMP, while focussing mainly on the first aim of the program: acting in solidarity with complainants. In discussing this objective I first address the court room experience through reviewing a court monitor's day in court, the court's atmosphere, the monitors' reaction to testimony and how monitors feel in the court room. Following this I discuss the monitors impressions of their interactions and relations with the court house staff and court room players, what influences these interactions as well as the content. The next section of the chapter gives an overview of the second aim of the CMP: data collection. Following this, I review the third aim: taking action, under the separate headings of media and letter writing. The chapter ends with a summary of the CMP's success and shortcomings in reaching its three objectives.

In Chapter six, I assess the participants' perceptions of the CMP's effect on women who monitor, complainants, court room players, the outcome of trials and others in the court room. I asked the twelve interviewees questions on these specific issues. In addition, I include responses of other participants who volunteered their perceptions. I end the chapter by summarizing the court monitors' perceptions.

In Chapter Seven, I summarize the research participants' theories on social change in the area of legal treatment of violence against women/children. I discuss the monitors response according to three locations they identify for change: in the courts, at societal level and law. I complete this section by summarizing the monitors' approach to social change. I then compare their approaches with contemporary mainstream academic feminist theory of sexual assault and the law, specifically Catharine MacKinnon and Carol Smart. I begin with an overview of each theorists' approach to sexual assault and the law and then summarize and compare them. After presenting a comparison between MacKinnon and Smart and the court monitors, I summarize my conclusions.

In the final Chapter, I review the Court Monitoring Program and present recommendations on developing a court monitoring program. I end by offering some concluding remarks on methodological and theoretical considerations of this thesis and the possible implications of Court Monitoring Program on feminism and social change.

Chapter 2: Development of the Court Monitoring Program

[F]eminist practice for change must include a clear orientation to the state that both exposes the limits placed on change because of the overall structure of power (disengagement) yet relates to the belief in the possibility of change engendered by the prevailing ideology (mainstreaming).

Nancy Adamson, 1988¹

In review the chronological development of the Court Monitoring Program. This her-story presents a context or background for the research. I have two further objectives in reconstructing this her-story: to offer the CMP members a detailed account of their efforts and to provide a framework for other women's organizations that may wish to establish a court monitoring program. To accomplish these objectives, it is necessary to present a detailed narrative and include all working documents, resulting in a lengthy report. As this is not specifically relevant to this thesis, but may be of interest to the reader, I include a more detailed her-story (see Appendix A).

The her-story of the CMP developed within the context of its parent organization, Victoria Status of Women Action Group (VSWAG). VSWAG was formed in 1971 to improve the status of women in economic, social and political life.² Like many other feminist organizations, VSWAG is chronically underfunded, overcommitted (energy dispersed in a multitude of different directions), understaffed, housed in dismal physical space with overtaxed (emotionally and physically) members and staff.

In this atmosphere, VSWAG conceived of and formed the CMP in the closing months of 1992. Two key events precipitated the development of the CMP. First, in a well-publicized Vancouver court case, a man convicted of sexual abuse was given a lenient sentence because the judge claimed that the three year-old victim was

¹ Nancy Adamson et al. *Feminist Organizing for Change* (Toronto: Oxford Press, 1988) 187.

² Victoria Status of Women Action Group brochure.

being sexually aggressive.³ This case raised several questions for women working at VSWAG: If this case was in the newspaper -- how many are not? Who is keeping track of what is happening in court cases such as this one? Who is doing something about it on a consistent basis? The second impetus was the Law Society of BC's 1992 report: Gender Equality in the Justice System. In this report the Law Society's Gender Bias Committee concludes that "Gender Bias still exists in our society and is reflected in our legal and justice systems."⁴

In response to these two events, VSWAG envisioned a long term court monitoring program to focus on violent crimes involving victimized women and/or children. Because VSWAG was not able to find an existing model for the type of program envisioned, the CMP struggled through a painful birthing with little concrete direction or support from similar organizations. Initially, the women involved did not understand the complexity and enormity of the work. They thought of the CMP as a small project that would require approximately five hours of staff time a week. They had no sense of the need for extensive training, the traumatizing effect of attending court, the high turnover of volunteers, the complexity of the database, or the enormous amount of time, energy and commitment that it would take to operate the program.

2.A Chronological Overview

The her-story of the CMP can be divided into three stages. These stages are defined by changes in the CMP's administration. The first stage was the tumultuous period from inception until the first restructuring meeting in September 1993. During this stage the Coordinator of VSWAG was primarily responsible for administration. The

³ Phil Needham, "Appeal Court Finds Judge Erred only in Word Usage" The Vancouver Sun 13 Jan. 1990: A1.

⁴ The two volume report looks at how gender bias manifests in the various legal arenas, with one chapter focusing on "The Justice System's Response to Violence Against Women". Law Society of British Columbia, Gender Equality in the Justice System 2 vols. (Victoria: Law Society, 1992) v.

second stage began with the restructuring meeting and ended with the hiring of a designated CMP Coordinator in September 1994. During this stage the program administration was divided among key volunteers and the Coordinator of VSWAG. The third stage covered the period from hiring a Coordinator to the completion of the research on April 30, 1995. During this period the CMP had a designated half-time coordinator who was responsible for the administration of the program.

2.A.1 First Stage: November 1992 - September 1993

The initial CMP meeting was in November 1992, with monitors entering the courts two months later. Monitors and the CMP were ill-prepared when they entered the courts in January 1993. There were not enough volunteers, volunteer training was inadequate, and the CMP had ill-defined aims with no guidelines nor directional policy. Furthermore, VSWAG did not prepare the court room players⁵ and staff, police and victim services -- for the arrival of the monitors.

During the first few monthly meetings after entering the courts, volunteers began to identify issues in terms of their needs and those of the program. However, by the April meeting, the effects of being ill-prepared and the lack of a common understanding of the program's goals and process became apparent. Tempers flared and a heated debate consumed the meeting. One difficulty was the lack of agreement over the process required to accomplish the program's aims. The CMP used a consensus process of decision making embraced by many feminist organizations.⁶ Although all the members of the CMP wanted to do something to change the

⁵ I use the term "court room players" to describe defense lawyers, judges, Crown Prosecutors.

⁶ Since the 1960's, feminists have largely rejected the "male organizational model" of hierarchy, decision making by majority vote, and Roberts Rules of Order. Grassroots feminists reacted to the traditional organizational model by developing a feminist model that emphasizes process, personal experience and non-hierarchy. Feminists embraced consensus as the model of choice. For discussion of feminist process see Linda Briskin, Janice L. Ristock, Joanne Doucette, and Estelle Reddin all in Wine & Ristock (1991), and Adamson et al. (1988) and Cheryl Hyde (1986).

experience of women in the court room, what to do and how to do it was not clear. Some women believed the priority was to work within the system -- tread softly and gain the respect of the court room players; the delicate dance of acceptance and respect from those you wish to monitor and influence. Other women saw this as a cop-out. They wanted to hold public protests, to make a stand on issues by being held in contempt of court, and to make strong statements in the media about the court system and players.

A second difficulty was participants' divergent perspectives. Not all the women in the CMP were feminists, and most held different philosophical perspectives. Their differences did not create a safe meeting place⁷ for women, who left the alienating court room atmosphere with emotions running high.

One issue was central to the controversy of the April 1993 meeting: the wearing of a CMP identification button. The CMP designed and supplied identification buttons that monitors wore in the court room. However some judges would not allow monitors to enter the court if they wore the button. Monitors disagreed on how to respond to this, leading to heated debates on the aims and process of the CMP. The button issue remained a point of discussion throughout the program and research participants identified it as a critical issue for the program.⁸ Although it took enormous amount of energy and focus, this issue established the CMP's validity in the courts and opened dialogue between the CMP and court room players and government representatives. It also resulted in a great deal of education about the program and its aims. The button issue raised the fundamental question of the aims of the program and which methods to use to achieve them: disengagement, mainstreaming or the gray area in between.

⁷ For discussion of the role of a safe environment in feminist organizations see, Hyde, 1986.

⁸ See Appendix A: Critical Issues and Events: The Button Issue.

Following the turbulent spring of 1993, monitor participation declined. The program survived the difficulties of the button issue and the creation of a statement of aims with diverse perspectives, but it lost monitors. The summer of 1993 brought a new concern to the program: volunteer burnout. A few women were monitoring full time and issues of program ownership and lack of support arose. At this point, the VSWAG Coordinator wanted to stop monitoring for a few months so the CMP could concentrate on building the foundation of the program; however, monitors were not willing to leave the courts. Although the program never left the courts, the full-time monitors, feeling unsupported and unheard, left the program in the fall of 1993.

In September 1993, ten women attended a day-long restructuring meeting to set priorities and outline basic requirements for the program. Those present identified key areas of the work to continue and expand: database development, liaison with the court personnel and others, court monitor support, letter writing and administrative tasks (minutes, etc.). Participants also flagged two new areas as priorities: funding and a training program. The Coordinator was directed to dedicate her paid time to acquiring funding for a designated CMP Coordinator. The other tasks of the Coordinator were set aside or taken up by volunteers. VSWAG/CMP relationship was discussed as well as VSWAG's contribution to the program. By the end of the restructuring meeting, there was renewed energy in the program. This meeting marked an important milestone within the program and laid the foundation for its next stage.

2.A.2 Second Stage: October 1993 - August 1994

During the second stage, the CMP was successful in developing an extensive training program and acquiring funds to hire a half-time CMP Coordinator. A few key volunteers took responsibility for significant roles in the administration. One monitor

was responsible for several administrative tasks: typing up minutes and sending them out, maintaining the phone list, contacting people to sign up for monitoring shifts and attending meetings. Another volunteer concentrated her efforts on supervising the database program. A third volunteer with experience in training, developed and implemented a training program for new volunteers,⁹ creating a more consistent team of volunteers who were better prepared to monitor in the courts. The Training Program is a measurable success of the CMP. It offers a data collection baseline while respecting and encouraging women to monitor from their own experience. It prepares monitors for the court and increases public awareness through monitors sharing their knowledge and experience.

In this period the program “settled down” in many ways and tensions eased. Rather than relying on the VSWAG Coordinator for all the direction and support, the volunteers began to share tasks. Their ongoing dedication kept the program together and allowed the Coordinator to concentrate on fundraising. She was successful in securing funding to hire a half-time CMP coordinator. The CMP hired their new Coordinator September 6, 1994. This again marked a shift in the program. It was the first time a paid staff member could dedicate all her efforts toward the CMP.

2.A.3 Third Stage: September 1994 - April 1995

The new CMP Coordinator had entered the program in June 1994 as a volunteer monitor, so she came to the Coordinator position with previous CMP knowledge and experience. Her approach was considerably different from the previous Coordinator and to a great degree this influenced a change in the “mood” of the program. The first Coordinator did a great deal of liaising, which is not surprising as this was part of her overall position as Coordinator of VSWAG. This also made her

⁹ See Appendix A - Volunteer Development & Support: Training.

more externally “visible and connected”. Conversely, the new Coordinator focused her efforts internally on monitor support, the training program, and the database.

Early in this stage, the three volunteers doing the administrative tasks left the program. The program gained a paid Coordinator but lost key volunteers that had dedicated many hours to the program both in and out of the courts. The new Coordinator took over the tasks of the volunteers, leaving her little extra time. Unlike her predecessor, she spent at least one shift a week in the courts, maintained regular monitor contact, and acted as a mentor. Although this was a time of few actions, the CMP launched its one major letter writing campaign in November 1994.¹⁰

Although there was considerable effort put into funding proposals, by the end of the research period, the CMP had not secured ongoing funding. Development of the database was progressing slowly. The program was stable with a strong volunteer base, a computer, a good court room training program for monitors, a new brochure, and a successful letter writing campaign completed.

2.B Organizational Development

The Approach we had was -- we are going to jump in those courts and figure it out as we go along and it just does not work that way.

Coordinator and Co-founder of CMP - December 1994 (interview)

The CMP began without a great deal of preparation. This in part led to many of the difficulties the program encountered. Although the founders invited women from community agencies to its initial meeting, they did not prepare court workers for the monitors. In addition, the founders did little internal community building before embarking on the difficult task of monitoring in the courts. The women involved in the

¹⁰ See Chapter 5 - The Third Aim: Taking Action: Actions Taken.

initial CMP did not have the sense of community, common goals or trust that they needed to work together while dealing with personal and painful issues.

The lack of common perspective caused difficulties in the opening months of the program. The program quickly identified the need for a common perspective: feminism. However, once the CMP developed its aims and guidelines, the theoretical perspective was less important. In practical terms, not all the women who became monitors identified themselves as feminists and those who did, had varying notions of feminism.¹¹ Despite this, the CMP did not have the problems that it encountered in the opening months because the guidelines and aims set out the practical terms and defined the common goals of the CMP. The members created the guidelines and aims with feminist principles that reflected the specificity of the CMP's work.

The lack of clear understanding of the CMP's aims in the beginning resulted in members disagreeing on how the CMP should approach political activism: disengagement or mainstreaming.¹² Some women wanted to use disengagement tactics (public protest, defiance of court orders), while others took a mainstream approach (quiet and anonymous collection of data in the court room, releasing information collected). The resulting debates led to the development of the CMP's aims, which clearly show the program's intent to bridge the gap between disengagement and mainstreaming. The CMP challenges the structure, laws, and process of the legal system, while believing in the possibility of change through

¹¹ See Chapter 4 - Court Monitors as Feminists.

¹² For a discussion of disengagement and mainstreaming see Adamson et al. (1988) and Wine & Ristock, (1991). Authors in both books argue that both of these poles of feminist practice represent potential dangers. Disengagement practice involves work that takes feminists outside the dominant structures and views of society. The potential danger in disengagement is that it removes itself from individual women's experiences and lives, leading to marginalization. Conversely, mainstreaming involves working within the social structures of mainstream society. The potential dangers with this approach lie in co-option, loss of vision and institutionalization. Adamson et al. further argue that feminists must not choose either of these poles but rather balance the two.

lobbying, raising public awareness and acting in solidarity with the complainant.

Women who positioned themselves on either pole left the program in its early days or moved to a more central position. Once this position was established, it remained unchallenged by either its members or its founding organization, VSWAG.

Members of the CMP met regularly to debrief the court room experience, attend to administrative tasks, increase knowledge and build a sense of community. The CMP had bi-weekly meetings, day-long planning sessions, and social gatherings. The meetings at times were draining as members grappled with painful experiences and daunting administrative tasks. For many women, the meetings met their needs for support.

Despite the difficult beginning, the CMP successfully developed organizational aims, guidelines, policy, literature and operational documents. As with many feminist organizations, particularly those that do not chose a mainstream approach,¹³ the CMP and VSWAG continually struggle to acquire adequate resources: financial and human. Proposal writing remains a challenge in the CMP's attempts to access government funding because it is necessary to write a proposal that suits the government's mandate while serving the operational requirements of the CMP. Also, government funding for not-for-profit organizations is increasingly limited to project funding rather than core funding. In addition, funding from private foundations is restricted because VSWAG has been unable to acquire charitable status because it is considered to be too political. Without adequate funding, the CMP cannot purchase necessary resources or hire adequate staff.

¹³ Wine & Ristock, *Women and Social Change: Feminist Activism in Canada* (Toronto: James Lorimer and Company, 1991). See also discussions within other chapters; for example, "Finding our Voices" by Roxana Ng (184-197).

The CMP has never had the necessary staff to adequately supervise the program and coordinate volunteers. The CMP needs to recruit, train and support a large number of volunteers to maintain monitoring full-time. At times, this responsibility fell to the volunteers themselves. Volunteers spent many hours doing the necessary administration, rather than actively monitoring and lobbying. Also the diverse work of the CMP required diverse skills that were not always available in the volunteers or the staff.

The CMP hoped to keep volunteers for long periods of time, however many women left the program; these difficulties with the program that were generally connected to the first stage. Some of the difficulties decreased with the development of the CMP infrastructure: a training program, organizational and operational documents, increased monitor support, and a safer environment. This research indicates that the work of the CMP is emotional and traumatic; however, with support from the program and a sense of contribution to positive social change, women are able to face the negative experience of being in the courts.

2.C Summary

The CMP's developmental experience is similar to other feminist work.¹⁴ The program has multiple, broad and ambitious goals but suffers from a chronic lack of resources that greatly limits its efficiency and effectiveness. In addition, the emotions that provided the cornerstone of the CMP, also required a support network and opportunities for women to express their feelings.¹⁵ At times, the CMP did not have a paid coordinator to debrief with monitors after court, answer their questions and do the endless administrative tasks. Moreover, women who joined the CMP to do direct

¹⁴ Stephanie Riger. "Challenges of Success: Stages of Growth in Feminist Organizations" (Feminist Studies 1994:20:3) 245-300.

¹⁵ Hyde, 1986:545-554.

political activism of monitoring and advocacy, often spent a great deal of time working on administrative tasks. This situation led to frustration and disappointment for some women. Other challenges for the CMP and monitors were the day-to-day pain of the court room experience and the overwhelming task of creating effective change. Women's pain and unresolved issues at times strengthened the group process, but at other times they contributed to communication difficulties and group fracturing.

The CMP developed within a her-story of many challenges. Despite these difficulties, the CMP had successes. Its most important achievement is the court support provided for women and children. The program also developed organizational and operational documents, data collection and analyzing tools and added to the work of other organizations. As well, the CMP has raised public awareness of gender bias in the legal system. Finally, monitors have learned a great deal from their experience in the courts and through the training program, knowledge and understanding that they in turn take into their lives.

Chapter 3: Methodology

[Feminist] Action research documents women's perspective on their community or group or on an issue women are concerned about. It prepares for lobbying, etc. and can be used to improve services, programs, etc.

Women's Research Centre, 1987¹

Feminism is not simply a theoretical window through which one views the world; it involves a methodology that includes a commitment to social change, a respectful relationship between researcher and research "subjects,"² and a recognition of the dynamic relationship between practice and theory grounded in experience. This is my "theory" of feminist methodology. In practice, feminism is a way of life, a way of being; it is always changing. My feminism is not inconsistent with other feminists doing research.³

I use a case study approach in this research because of my interest in the CMP's development. A case study is valuable in laying the foundation for invalidating generalizations and suggesting new research directions. It allows us to re-evaluate images and provides positive models to emulate and negative models to avoid.⁴ In addition, a case study offers a written record for the "subject" of the research, in this case the Court Monitoring Program.

I use a multiple method approach to provide a richer and fuller account of the CMP. This study looks at a number of questions and a variety of approaches which are

¹ Jan Barnsley, *Action Research for Women's Groups* (Vancouver: Women's Research Centre, 1987) II-8.

² I use the term research subjects not in the common usage but rather to denote the research participants' subjectivity in the research in opposition to being objects of the research. As stated by Janet Billson "Women are subjects of and writers of their own knowledge, rather than alienated objects of non-reflective research strategies." ("The Progressive Verification Method: Towards a Feminist Methodology for Studying Women Cross-Culturally" [*Women's Studies International Forum* 1991:14.3] 211)

³ Eichler (1987), Maguire (1987), Billson (1991), Cook & Fonow (1991, 1986), Lather (1988), Barnsley (1992, 1987), Kirby & McKenna (1989), Reinharz (1992). This list is only a beginning. These principles lay the foundation of feminist methodology. In addition to feminists, Glaser and Strauss (1967) bears mention.

⁴ Shulamit Reinharz, *Feminist Methods in Social Research* (Oxford: Oxford University Press, 1992) 166-7.

useful for exploring different issues. For example, archival data are the most efficient source for studying the process and development of the CMP. These data provide a framework for reconstructing a her-story of the program. A second source, questionnaires, offered the possibility of collecting information from all past and present participants of the CMP, regardless of location. Finally, interviews offered women's interpretation of events and an emotional tone and personal experience missing from archival data and questionnaires. In addition, interviews allowed the researcher to interact with participants and collect more detailed data. To limit the size of the research project, I did not attempt to interview all the past and present participants of the CMP. I decided to interview women who were presently involved in the CMP because their recollections will be current. Two exceptions to this were women who were no longer involved in the program, but had played a significant role in the program's development. They had unique knowledge about the program that could not be collected through a questionnaire. I interviewed approximately half of the current monitors. The CMP Coordinator and I chose the interviewees to represent a cross section of monitors based on their role and length of time in the program as well as demographics.⁵ The interview questions differed from those on the questionnaires, in order to acquire more detailed information.

3.A Data Collection Time Frame

The data collection began with the start of the CMP in November 1992 and ended on April 30, 1995. My need to work full-time as well as other "life demands" prolonged the completion of this project, and it took almost a year longer than originally proposed. I selected April 30 as a cutoff date because a new set of court monitors

⁵ For details on diversity of interviewees, see 3.D.4 Interviews and Chart 4.1 - Research Participants' Role in the CMP.

began working in May. The court monitors who participated in the research were involved in the program during the period between November 1992 and April 1995. I used archival data from the same period. My participatory research occurred from February 1993 to April 1995. At times I add references to outcomes that occurred after April 1995 to give the reader a fuller account; however, these are clearly marked as outside the data collection period.

3.B Participatory Action Research

I have been an active member of the Court Monitoring Program from February 1993 until now. Over this time I participated in a number of capacities. I was a court monitor until July 1994. Afterwards, I occasionally accompanied new monitors to the courts. I participated in one training session, most meetings, all planning sessions, the database committee, some fundraising committee work, media presentations, and one-on-one meetings with the CMP Coordinator and members.

I was not particularly good at making notes on my thoughts and feelings during the research, although I always took notes at meetings. In some ways, I prefer this approach. Had I kept meticulous notes, it would be much easier to consider my perspective as the “right” one. My memory exists primarily in generalizations and emotions, and I rely on these for the overall “gist” of what was happening. My participation convinced me of the difficulty an outsider would have in trying to get the “mood” of the CMP. For example, the emotions of the first few months and tension of the restructuring meeting of September 1993 are not documented elsewhere. My firsthand knowledge of these experiences allows me to draw out more information and “read between the lines” at times. The participatory approach of my research raised several concerns:

- 1) There is the possibility that less experienced monitors see me as an expert, lending them to "silence" themselves in the research.
- 2) Perhaps research participants did not mention some information or issues because we had discussed them on other occasions. For example, voice amplification in the court rooms is an issue that we addressed a great deal at meetings, but was mentioned little in the interviews.
- 3) Research participants may have been reluctant to disclose possible negative comments to someone who is involved (and invested) in the program. I was particularly concerned about this in the interviewing process, so I indicated that I welcomed criticisms and suggestions and that such information would hopefully offer a guide to the CMP's future. I was pleasantly surprised by the candid input of many women. Who showed no inhibitions. However with other women I felt like the Chief of Police investigating the police department: these women were reluctant to comment on weaknesses or reveal shortcomings of the CMP.
- 4) At times the program faltered, emotions ran high, and confrontations occurred. I was involved, as were some of the research participants, and I was concerned that some women would feel hesitant to talk to me about these times. Some women did discuss the issues, but perhaps their comments were tempered. In other cases these conflicts may have affected women's decision to participate in the research.⁶

My personal struggle as a "researcher" continues. This was particularly difficult as I try to make sense of this experience in terms of traditional feminist participatory research methodology. I am sure I am doing participatory research -- it is research and

⁶ Unfortunately I did not receive input from one of the women who was at the center of a major controversy. I sent her a questionnaire, which she assures me she sent by return mail. She said she found it a good process to debrief on the experience. I did not receive the questionnaire. A post office tracer was unsuccessful. I sent a second questionnaire to her but it was not returned.

I am participating in the program. However, at the point I began writing this thesis I felt a sense of panic reading methodology texts that did not describe my "methodology." Is what I am doing feminist participatory research? Am I doing it "right"?

A key aspect of participatory research is my participation in the process of social change. The one example of this approach I found in methodology texts is Jane Mansbridge's Why We Lost the ERA.⁷ However, she does not include a methodology section in her study, so she offered me no direction. In reviewing methodology texts, I found that participatory research generally refers to the drawing in of research subjects to the process of the research. Certainly this was one of my intentions in this research. My intent was to be the writer, and for "we, the CMP members" to collectively dictate. I also envisioned this research project as an integral part of the CMP work, a research project within a research project. However, I did not fully achieve this notion of participatory research for three reasons.

First, the participation of research "subjects" is dependent on and assumes availability of their interest, time and energy; this was not always reflected in this study. Often the "research project" was not a priority for either the monitors or myself. *The length of time needed to write this thesis was greatly extended because my priority and first "love" were always the work of the CMP, not the writing of this thesis. It was with great discipline that I took sporadic leaves of absence from my volunteer work with the CMP and other agencies to complete this work. A constant reminder that this is a valuable contribution to the program is necessary to continue. In speaking with other feminists who combine activism and academia, this appears to be a common dilemma.*

⁷ Jane Mansbridge, Why We Lost the ERA (Chicago: University of Chicago Press, 1986).

Second, my resistance to being a researcher further discouraged discussing the project with participants. Perhaps the participation of CMP members might have been higher if I had more actively solicited involvement and actively focused on the research.

Third, I have questioned the relevance and value of this research due to the lack of direction from many of the monitors. Although I consulted with the CMP Coordinator, VSWAG and monitors, one of the CMP Coordinators and one member provided most of the CMP input.

In researching methodology I realized that, in part, my dilemma arose from trying to identify/conceptualize the research in the usual we/they, researcher/researched, insider/outsider view. It is difficult to classify my approach because I am a research subject as well as the research writer. Much of the dilemma of traditional participatory research is not an issue in this research project. As a research subject, I do not struggle with the outsider/insider dilemmas of traditional participatory research.

Although I share the position of a research subject, in my position as a researcher I have endeavoured not to layer my voice over that of the other women by using a minimum of text to frame the women's words and by *setting my thoughts apart in italics*. However, my choices on what text to include and how to present it, influence the subjectivity of this report.

I find the most similarity with and comfort from the Women's Research Centre. While my interpretation and expression of participatory research may not fall neatly within theoretical bounds, the definition of action research has never been in doubt. Action Research calls for research that leads to action:

Research is not an end in itself. To be useful, it must be part of an action plan. Right from the start we have to be clear about how we'll use the information we collect and analyze.⁸

⁸ Barnsley, 1987: III-8.

I used the Women's Research Centre publications (under the name of Jan Barnsley) and Kirby and McKenna's Experience Research Social Change as my primary in writing this research.

3.C Archival Data

I retrieved archival data from minutes of meetings, contents of files (correspondence, fundraising, button issue), volunteer application forms, training summary forms, and court collection forms. I transferred each "piece" of information from the minutes of meetings and files to an index card, noting its source and date. This was the first step in data collection, and I began noting some topics for grouping; however I did not code these data until I had gathered all the data.

I typed and listed by question the information from the volunteer applications and training summary forms. I numbered the responses and coded them to identify the source. This was particularly important because I needed to cross reference this information with questionnaire and interview data. Information gathered from the Court Form Summary pertained to contact in the courts and requests for court monitors to attend a case. I organized this information according to these two groups, as well as who the monitor had contact with (court room personnel, complainant, witness, other).

I used the archival data to re-construct the her-story of the CMP's development and to contribute to a "picture" of the court monitors.

3.D Interviews and Questionnaires: Data Collection⁹

3.D.1 Defining the Questions

The archival data and my participation in the program were the foundation for the interviews and questionnaires. I reworked my questions many times with input from

⁹ See Appendix B for all data collection forms and lists of interview questions.

my thesis supervisor and the Coordinator of the CMP. I did not address some issues because I was afraid of asking potentially painful questions. Most notably, I did not ask participants if they had personally experienced any of the crimes that the CMP monitors.¹⁰

Before I began interviewing and sending out questionnaires, I wanted to pre-test my questions for clarity, time requirements and thoroughness. I approached two women who shared a role in the CMP and my personal life. One woman who had been involved in the program for only a short period of time helped pre-test the questionnaire and a second woman agreed to pre-test the interview questions. I went over the questions with both women so that I could understand their interpretation. This led to some rewording of questions to increase clarity and remove bias.

I was impressed with both of these women's thoughtful responses and I did not want to omit this valuable information from the research project. After some reflection, I concluded that including these women's experiences was important. Both women completed consent and participant information forms. I approached each of them and they gave permission to include their responses.

3.D.2 Research Participants

I used CMP contact phone lists¹¹ to compile a list of the 80 women who had participated in the CMP; however some women on the list had been invited to the first meeting but did not participate in the program.¹² Chart 3.1 shows the breakdown of the 80 names on the phone lists and their relationship to the research project. Nine of the

¹⁰ In part I was able to establish women's experience of abuse from the Volunteer Application Form. For discussion of this see "Court Monitors as Experts on the Experience of Violence Against Women" in Chapter 4.

¹¹ The program always had a contact phone list for those involved. It was updated every few months adding new participants and dropping off those who were no longer involved. However, the listings were not necessarily accurate. Women could be on the list for some time and never participate.

¹² The original CMP Coordinator indicated that women from various women's organizations in Victoria were invited to attend meetings.

women I contacted said they had not been involved in the program. I was unable to locate 14 participants, whose involvement in the program is unknown. Twelve of these women were connected to the first stage of the program and I do not remember them participating in the program. I was able to obtain current addresses for a further seven women who had moved out of town. I sent them an introductory letter and a questionnaire package. I did not receive a reply from anyone in this group and did not have any verbal contact with them. In this group six out of seven were involved during the first stage of the program and I remember only three of them as participants in the program, therefore it is likely that these women were not involved or marginally involved.

Chart 3.1: Participants of the CMP and Research

	Number	Balance
total on phone contact list	80	80
not involved in the program	9	71
unable to contact	14	57
out of town (no personal contact): no answer	7	50
when contacted, stated not interested in participating	2	48
agreed to participate but did not answer	10	38
past participants: questionnaires answered	18	20
current participants: questionnaires answered	6	14
interview participants	12	2
participatory researcher	1	1
CMP coordinator (Sept. 94 to Apr. 95)	1	0

In summary, I was unable to contact 21 women, a substantial number of whom may not have been involved in the program and I dropped 9 others who were not part

of the CMP. I successfully contacted 50 women who had participated in the CMP. Of these women, 38 participated in the research (76%): 24 completed questionnaires, 12 participated in formalized interviews, one (the CMP Coordinator) participated through informal interviews¹³ and I participated as the researcher completing no formalized interview or questionnaire.

3.D.3 Questionnaires

I began contacting past participants on October 5, 1994. I sent a package containing the following to women who agreed to participate: introductory letter, consent form, participant information form, questionnaire, and stamped return envelope. Several of the women I contacted said they were only in the program a short time and felt they had little to offer. I encouraged them to participate anyway, stating that their input was valuable regardless of the length of time involved. Some agreed but did not return their questionnaire; perhaps after seeing the questionnaire they returned to their original reaction. I phoned women who did not answer the first questionnaire and sent a second package out on April 5, 1995, with a letter further encouraging participation. I received the last questionnaire from a past participant on April 29, 1995. There were 28 past participants: 26 agreed to complete questionnaires and I received 18 completed questionnaires (64%).

I also sent questionnaires to eight current CMP participants.¹⁴ Six responded between November 15, 1994, and May 12, 1995 (75%). I phoned the two remaining participants and asked them to return the questionnaire in May. Both stated they would return the questionnaire, but neither did.

¹³This refers to the Coordinator of the CMP during the last eight months of the research period. Although she did not participate in a formal interview or questionnaire, the coordinator and I spend many hours reviewing the thesis, the questions arising, the organization of the thesis, etc. Her input had a great influence on this research.

¹⁴ The number of current participants was low because eight of the current monitors participated in interviews.

As each questionnaire arrived, I coded it with an alpha-numeric code so that only I could identify the data's source. I stored the questionnaires in a locked file cabinet separate from the participants' information sheet and consent form.

3.D.4 Interviews

In consultation with the current CMP Coordinator, I chose twelve CMP participants for interviews. These women vary in background (e.g., age, occupation, education, see Appendix B for details) and program participation (e.g., length in the program varied from 2 years to 6 months). One interviewee was the staff coordinator of the program for 21 months, five were monitors, and six were both monitors and members of the administration team.

Initially I contacted potential interviewees by phone or in person to ask them to participate. We set a meeting time and I mailed each woman a letter of introduction and consent and participant information forms. I conducted the interviews in a location convenient for participants (e.g., VSWAG, participant's home, my home, my place of work).

After usual greetings and testing the tape recorder for volume, I began with a preamble that basically went as follows:

I hope this interview will be as informal as possible. I have a considerable number of questions that address areas that I am interested in. These questions will to a great extent limit the information we exchange, therefore I only see them as an outline - we do not need to address all of them and we may find we are going in a different direction altogether. Please feel free to not answer any question and to offer only information you wish to contribute. I also encourage you to ask any questions you wish to. As I mentioned before I anticipate approximately 30 minutes to one hour, but again we can determine that as we proceed. Are there any questions before I begin with my questions.

I had a list of specific questions for the woman who coordinated and created the CMP. I also asked some of these questions to interviewees who were instrumental in

the development of the program. For the other participants, I generally kept to my list of questions; however, I did clarify them when necessary. For example, most participants did not understand question nine unless I gave examples (See Appendix A). At times I changed "How do you think the program has succeeded/failed?" to "What do you see as the program's strengths/weaknesses?" I also added subjects that I expected to be discussed and were not; for example, how participants felt about the structure of and support they received in meetings, wearing the CMP button in the courts, and their thoughts on the relationship between the CMP and VSWAG. I took notes as "themes" or thoughts came to me during the interviews. In summary, although I kept to the list of questions I started with, I varied their delivery and in some cases, added questions.

During the interviews, participants asked questions about the program and the research. I left the tape on during my answers as this was useful for the project. For example, one participant asked if I would be interviewing court room players. I explained my initial intent and my rationale for not doing so. This conversation is the basis for the argument presented in Chapter 1.

I was disappointed in the formalized exchange and lack of interactive or collaborative feel of the interviews. As an interviewer, I lacked ease and the ability to engage some interviewees. As well, the data are limited by what the person feels, thinks, remembers, believes and is able to express at any one moment in time.

I recorded each interview on a separate audio tape, numbered and stored in a locked file cabinet separate from the participants' information sheet and consent form.

3.E Interviews and Questionnaires: Data Processing

3.E.1 Questionnaires

I started by reading the questionnaires, first when I received each one and again when I was ready to compile the data. After receiving all the past participants' questionnaires, I typed each participant's responses, organizing the answers by the question, and identifying the source by the individual's code. For example, I typed a question at the top of a page followed by the answers. Each answer includes the code identifying its source. I did this in part to familiarize myself with the responses. This process gave me a good opportunity to get a sense of the information by question or topic.

3.E.2 Interviews

I transcribed the interviews in two ways: verbatim and paraphrasing. I omitted some of the information that was not useful (e.g., off topic and silliness.) This method made the work less tedious, yet saved the important points in their entirety. One problem with transcribing was the low volume of the participants' voices. This was a problem with all the tapes because I transcribed them after completing all the interviews to save money on renting the transcription machine. In most cases, if I listened to the interview many times, I was able to make sense of it.

3.F Coding

Reading through the data, I identified five headings for coding as well as themes and issues that I listed under these headings. Under each heading, I established data groupings. Groupings shifted from heading to heading, came together with other groups, split into two or coalesced under additional subheadings. Eventually all the data were coded according to 37 data groupings. I photocopied the source

materials, keeping a copy of the original in a binder according to its source. I cut the photocopied pieces of data so each “bit” that had a coding was on a separate piece of paper with its source identified. I set up a file folder for each group and placed the coded data in the appropriate file. If a piece of information had more than one coding, I placed a copy in each corresponding file.

3.G The Writing

The writing of the thesis occurred sporadically over an extended period of time, from May 1995 and August 1997. This certainly was not the plan. I took the month of May 1995 off work to concentrate on writing the thesis, intending to complete it by the fall of 1995. By mid-May 1995, I had transcribed the interviews, typed the data and begun coding. However, I became ill and was unable to do any work until the end of the summer. At that time I had a short time off work and I finished coding the data and organized it in files ready for writing. The work I did until the end of February 1996 was sporadic and most of it was for other purposes. For example, I participated in a presentation on the CMP at the Praxis/Nexus Conference at the University of Victoria in January 1996.¹⁵ Between September 1995 and February 1996 I started two new full time jobs that consumed my energy along with other personal commitments.

At the end of January 1996 I took a leave of absence from all volunteer work (except the CMP) and began concentrating on completion of the thesis. As I reviewed what I had done, I developed an organizational structure for the thesis that is reflected in this final presentation. I was able to do a great deal of the first draft before July 1996 when I once again started a new job. Also, at this time, the CMP was offered an opportunity to integrate the CMP into a Women's Studies course at the University of

¹⁵ Some of the materials I prepared for the conference and the subsequent publication appear in this thesis.

Victoria. With little woman power left in the CMP, a great deal of my attention turned to this project as we revamped the training manual and designed and delivered a training program to a class of 30 women. In January 1997, I took 4 months away from my thesis to teach this course. At the end of this course, I began the second draft of my thesis. My progress was to be sporadic as I balanced the workload of paid employment, family responsibilities, volunteer commitments, writing this thesis and the daily necessities of life.

I included this overview of the writing of the thesis in part to demonstrate what so many women experience -- the double/triple/quadruple workload. And why for many of us the pursuit of education holds different and complex obstacles.

Chapter 4: Research Participants

In this work I make no claims for being "objective" and "unbiased"
I might most accurately be considered not just the researcher but the
twenty-second participant in the study. My aim is to give voice to these
women, but my own voice is clearly woven throughout.

Jeri Dawn Wine, 1990¹

4.A Demographics

The participants filled out the majority of the questions asked on the Personal Information Form; however, 5 women left one question unanswered: primary occupation (3); ethnic background/identity (1); or employment status (1). Six women did not answer two questions² (5 left are you a feminist unanswered with formal education level (2), ethnic background/identity (1), primary occupation (2); ethnic background/identity and primary occupation). One woman did not answer three questions (marital status, formal education level, are you a feminist) and another left four questions blank (birth date, ethnic background/identity, current marital status and formal education).

I received some criticism of the Personal Information Form. One woman with experience in research had several criticisms. She found the form intrusive and she thought I should have explained why I wanted the information. As well, she suggested the following improvements for the form: should be clear in stating that completing it was optional, should clarify if "primary occupations" refers to time-wise or personal significance; and drop current marital status (stating it is heterosexist and not usually considered relevant in feminist research). Another woman expressed her concern with

¹ Jeri Dawn Wine, "Outsiders on the Inside: Lesbians in Canadian Academe" in Lesbians in Canada (Toronto: Between the Lines, 1990) 157.

² Formal education and "are you a feminist" were on the back of the sheet. I suspect that the three women who did not answer both these questions were unaware of them.

the inclusion of marital status without a “category” to give equal opportunity to describe her primary relationship: a long term same sex relationship.

Lack of Clarification

I do not believe that two criticisms directed at my lack of clarity are well founded. I had stated the optional nature of completing the form, both through verbal and written communication (the letter and the consent form). This was supported by participants with 13 of the 36 participants leaving at least one question unanswered. I did not clarify or qualify questions such as primary occupation and ethnic background/identity because I wanted the women to define these “categories” in their own ways. I expected and wanted their answers to reflect their own definitions.

Rationale for Inclusion of the Personal Information Form

In the initial contact with participants and in the letter of introduction, I made a generic statement that does not specifically address any of the questions I asked in the questionnaire, interviews or on the participant information sheet. I expanded on this explanation when participants challenged the form.

In some sense, I included the Personal Information Form without a great deal of foresight; after all, collecting demographics is something sociologists do. I did not challenge it nor did I think it through carefully. For some time after the first concern was raised, I was unsure whether to include these data in the research. As with the rest of this research, I let the data lead me. They led to inclusion. One of the things that had originally attracted me to this group of women was their diversity. Establishing who the women are in terms of social location is important for the dual purpose of this research: the ongoing work of the CMP and the integrity of the research itself.

The question of diversity among the monitors was raised recently during a presentation of the CMP at the Praxis/Nexus Conference. This is not unusual amongst

feminists. Mainstream feminism has been rightfully accused of being representative of an elite group of women, particularly in regards to race and/or ethnicity.³ Diversity is at long last receiving the attention it deserves and increasingly feminists strive to bring diversity into their discussions on all issues.⁴ My faith in feminism as a perspective lies not in its limited success in dealing with diversity in the past, but in its continuing struggle to embrace difference in a society that teaches and models power and hierarchy based on difference. Our success lies in the struggle and process toward an “end” that remains out of our grasp without social revolution. Cellestine Ware states:

Radical feminism is working for the eradication of all domination and elitism in all human relationships. This would make self-determination the ultimate good and require the downfall of society as we know it today.⁵

In this thesis, my discussion of diversity centers on the court monitors as grassroots feminists doing what is traditionally done by academic feminists and values their experience/perspective as women who are not legal experts in the legal arena of sexual assault. In doing this I do not wish to essentialize grassroots feminists as a monolithic group or diminish the importance of considering other differences.⁶

In discussing diversity within the CMP, I differentiate between organizational representation and the monitors. In terms of organizational representation, VSWAG and the CMP are defined by, and predominately reflect white middle class “abled” Anglo feminism.⁷ VSWAG was born from an identity politics approach based on this

³ There are many excellent readings on feminism, diversity and exclusion/inclusion. For example, Gloria Anzaldua (1983, 1990), bell hooks (1984, 1988, 1990, 1993) and Marilyn Frye ((1983). In the area of law, Toni Morrison (1992). Also see: Poster (1995); Rebeck and Roach (1996:105-22); Taylor & Whittier (1993: 533:536); Doucette (1991).

⁴ In addition to previous mentioned books on diversity and inclusion, see also: Rebeck & Roach (1996:175-192); Papusa Molina (1990); Carol Smart (1989:2); Wine & Ristock (1991:12-15).

⁵ Cited in bell hooks *Feminist Theory: from the margin to centre* (Boston: South End Press, 1984)19.

⁶ I share Angela Harris' concern that, in discussing one aspect of diversity I risk the construction of an alternative essentialism (“Race and Essentialism” *Stanford Law Review* [1990] 585)

⁷ During its her-story, VSWAG has had both heterosexual and lesbian perspective. When I look at other organizations such as the Victoria Women's Sexual Assault Centre, it is difficult to define VSWAG as middle class, however, in its very existence it requires, to a great degree, middle class culture. From my

singular identity of “woman”.⁸ In more recent years VSWAG has struggled to be inclusionary from both its positions of privilege and marginalization. Working cross-culturally,⁹ it continues to struggle to overcome its own “centrism” through a coalition approach that supports and encourages diversity within the organization, creating culturally designated support groups and committees. However, its success is limited. VSWAG has made few inroads in including other perspectives in the overall organizational culture.¹⁰ Only now is it beginning to go through the painful experience of crisis and change¹¹ that is required for transformation to a politics of difference that does not privilege the identity of “woman”. As a subcommittee of VSWAG, the CMP is no different.

The level of organizational diversity differs dramatically from that of the women involved in the program. These women are a diverse group of women and their diversity goes beyond race and class, the usual categories discussed by feminists -- and includes age, employment status, education level, sexual orientation, “marital status”, able-ness, and many invisible differences seldom recognized as defining “categories” (such as survivor of sexual assault, motherhood). CMP participants come from different sexual orientations and have a variety of ableness.¹² The research

biased perspective and experience, class is an area where people have no qualms about not discussing cultural difference. In addition, class is predominately discussed from the perspective of union organizing and poverty: economics. A much welcomed exception is Lillian Ruben *Worlds of Pain* (New York: Basic Books, 1976).

⁸ For a thorough discussion of politics of identity and difference in VSWAG conception and continued operation see “Mobilization, Collective Identity and Activism in a Women’s Movement Organization in Victoria” by Monique Cikaliuk (1996) on file with the Department of Sociology, University of Victoria.

⁹ I use the word culture in a broad sense to include the traditions, habits, beliefs of a community of people. A community is created and cross-sectioned by class, race, ethnicity, sexual orientation, age, geographic location, etc. Culture is not limited to ascribed status. It can also include “hidden” identities such as survivors of sexual assault, refugee status, and motherhood.

¹⁰ The one exception to this is sexual orientation.

¹¹ See Judy Rebick & Kiki Roach *Politically Speaking* (Vancouver: Douglas & McIntyre, 1996) for a discussion of the National Action Committee’s (NAC) process to create an anti-racist organization in the midst of a racist society (105-122).

¹² Although not asked in the research, as a participatory researcher, I am aware of this information.

includes women from age 73 to 20 years, a wide variety of primary areas of employment, employment status, education level, ethnic background/ identity¹³ and experience of sexual assault. This is not to say that the majority of the participants are not abled, white, young (20 - 25 years), never married, university educated (ing) women. The numbers are highest in these groups and their influence is likely to be stronger. Yet diversity remains. From this diversity and with a commitment to change, there is hope that the work does and will increasingly represent a variety of views. Sandra Harding states "there is not 'woman' and no 'woman's experience'. Masculine and feminine are always categories within every class, race and culture."¹⁴ Data from the personal information forms confirm this.

Inclusion of Marital Status as a Category

The issue of marital status is not simply addressed. I thought I had covered this issue by having the category "co-habiting". When one lesbian voiced her discomfort with this question, I suggested that co-habiting was available. She said that she found that inadequate to describe her long term relationship and left the section blank. Her integrity and what I saw as deep pain in addressing this issue shook me.

I believe the understanding of difference happens at this fundamental level and to some degree only at this level. Theory plays but a minor role. When this woman challenged me on my heterosexist vision with her experience and pain so present, it became undeniably real. I could not ignore homophobia and the pain it creates. Her willingness to share her vulnerability with me rather than her anger is a gift for which I shall be forever thankful. For me it is such a risk to share vulnerability with someone I view as outside my own "group". I always weigh carefully if I believe that person will

¹³ see Appendix C for listings of participant information.

¹⁴ Sandra Harding. Feminism and Methodology (Bloomington, Indiana: University Press, 1987) 7.

use the information, experience to understand me or destroy me. I too often err on the side of safety. Given this, I feel honoured when someone trusts me enough to share their vulnerability of "difference" with me. Her sharing played an important role in my continuing struggle to unlearn homophobia and, in the process, understand my own changing identity and sexual orientation.

Marriage is a legal status for heterosexual couples only.¹⁵ Since legal marital status only applies to male/female relationships, why would someone tick off co-habiting to denote a lesbian¹⁶ relationship? I certainly do not mean to challenge the women that did, but only to point out the bias in this question. Another woman in a long term same sex relationship answered the question as "never married". Technically this best describes her status because the legal question of marital status only addresses a woman's intimate relationship to a man. This last example gave me a better understanding of the question's purpose. It did not provide an inquiry about sexual orientation (lesbians are divorced, separated, co-habiting, widowed and never married), or a definitive indicator of intimate relationships (people can have a long term intimate relationship without marrying or co-habiting); rather it does provide some information about their relationship experience.

One reason for including demographics in a research project is to describe who is involved. The CMP looks at crimes of violence where victims are predominantly women and perpetrators predominantly men. Given this, the question may arise: what kind of relationships do the women in the CMP have with men. The data collected, combined with my knowledge as a participatory researcher, answers this question to

¹⁵ Increasingly lesbians are claiming the right to marriage. Although not legally recognized, lesbian couples declare their commitment through a marriage ceremony that is generally referred to as a union. However, at this time, the women in this research reflect the dominant belief that a gay marriage remains unobtainable.

¹⁶ I use the term lesbian to denote a woman in a same sex intimate relationship, with the respectful understanding that not all women who are in one use this term to describe themselves.

some extent.¹⁷ However, I do not want to give credibility to those who question what “kind” of women are involved, or to appear to seek credibility for the program by demonstrating that heterosexual women are involved.¹⁸ Rather, my intent is to show the diversity of women within the program without weighted value to any particular group. The research confirms the diversity of women (in regards to their intimate relationship with men) who have chosen to engage in this program. Straight and gay women in the CMP represent a range of relationships including those who are married, divorced, separated, single, co-habiting. Although I found the information prompted a great deal of thought and it is valuable to this research, I will never again ask this question in that way. I agree that marital status inquiries are heterosexist and have little place in feminist research unless explained and clarified.

4.B Court Monitors as Feminists

Because feminist thought is kaleidoscopic, the reader's preliminary impression may be one of chaos and confusion, of dissension and disagreement, of fragmentation and splintering....

Rosemarie Tong, 1989¹⁹

I asked all the research participants if they were feminists, primarily to explore the extent of grassroots feminism. Thirty women described themselves as feminists, one answered “?” and five did not answer.²⁰ In addition I asked the 12 women interviewed: “In what ways do you see your feminism affecting or directing your actions,

¹⁷ Although research participants were not asked their sexual orientation, as a member of the CMP and associate of the members, I am aware of most of the women's sexual orientation.

¹⁸ Historically a tension has existed between straight and gay women in terms of visibility (of lesbians) in the feminist movement because the presence of lesbians or the perceived presence of lesbians has been used to dismiss and discredit feminist work. In “A Test of Unity: Lesbian Visibility in British Columbia Federation of Women”, Julia Creet explores and elucidates how this tension arose in the BC Federation of Women and how credibility and heterosexuality have been equated. In *Lesbians in Canada* Sharon Stone ed. (Toronto: Between the Lines, 1990) 183-197.

¹⁹ Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction* (Boulder: Westview Press, 1989) 238.

²⁰ Although VSWAG is a feminist organization, not all women in the CMP may be feminists.

your choices or your beliefs.”²¹ The interviewees responded in a personal way, speaking of their feminism, their practice and how they theorize the world.

Seven women speak of feminism as a totality in how they live their lives, theorize or practice it. Examples of this perspective are evident in comments like the following: “I don’t know what it would not affect, that’s why it is so hard to answer. It affects every part of my life”²² and “My feminism colours the way in which I see the world, my feminism has been more about change than support.”²³ Women also talk about empowerment and awareness of every part of their life (from personal conversations to social policies.) However, others point to feminism’s contradictions, “sometimes feminism empowers me and sometimes it doesn’t. Increased awareness is hard sometimes.”²⁴ Another monitor expresses her feminism as:

not a theory that is separate from me, it is the way that I live, it is not something I turn off.....the way I view the world and the way I treat myself, my actions, in what I choose to study, how I talk about the world, the way I deal with the world. My ideals are feminist, not just about gender, about sexual orientation, class, race, invisible and visible things that oppress people. That is why in particular I’m interested in the sexual assault program with VSWAG. Sexual assault is one of the invisible things that women carry. People can see my gender but they don’t necessarily know that I am a survivor. Being a survivor colours your world.²⁵

Some of the women use a more restrictive approach in discussing feminism. One woman speaks of feminism only in terms of prioritizing women, whereas another talks about working for women-specific organizations. A third woman expresses reservations about feminist identity. She says other people called her a feminist but she has a hard time with labels and their limitations. She also expresses a concern

²¹ The first woman interviewed was not asked this question. She was the co-coordinator of the CMP for some time and her interview was different than the others based on her unique role.

²² Interview: October 1994 - **

²³ Interview: January 1993 - July 1994

²⁴ Interview: October 1994 - **

²⁵ Interview: May 1994 - **

with using the word feminism because it could cause ostracization. She says that she lives a fairly traditional life but "sneaks feminism in there, but I don't use the word."²⁶ Another woman expresses a similar sentiment: "I'm careful about labeling myself and I don't call myself a feminist in some situations to save myself verbal abuse."²⁷ Both these women speak of feminism in terms of women's issues and inequality and every woman refers to social change and action. In general, the women's feminism is one motivation for their involvement in the program, an experience which in turn informs their feminism. As suggested by the following comment by Rosemarie Tong, the sentiments expressed by the CMP participants resonate with those of academic feminists:

[A] closer inspection will always reveal new visions, new structures, new relationships for personal and political life all of which will be different tomorrow than today. What I most treasure about feminist thought, then is that although it has a beginning, it has no end, and because it has no predetermined end, feminist thought permits each woman to think her own thoughts.

Rosemarie Tong, 1989²⁸

4.C Research Participants in the Court Monitoring Program

Research participants in the CMP represented all aspects of the program. In addition to monitoring, research participants did administration and database work. Administration includes policy development, media relations, promotion, fundraising, writing up minutes, calling monitors and ongoing activities to keep the program functioning. Database activities include designing the database and accompanying documents, organization and data input. Of the 38 participants, 34 monitored, 13 worked on administration and 7 worked on the database (See Chart 4.1). However, some participants played more than one role in the program and roles also changed

²⁶ Interview: October 1994 - **

²⁷ Interview: June 1994 - **

²⁸ Tong, 1989:238.

over time; some women began as monitors and then concentrated on administration or database activities. Three things usually precipitated this shift: courtroom burnout, a new personal commitment during the day that prohibited monitoring, or a CMP priority shift to administrative tasks. A few women maintained a focus on the database and never entered the courts.

Chart 4.1 - Research Participants' Role in the CMP

Role in the CMP	Researcher/CMP Coordinator	Questionnaires	Interviews	Total
Monitoring		17	5	22
Administration		0	1	1
Database		3	0	3
Monitor/Admin		2	6	8
Monitor/Admin/DB	2	2	0	4
Total	2	24	12	38

Research participants' length of involvement in the CMP varies from 1 month to 2 years.²⁹ The average length is 9 months, the mode is 6 months and median is 7 months (see Appendix C). It is important to point out the limitations of these data. The length of time in the program does not indicate the amount of time spent working for the CMP or consistency. For example, one month's participation may represent 32 hours for one woman and 4 hours for another. Research participants' involvement in the CMP spans the entire research period: some women were involved in the beginning months only, others at the end and a few were involved for almost the entire period.

²⁹ To determine the length of involvement I used April 30, 1995 as the cut off time of the research. Of those surveyed, 10 stated they are continuing and 4 are undecided.

4.D Court Monitors As Experts on the Experience of Violence Against Women

*There is no difference between being raped
and being pushed down a flight of cement steps
except that the wounds also bleed inside.*

*There is no difference between being raped
and being run over by a truck
except that afterward men ask you if you enjoyed it.*

*There is no difference between being raped
and being bit on the ankle by a rattlesnake
except that people ask you if your skirt was short
and why you were out alone anyhow.*

*There is no difference between being raped
and going headfirst through a windshield
except that afterward you are afraid
not of cars
but half the human race.*

*Fear of rape is a cold wind blowing
all of the time on a woman's hunched back
Never to stroll alone on a sand road through pine woods,
never to climb a trail across a bald
without that aluminum in the mouth
when I see a man climbing toward me.*

*Never to open the door to a knock
without that razor just grazing the throat.
The fear of dark side of hedges,
the back seat of the car, the empty house
rattling keys like a snake's warning.*

excerpt from Rape Poem by Marge Piercy³⁰

- 54% of the women had experienced some unwanted or intrusive sexual experience before reaching the age of 16.
- 43% of women reported at least one experience of incest and/or extra-familial sexual abuse before the age of 16.
- 96% of perpetrators of child sexual abuse were men
- 51% of women have been the victim of rape or attempted rape
- 27% of women have experienced physical assault in an intimate relationship
- 50% of women reporting physical assault also experienced sexual assault in the context of the same relationship
- All the physical assaults on women where perpetrated by male intimates.

Highlights of the Findings of
the Women's Safety
Project³¹

I believe the question about monitors as experts on the experience of violence
is a non-question. All women live under the threat of violence as women: in our homes,

³⁰ Marge Piercy, Circles on the Water (New York: Alfred A. Knoff, 1990) 164-5.

³¹ Cited in "Violence at 'Crisis' Point" by Bob Cox (Times Colonist) July 30, 1993: 1.

in the streets, and all too often from those who say they love us. For most women the threat of violence comes from experience. Liz Kelly states that one of the three core themes that runs through her book, Surviving Sexual Violence, is "that most women have experienced sexual violence in their lives."³² Lawyers go to law school to become experts on law. Women live their lives under the threat of violence and become experts on violence against women. Our training ground is the streets, our homes, our schools, our workplaces: the sum total of our lives. Others share this observation. In Recollecting our Lives, women from the Women's Research Centre state that:

[v]iolence against women defines our lives. It defines where we walk at night, what we wear, how we act. It prompts us to jump at an unexpected sound when we're out alone at night or waiting at a bus stop or going to our car in a parking lot, day or night. It puts us on guard in our relations with men where we work or in our homes. It defines our sexual practice whether we are heterosexual or lesbian.³³

Given this, I did not ask women if they are survivors. *Also for years I was unable to answer this question and if the question was raised, it caused pain for sometime after. I did not want to risk this with the women I interviewed or questioned; it was a boundary I was not willing to cross. Perhaps this was more for me than them.* However, some of the women filled out a CMP Volunteer Application form that asks the following:

"Court Monitoring a sexual assault/abuse case can trigger emotions for the court monitor. Have you had any personal experience with these issues? Please comment."

The form was completed by 36 court monitors who entered the program from August 1993 to October 1994; of these 3 were discarded.³⁴ (see Chart 4.2) Of the 33 used in this study, 5 left this question blank, leaving 28 responses. Women who are sexual assault survivors comprise the largest single group (28.6%). About 43% had personally

³² Liz Kelly, Surviving Sexual Violence (Minneapolis: University of Minnesota, 1988) 1.

³³ Women's Research Centre, 1989:24.

³⁴ One woman was not yet in the program, one left before monitoring, realizing it was too close to home, and one did not become involved for unknown reason(s).

experienced violence (wife assault [14.3%] or sexual assault [28.6%]),³⁵ another 32.2% have experienced violence secondhand through working with survivors [17.9%] or through supporting friends or family that are survivors [14.3%]. In total, 75% of the women stated they had experienced violence against women directly or indirectly. Although I did not ask this question, 3 of the 4 survivors of wife assault stated they had taken legal action, whereas none of the survivors of sexual assault mention legal action. Of the remaining 6 interviewees who had not completed Volunteer Application Forms, 2 offered no information, 1 was a survivor and 3 worked with survivors (See Chart 4.2).

Chart 4.2 - Research Participants Experience of Genderized Violence

	Interviews	Percent	Application form	Percent
Sexual Assault Survivor	1	25%	8	28.6%
Wife Assault Survivor			4	14.3%
Identified being close to a survivor			4	14.3%
Worked with survivors in some capacity	3	75%	5	17.9%
No experience			7	25.0%
No answer	2	---	5	---
TOTAL	6	100%	33	100.1%

One woman's answer to the question of personal experience of sexual/wife assault is particularly noteworthy. She stated: "I have no memories of sexual abuse in my past."³⁶ Increasingly, women who are aware of the prevalence of sexual assault are using this terminology. Recently, a survivor of childhood sexual assault expressed it

³⁵ I use the terms wife and sexual assault while recognizing they are not mutual exclusive categories. However, these are distinctions used by in the legal system to describe many of the crimes the CMP monitors and the terms used by the participants to describe their experience. I use wife assault rather than spousal assault, because it more rightly describes the crime (see Eichler, 1987).

³⁶ From Volunteer Application Form: October 1994

another way: "We can never say that we are not a survivor, we can only say whether we remember."³⁷ Blocking memory is one form of survival. However as sexual abuse is coming "out of the closet" so are the memories. Similarly, with increasing awareness, sexual and wife assault are being named. For some of us, the identification of physical, verbal and emotional abuse as wife abuse/assault is lifting some of the weight of responsibility and shame; unfortunately, this is not the experience of many women in the cases we monitor and complainants are often blamed and shamed as part of the defense strategy.

Women live under the constant threat of violence because we are women. Consciously or unconsciously we order our lives based on this threat of genderized violence. For many women the fear comes from their own her-story of abuse; for others it originates in the stories of friends or family. Because we live under this threat or we have experienced it, all women are experts on violence against women:

The phrase recollecting our lives is also meant to remind us that, as women, we all struggle to own our lives, to reclaim them from male violence. Violence against women in all its aspects touches all women's lives directly or indirectly.

*Women's Research Centre*³⁸

4.E Summary

In this chapter, I described research participants' backgrounds and established their standpoint as grassroots feminists and experts on violence against women. The data indicate that these women are a diverse group in terms of their ethnic origin, sexual orientation, educational background, employment, age, ableness, and marital status. This variation does not necessarily reflect an organizational diversity.

³⁷ Personal conversation: March 1995.

³⁸ Women's Research Centre, 1989:24.

One area where research participants demonstrate a lack of diversity is feminism. Eight-four percent of the women identify themselves as feminists describing their “feminism” in a variety of ways. All the women speak about social change and action. The women are also experts on the experience of violence against women. They came to the CMP for many reasons, including their interest in the legal system, desire to learn and to be active in social change while supporting others. The participants play varied roles within the CMP, and their involvement collectively spanned the whole research period.

My request for this demographic information drew concerns from a few participants. Through discussing these concerns, considerations for future research emerge: most notable is homophobia in research questions.

Chapter 5: Delivery of the Court Monitoring Program's Three Aims

The Court Monitoring Program offers a unique service to women of Victoria and society at large through its dual role of advocacy and support.

excerpt from CMP brochure, May 1995

The three aims of the CMP are listed in order of priority. The first priority, acting in solidarity with the complainant, lays the foundation for the second and third goals. Similarly the second objective, compiling data, serves the third aim: taking action. When the members of the CMP developed the three aims and set priorities, they were not aware of how the aims built on each other or how they would eventually evolve. It is only through compiling these data that it became clear that the level of development of the three objectives coincided with their priority.

The CMP accomplished its first goal through monitor presence in the court room. Although the presence of monitors in the court is inconsistent, it is the most consistent activity of the program. The second objective requires a data collection tool (Court Form), a data organizing tool (the database), and a data reporting tool (reports). To date, the program has worked on the first two tools, having the most success with the data collection instrument. The third aim of the program requires development of strategies, identification of audiences, and implementation of lobbying and awareness raising. The CMP has made considerable inroads into the first two areas, with only limited implementation of lobbying and raising awareness.

All the work of the CMP falls under the three objectives of the program. These aims act as an organizing framework for the program's work and how the research participants perceive it.

5.A The First Aim: Acting In Solidarity with Complainants

Acting in solidarity with women and children complainants does not require the court monitors to “actively” support the women and children through verbal communication. Monitors generally do not initiate contact with the complainant and, in many cases, monitors and complainants have no interaction. The program assumes that monitors give support by sitting in the courtroom, witnessing and believing the complainant’s story and gathering information about the case.¹ *One woman’s custody case lasted 14 days. There was at least one monitor there every day. I monitored the case two days and was there to hear the decision. She lost custody. I never spoke to her throughout the trial. Months later we were both at an event. She approached me and thanked me for being there during the trial. She said she did not know if she would have been able to get through it without the monitors there.*

Monitor presence in the court room achieves the first aim of the Court Monitoring Program as well as laying the foundation for the remaining two aims. In addition, the work, process and progress of the CMP is greatly affected by the experience of being in the courts. The atmosphere of the courts infiltrates the whole program, setting the emotional tone. Sometimes the experience fuels the monitors to continue and at other times it overwhelms them into retreat.

In the Courts

Initially I found being in the courts very overwhelming -- it is (I believe on purpose) designed to be very formal, an intimidating and hostile atmosphere for people who are not working there. I found that this diminished a bit with time, but it did not disappear. The experience of watching court cases was very demanding emotionally. I found that I would often be depressed or angered after leaving. The anger was useful and would keep me motivated. I found that sometimes court time was very disjointed - you would only receive bits of information on a case

¹ For discussion of how monitors’ presence affects complainants, see Chapter 6 - Perceived Effects on the Complainant.

-- this was frustrating. In general I found it very informative. It helped me to learn first hand vs. written information on how women are being treated in our judicial system.

Monitor: May - October 93 (questionnaire)

From the beginning, the founders and members of the CMP were concerned that being in the courts would be a negative experience. A lawyer who attended the November 1992 organizing meeting told us that she found the provincial court threatening. She recommended that we prepare a common statement and go to court in pairs to combat intimidation. Monitors and CMP coordinators continue to repeat this warning, which reflects the ongoing lived experience as court monitors and their memories of the difficult early months of the program when we fought for the right to wear an identification button.²

I asked all the research participants how they feel/felt in the courts. Responses fell into three areas: the relationship between court room players; monitors' relationship with court players/staff; what respondents thought of the court process.³ I begin with an overview of a monitor's day in court to contextualize the respondents' experience.

5.A.1 A Monitor's Day in Court

Court sits from 10:00 am⁴ to noon and from 2:00 p.m. to 4:30 or 5:00 p.m. Both sessions have a mid-way break. Generally monitors sign up for one half-day session per week. Monitors arrive before court starts to check the Daily Court Listings,⁵ to see what is scheduled for the day and record case information. By referring to the provincial court listings, a monitor can identify relevant cases by the listed charge

² See Appendix A - C.5 Critical Issues: The Button Issue for more discussion.

³ See Chapter 7 for more discussion of relations between court monitors and court players/staff.

⁴ Starting time in the morning varies by courtroom. Remand court starts at 9:00. Generally the trials we monitor do not take place there. Monitors go to remand court only if there is no other activity. Other courts sit at 9:30 or 10:00 am.

⁵ Each morning a list of the day's court cases is posted on a large board. Information on provincial court cases includes: name of defendant, charge code, age of case, procedure scheduled (full trial, preliminary plea, etc.), case number, lawyer, court room, whether the defendant is in custody or not.

codes. Supreme Court cases do not have codings. Cases with "Regina vs." may be relevant, so monitors go to the Supreme Court Office and ask what the charges are in "Regina" cases. Monitors also check the CMP communication binder for instructions or information from a previous monitor. Using this information they decide which case(s) to monitor.⁶

The monitors go in the court room when it opens and they wait for the case to start. Sometimes it is necessary to wait through a couple of cases before the relevant case is heard. Also, cases can move to another court room, be canceled or postponed. Changes are not always mentioned, so if a monitor does not ask the bailiff, she may find herself sitting in one court room only to discover that the case has been moved or canceled. Once the case begins, monitors take notes. Monitors also collect valuable information before the session begins, on coffee breaks or between sessions in the halls or court room, where it is not unusual to overhear the crown counsel and defense lawyer discussing a case.

Monitors do not approach complainants and all interactions are at the discretion of the complainant. If the complainant asks the monitor to leave, she does so. The CMP discourages monitors from talking to the media. If someone approaches a monitor, she has a "business card" and a CMP information sheet on the CMP that she can hand them. Monitors are also encouraged to direct inquiries to VSWAG or the CMP Coordinator.

At the end of their shift, monitors write the following in the CMP communication binder: the case they monitored, a brief note on what occurred, a summary of what

⁶ The CMP developed a Monitoring Priority/Preference List to guide monitors in making the decision on the best case to monitor. (see Appendix A).

they expect at the next session, and their recommendation as to whether a monitor should attend the case the following session.

As monitors usually only monitor part of a case, they may not know the outcome of a case they monitored until they return to court at a later date. At this time, they can ask the administrative staff for information on recent cases. When the monitor has a completed CMP Court Form, she takes it into VSWAG after court or hands it in at the next meeting.

Court can be quite boring. There are tedious procedural discussions, as well as endless questioning and re-questioning about issues that appear to be obscure and meaningless (e.g., the colour of his shoes, the location of the couch, which lights were on, did he say this or that first.)

Monitoring is a strange experience, I compare it to being a fire fighter...you go to court, there may be no cases to monitor that day or you spend hours listening to procedural arguments that seem irrelevant at best. On another day you hear horrendous testimony and witness merciless attacks by a defense lawyer. It is difficult to prepare. It is difficult to live with the contradiction of wanting to be there to support a complainant but hoping there are no complainants, while always knowing there are victims of violent crimes whether they become complainants or not.

5.A.2 The Court Experience

The first time I was there was very traumatic. I was so shocked to see men let out of court when they had battering charges brought against them and no help or none seemed to be forthcoming. I felt anxious and fearful some days, it reinforced my ideas of being scared to be female on this planet.

Monitor: Apr. - June 93 (questionnaire)

Nine interviewees and 18 questionnaire research participants responded to how they feel/felt in the courts. Their answers were diverse, from positive (very confident,

empowering) to negative (angry, very intimidated). I separated their comments into three categories: the atmosphere in the courts, their reaction to testimony, and how they felt in the court.

5.A.2.1 Atmosphere in the Courts

There was an energy -- don't know how to describe it, it certainly wasn't positive energy...

Monitor: Feb. - Dec. 94 (interview)

Seven responses addressed the atmosphere in the courts. They unanimously described the courts as unwelcoming (oppressive, hostile, pervasive air of righteous indignation, austere and impersonal). One woman comments, "what a bizarre place for people to work and spend all their time. It's like a boys' club. It's so alienating."⁷

In part this atmosphere is created by the court room players: the language, dress and ceremony demanded of their trade. A large desk places the judge above and separate from everyone else. The judge's entrance and departure from the court room are ceremonious⁸ and people must stand, and generally bow, as they enter and leave the court room when the judge is present. As well, court rooms are locked unless a court administrator is present, and there is always a bailiff or sheriff in attendance. This ceremony and security create an air of formality and separation, as evident in one monitor's comments:

I was surprised how much it was intimidating. I found the whole thing intimidating from the courtroom set up to locking and unlocking the doors and not speaking so you can be heard.⁹

Also, the physicality of the building is extremely formal and unwelcoming. In some courts, a fence separates the public from the court room players and the defendant. The court room atmosphere, its physicality and ceremony, are not haphazard. It is

⁷ interview: October 1994 - **

⁸ The judge enters the room by a side door, ushered in and out by a sheriff.

⁹ Interview: January 1993 - July 1994

deliberate, formal and constrained -- it creates the environment within which a trial takes place. It has a direct effect on the experience of court monitors and others who find themselves in it.

5.A.2.2 Reaction to Testimony

The most difficult part of the cases was watching the victims be forced to defend their own behaviour and re-tell their experiences.

Monitor: May - October 93 (questionnaire)

Although monitors expressed admiration and awe for the courage of women and children who take the stand against their oppressor, the experience of witnessing the testimony is overwhelmingly negative. The words they use are: anger [7], emotionally difficult and stressful [4], frustrated [2], hurtful [2], distressed, depressed, upset, and difficult. One monitor was physically sick from what she heard:

It was very difficult emotionally to hear the trials, and the outcomes because it seemed that the "bad guys" always won. The cases were thrown out or the women were not believed or the sentences were a joke. The first time I went to court I was actually physically sick. There was such a huge gap between where I thought the judicial system was and reality.¹⁰

Another woman writes of her frustration and anger:

...as I heard more and learned more of how court cases are conducted, I often came away frustrated and distressed...I would be angry at the attitude towards female witnesses as though their testimony was unimportant, untruthful. I was often appalled at the number of times wife assault and violence was excused and charges dismissed due to lack of evidence or "your word against mine" syndrome. (In my view every battered woman needs a loaded camera kept handy to have her bruises photographed immediately, otherwise, her evidence will have faded and healed sufficiently to be disbelieved when her case comes up).¹¹

A third monitor speaks in disbelief:

sometimes I feel really upset after leaving the courtroom, you hear something really awful and it's always appalling to me and there is

¹⁰ Questionnaire: Fall 1993 - Spring 1994

¹¹ Questionnaire: September 1993 - September 1994

always a level of surprise -- I don't know how people can do that to each other.¹²

Some of us took our unresolved experiences of abuse with us. One monitor writes "the agony of hearing witnesses describe the abuse hit too close to home and I found the experience too draining emotionally."¹³ *My own experience of being in the courts comes back to me as flashbacks of emotions and pictures. I never got over the feeling of intruding into a world where I did not belong, listening to painful stories in an alienating environment -- watching women and children being attacked and manipulated by defense lawyers who focused on winning rather than hearing their truth. It's a minefield -- you just don't know when it will trigger you...*

One woman thought she had dealt with all her own "stuff" and could listen without getting upset. Then she overheard a defense lawyer in the elevator refer to sexual abuse of a child as "kiddy diddling". She was devastated. I asked her in the interview how she had been affected by her experience in the CMP. She responded, "certain parts of my history of sexual abuse, which I thought I had dealt with [were] dragged up, which gave me the opportunity to clear it. It was helpful to me."¹⁴

The primary task of the court monitor is to witness testimony. Its effect on monitors at an experiential level is the premise on which "women as expert" is based. The monitors' responses support previous research: the court process represents a second rape. Lee Madigan and Nancy Gamble assert that the second rape is at its worse in a criminal trial, but they define the second rape in more general terms as "the act of violation, alienation, and disparagement a survivor receives when she turns to

¹² Interview: May 1994 - **

¹³ Questionnaire: February 1993 - **

¹⁴ Interview: June 1993 - February 1995

others for help and support."¹⁵ They also claim that "It is a rape more devastating and despoiling than the first."¹⁶ This research also points to the secondary trauma experienced by women who witness court room testimony. For some women, monitoring is their first experience of hearing testimony; for others, monitoring represented a re-traumatization as it triggered their own experience of abuse.

5.A.2.3 How Court Monitors Feel in the Court Room

Various, sometimes I feel angry. I always feel vigilant, always - who's sitting in front of me - who's sitting behind me -- where the sheriffs are -- if the judge is aware of the court monitors in the court room. A real sense of having all your sensory receptors on full -- not tense but ready...

...generally I feel okay, oh yeah I feel as a citizen it is my right to be there, it is my right to document, and if I feel small that day I remind myself of that.

*Monitor: May 94 - ** (interview)*

The greatest number of women [10] reported mixed feelings about their court experience. Another six reported exclusively negative feelings and two women said they felt that the court room experiences were positive. The negative responses (total 16) included: very intimidated [6], uncomfortable and unwelcomed [3], observed, vigilant, overwhelming, anxious, fearful [2], vulnerable, stressful, defensive, conspicuous; whereas the positive (total 12) were comfortable [3], usually okay [2], very confident, empowering, fulfilling, enjoyable, excited and curious, informative, fine. The contrast of positive and negative feelings is captured in one monitor's description of feeling both:

I felt a mix emotions at first, confusion and fear about how I would fit in and the kinds of alienation I might experience. Also excitement and curiosity about doing this, and what I would learn.¹⁷

¹⁵ Lee Madigan & Nancy Gamble, The Second Rape: Society's Continued Betrayal of the Victim (Toronto: Maxwell Macmillan, 1991) 5.

¹⁶ Madigan & Gamble, 1991:7.

¹⁷ Questionnaire: October 1994 - **

Participants who had mixed feelings point to influences that affected how they experience the court room. Six women talked about the influence of being alone versus being with another monitor. Monitors feel more comfortable if they are not alone, as one monitor expresses: "I hate being in court by myself. I feel very vulnerable...when I am with someone else I feel okay."¹⁸ Five women indicated that their feelings have changed over time. One woman's experience went from exciting to difficult, whereas the remaining four women felt better over time. One monitor explains: "The first time I monitored a case I was a little nervous...my feeling was that I had every right to be there and I quickly felt comfortable in the process."¹⁹

5.A.3 In-court Relations with Court House Staff and Courtroom Players

Founders and members of the CMP expected people in the court house to respond to the monitors with hostility. However, comments from 20 participants²⁰ spoke positively about relating to court personnel. The monitors generally stated positive comments about specific interactions with court staff/players, whereas they expressed negative comments about the general atmosphere in terms of feelings. For example: "There was a nice lawyer...He was helpful, but I felt that the lawyers and judges were annoyed that we were there."²¹ and "I know a lot of people in the system don't like us as court monitors."²² Although some respondents identify people in the courts as a singular group, the majority differentiate between their relationship with court house staff (i.e., sheriffs, court reporters, administrative and clerical staff) and courtroom

¹⁸ Interview: October 1994 - **

¹⁹ Questionnaire: February 1993 - March 1994

²⁰ Eleven of the 12 interviewees commented, as I directly asked them about their relationship with court house personnel. I did not directly ask this question on the questionnaires, however 9 women did comment on these relations.

²¹ Questionnaire: June 1993 - April 1994

²² Interview: October 1994 - **

players (i.e., lawyers, crown counsel, judges).²³ Monitors perceived their relations with court house staff as more positive than relations with courtroom players.

5.A.3.1 Relating with Court House Staff

Sixteen of the twenty women referred to their relationship with court house staff, with only two describing these as negative interactions (both regarding sheriffs). One states: "with the sheriffs I feel a little more uncomfortable -- they are nervous of any little distraction."²⁴ The other 14 women's comments on courthouse staff ranged from "being fine" to "being incredibly helpful". One monitor comments: "I'm encountering help and consideration from officials in the courthouse which is encouraging. So far I haven't had any hostile experience with these people."²⁵ Not only have individual monitors enjoyed good relationships with administrative staff of the court house, the CMP has greatly benefited from the help and support of the staff. Most notably, the Manager of Court Registry has been a tremendous asset. He conducted court orientations for new monitors, offered assistance in finding our way through the system, made himself available to answer questions, offered to speak on our behalf to funders, established a location for a CMP communication binder in the court house and helped us develop good relationships with some people within the court house. The court house staff have been invaluable to the CMP in learning court room procedure and gathering information about the court system and individual cases.

5.A.3.2 Relating with Court Room Players

Monitors' interactions with court room players (i.e., judges, lawyers, crown counsel) have been less consistent. Of the seventeen respondents who referred to

²³ Some women talked in general terms about "the people" in the courthouse [6], others talked about people in terms of the roles they played in the courts [10]. Others referred to a difference between courthouse staff and courtroom players [4].

²⁴ Interview: June 1993 - February 1995

²⁵ Questionnaire: October 1994 - **

these relations, seven women's comments were positive, six were negative and four either neutral or contain both negative and positive comments. *I had some very good interactions with Crown Counsel. Two, particularly, initiated conversations with me regarding a case. As the following comment from a woman suggests, my experience was shared by other monitors:* "Generally I have good experience with the Crown Counsel and people end up being friendly with you so it makes it feel better."²⁶

Certainly, the time period a monitor was involved in the program had an influence on her experience. In the beginning, the button issue caused tension and at that time the CMP Coordinator found the Crown Counsel to be hostile. The Coordinator also believed that courtroom players see the CMP as threatening and fly-by-night. Regarding judges, she states: "judges still don't take us seriously, very few are openly hostile, a lot of indifference. One from the beginning was quite interested -- he is the only one who met with me."²⁷

However, attitudes changed over time and court players offered to speak to the program. For example, a judge suggested to one court monitor: "We gave you six months and you're still here -- we thought some Saturday we could all get together and talk about your program."²⁸ A sheriff offered to talk to the CMP and to "show us the ropes." Similarly, the Administrator of Crown Counsel said he supports the program and is willing to speak to the CMP about Crown's role in court.²⁹ Several respondents repeated positive statements from court room players about the CMP.

²⁶ Interview: May 1994 - **

²⁷ Interviewed December 1994

²⁸ minutes: September 7, 1993

²⁹ Unfortunately the suggestions put forth by a judge and the Administrator of Crown Counsel for formalized communication between the court room players and the CMP were not implemented. It is likely the CMP did not follow up on these suggestions because of poor timing. The suggestions came at a time when the CMP was at a crisis point. The program was regrouping and attempting to develop some stability. It was difficult to "meet" the outside world, particularly those we were scrutinizing, when we were in the process of establishing our collective self. There was also uncertainty about what kind of relationship the CMP wanted to have with the court room players.

5.A.3.3 Influences on Interactions with Court Players/ Staff

A number of issues influenced the interaction between court monitors and court players/staff including: individual characteristics, the case, consistency of monitoring and who initiated contact. To a great extent, the interaction depended on the individuals and the case. When asked if her interaction with court staff/players changed over time, one monitor responds: "by case, not over time. Sometimes friendly, sometimes confrontational"³⁰ and another says: "it's a personality thing."³¹ One monitor talked about going into a court room and sitting separate from another monitor. She describes herself as "my 48 year old self -- looking pretty average wearing a navy raincoat."³² She notes the other monitor who "looked more radical" was harassed whereas she was not.

Certainly the fear with which some of us entered the court affected our interaction in the courts. *I generally avoided those working in the courts. I asked very few questions, opting for missing a trial rather than asking a sheriff what was going on. However, when people approached me, it was generally friendly. People were helpful and respectful of my impressions and experience of the court. Over time, I felt more confident and secure in my right to be there.* For others, fear did not stop them from interacting and challenging the court room players. One monitor's lengthy description of her experience in the court house bears repeating:

Firstly, nervousness and wariness of judges and court officials. I had been forewarned by the Victoria court monitors. However, I immediately made friends with the courthouse clerks. They gave me a copy of the criminal codes of Canada...after I had an interview with the courthouse manager I was permitted to receive a 'daily court list' ...[regarding a meeting with a judge who asked her to remove her button while in the courtroom] ...he gave his view and I mine -- the result, a friendly smile and permission to wear the button anytime and so may any of my friends

³⁰ Interview: February - December 1994

³¹ Interview: June 1994 - **

³² Interview: January 1993 - July 1994

[other monitors]. The Crown Counsel was most helpful and friendly when I asked questions about procedures, in fact he stood up for me in court one day when a defense lawyer tried to have me thrown out. (I had had a row with him in the hallway.) The judge also stood up for me, remembered my name and said my conduct was irreproachable and I should stay...One or two defense lawyers openly smirked at me and the button, but one or two came up to me and said we were doing a good job and asked when we were going to get out some facts and figures.³³

This woman monitored in the Western Communities courthouse where the atmosphere is perhaps less intimidating and where there is more consistency. Certainly the consistency of court room players had a positive effect on developing a respectful and friendly relationship. A monitor who went regularly to the Victoria courthouse responded to the question of change over time by saying:

People are more friendly now. One lawyer who I saw every week started saying hi to me. People are getting friendly and accepting us, especially if I was going the same time and seeing the same people.³⁴

Generally the tone of interactions was situational, influenced by the personalities of those involved and the site of the interaction.

5.A.3.4 Content of Interaction

The content of the interaction depended to some degree on who initiated contact. Predominantly, the monitors initiated interactions with the courthouse staff/players to elicit information. Generally this was a good exchange, as one monitor expresses:

[A] surprising willingness of office staff and sheriffs to explain, describe and supply information [to me] as an interested observer in the court rooms. I was always accepted and treated as a legitimate participant in the proceedings.³⁵

³³ Questionnaire: April - October 1993

³⁴ Interview: June 1993 - **

³⁵ Questionnaire: September 1993 - September 1994

When the court staff/players initiated contact with the monitors, the interaction was more varied. Often they approached monitors to find out who they were and why they were in the courts.

I was finding defense lawyers or sheriffs asking who I was -- had to give a crash course on the CMP. Some clerks recognized me and there was a beginning of a friendship, others saw the button and knew why I was there.³⁶

Interactions also included discussing cases, procedures and law. One monitor wrote on her Court Summary Form that the Crown Counsel was comfortable talking with her about a stay of proceedings, and he stated: "the defendant preyed on young children and was a real bad one." On another Court Form Summary, a monitor stated that the Crown Counsel thanked the monitors for being there.

The context of the interaction influences the relations between court room players and monitors. Court monitors are there to observe and make judgments on the court players and the legal system. Court monitors assume a bias and are looking for it. Given this situation, I am surprised by the positive response monitors have received from many people within the legal system.

The positive relations between court monitors/CMP and court room players/court house staff have been an unexpected bonus for the CMP members. One monitor and I talked at length about these relations. She saw positive possibilities:

It doesn't feel like co-opting to me, it feels like a very positive mutually respectful way of going about it... I think that they are not all the same. I think that the CMP has an opportunity to offer some tangible support to people who are trying to do it [make change] within the system.³⁷

³⁶ Interview: February - December 1994

³⁷ Interview: January 1993 - July 1994

Despite the good relations with those working in the courts, many monitors talked about the isolation of being in the courts and about feeling separate from the program. The CMP attempts to deal with the intimidation and isolation of the court house through monitor support, a buddy system and the in-court communication binder.³⁸

5.B The Second Aim: Data Collection

Many monitors expressed frustration with their inability to access information and reports from the CMP database. In a sense, the database was a tangible fruit of their labour. One monitor expresses her frustration:

Court monitors had earned the respect and acceptance in the courts, however in the seven months I was a court monitor no results were forthcoming. No statistical data emerged from the computer and as far as I know a year later, October 1994, still nothing published. One became disenchanted.³⁹

The monitors and the program share visions of many hopeful outcomes and uses for the database. They envision a database that will allow participants to produce regular reports on statistics of the cases monitored (probably quarterly); send reports to relevant court associates, government agents and departments, local groups dealing with the courts, and the media; use reports for a basis for lobbying for change and producing regular media coverage; make information on particular courtroom players available to organizations that work in the court system with women complainants as well as to complainants, allowing them to prepare for the courtroom; and produce a biography and report on various court room players, such as judges, lawyers and crown counsels for court monitors and others going into the system. The end goal is a

³⁸ For more discussion see Appendix A - Critical Issues: Volunteer Development and Support.

³⁹ Questionnaire: April - October 1993.

coalition of CMP programs across Canada linking together information to produced nationwide reports.

The data collection is certainly not complete and would not stand the scrutiny of rigorous research methodology; however, it remains valuable. The recent development of a data collection instrument (a questionnaire with accompanying instructions) and the training of court monitors in the collection of data are increasing the "scientific integrity" of the data without losing the value of data collection by grassroots feminists.

The unique position of the women collecting the data remains its most valuable aspect. Most data on court room experience has been collected by "experts": those trained in the fields of research and law. Court monitors bring their expertise as women and with it, perhaps, a different perspective.

At end of the research period, the database was not completed and the frustration continues, although not without hope. A volunteer with programming experience has taken on the task. With his input, program participants have realized the true extent of the work and expertise required to create their visions of a database. Perhaps it will be necessary to re-assess the original vision and accept the limitations of what will be possible in order to have reports produced in the near future. The database continues to promise valuable information and a basis for action and lobbying for legal change.⁴⁰

5.C The Third Aim: Taking Action

The third aim of the Court Monitoring Program is "to take action as a group around issues that come up as a result of the process of monitoring the legal system."⁴¹ The CMP has done little in this area because of the constraints of the program, the

⁴⁰ In December of 1996, a member of the CMP who participated as part of the Women's Studies 301 class, completed the database program.

⁴¹ From the Court Monitoring Program Statement of Aims as adopted at the May 19, 1993 meeting.

lower priority of this third objective, and the difficulties it presents. Nonetheless, the CMP had some success via media contact and letter writing.

5.C.1 Media

In March 1993, the CMP first identified outreach and media as an important area of work. Media contact has two purposes: promoting the program and raising awareness of the program's concerns about the legal system. Media exposure is risky: correct wording is very important. The CMP does not want to make a statement that the media may misrepresent or that may be hurtful to complainants. This fear is embedded in the work of the CMP, as its members constantly witness examples in the court room of words being manipulated and reframed. In an attempt to control possible problems, the CMP developed a common statement for the media and warned monitors to be careful talking to the media. However, shortly after entering the courts, heightened concern led to VSWAG advising monitors not to make statements to the media on behalf of VSWAG.⁴²

VSWAG considers media contact an area where the CMP does not have autonomy from VSWAG. The CMP public image and voice represent the greater membership of VSWAG. For this reason, formal media contact generally involves the CMP Coordinator. Contact takes the form of press releases, letters to the editor, radio interviews, and phone calls to the print media.

A less problematic method of media contact is report production. By producing and sending out regular reports to the media, community organizations, relevant government agencies and court room players, the CMP hopes to raise awareness and lobby for change. This remains a long term goal of the program that members revisited

⁴² An Agreement of Confidentiality introduced in May 1993 requires all monitors to agree not to speak to the media on behalf of the CMP or VSWAG.

at length in the planning meeting of January 1995. However, without a functioning database this goal remains unachieved.

Although exposure was sporadic, the CMP successfully promoted the program through the media. During the research period, there were nine documented contacts with the media, five involving promotion of the CMP, resulting in the recruitment of new members.⁴³

5.C.2 Letter Writing

Although members never formally approved it, the CMP adopted letter writing as a course of action. Members wrote letters in response to issues arising in specific cases or about general conditions in the courts. The issues the CMP addressed in action letters include voice amplification in the provincial court rooms;⁴⁴ inappropriate behaviour of lawyers in the courts; alternatives to children testifying in the court room; inconsistency of Crown Counselors; and lack of response by police to allegations of wife assault. Over the 28 months of this study, the CMP wrote and sent seven action letters while a further nine actions identified in minutes were not completed.

Court monitors record concerns regarding a case on an Action Form. However, throughout the research period no-one took responsibility for writing action letters. In the early stages the Coordinator asked those interested in taking further action to stay at the end of the meeting to write a letter. *Given the length and time of the meetings, I found that surprising if anyone was willing to stay. Also the Coordinator at this time had a young daughter who was more than anxious for the meeting to end. I never had the*

⁴³ Six research participants state they heard about the program through the media.

⁴⁴ Provincial court has microphones but they are only for recording. They do not amplify the witness's voice. This increases the anxiety and discomfort for some witnesses, particularly women and children whose voices are softer. The court rooms are large with high ceilings and background noise. In some cases a witness is asked to repeat themselves or speak up many times. Repeating stories of abuse are painful in a courtroom of strangers without having to yell them so that the judge can hear.

necessary energy to draft a letter. Later in the program, the person who raised the concern was responsible for drafting the letter.

Although monitors voiced many concerns, they wrote few action letters. Why CMP members did not write more action letters is not simple to determine and is open to some speculation. Certainly there are the usual answers: not enough time and interest in writing letters and it was not the first priority of an overtaxed program. In addition, the process was difficult and lengthy. Letter writing was often painstaking as monitors struggled over the "right" words to use to make their point clearly. Writing a letter also involved bring a draft to the next meeting and getting approval. Considerable discussion could take place over one letter, taking precious meeting time. Approval required a minimum of two weeks, although it usually took much longer. In addition, putting the experiences into a language that a bureaucrat could understand was not a rewarding or cathartic experience.

I found the process more than I could handle. Taking all the painful feelings and putting them into a language for a bureaucrat did not coincide with the debriefing process for me. I found it disempowering to take the feelings out of the experience, it became akin to the whole court process at some point. I was one of the people who debriefed a lot and did not fill out Action Forms or write letters.

Generally the CMP did not receive responses to action letters very quickly, and at times, we had to write additional letters. The responses often did not address the concerns raised by the CMP. The only possible immediate positive outcome of letter writing may be that court room players and bureaucrats are aware that members of the public are watching and reacting to court room experience.

In November 1994, the CMP launched its one public awareness campaign "Drunkenness is not a Defense". Eight women's organizations endorsed the poster and letter writing campaign. The CMP distributed over 200 posters and seven hundred petition letters.⁴⁵

5.D Summary

From its inception, the CMP had concern about media contact and writing letters: we feared alienating potential allies, losing credibility, and hurting the women we wanted to assist. How do we walk that fine line of lobbying with credibility and integrity in the alien world of bureaucracy and law? As citizens we have the right to be in court and to lobby our government officials, but we are also attempting to build our credibility as an organization in order to get funding and to have a voice that people respect. Furthermore, we were learning from the courts how women are treated and the paradox of women's emotional tone.⁴⁶ Being in the courts and watching the horrendous treatment of women affects how we work as a program. It increased our sense of urgency for social change, but also paralyzed us as we tried to find a way of saying something that would be heard.

Prioritizing of aims has remained an important issue. As the CMP struggles with its complexity, some monitors became frustrated with the program's lack of attention to the second and third aims. One monitor states: "It is disempowering in a way to go in and examine all the problems and not taking it anywhere further."⁴⁷

Another monitor talks about her frustration with the database:

⁴⁵ Four hundred letters were returned to VSWAG for mailing to Minister of Justice Allan Rock. It is difficult to know how many of the other 300 letters people signed and sent directly to Rock and how many additional letters other sponsoring organizations copied, signed and sent to him. For outcome of criminal code change, see Elizabeth Sheehy, "A Brief on Bill C-72: An Act to Amend the Criminal Code ('Drunkenness Law') (Ottawa: NAWL, 1995).

⁴⁶ For women to be 'believable' as victims of violent sexualized crimes, they must show emotions when testifying, however if they are too emotional they are not considered rational/credible.

⁴⁷ Interview: October 1994 - **

I was frustrated/dissatisfied as I sat in the courts with very general categories on the form to complete, always wondering just what was the purpose. What would be useful in terms of database input.⁴⁸

Some monitors left the program frustrated by witnessing the horrors in the court room and wanting to do more than passively supporting the complainants. In some cases, monitors felt that not taking action was a further assault on the complainant. Many monitors felt outraged witnessing the lack of respect for women and children's words, bodies, self-determination, and experience. To walk away and do nothing, say nothing felt like complicity with the second assault for some monitors. In part, monitors' frustration has been due to the "promise" of the other two aims, a promise that the CMP has only minimally met. However, for other monitors, their political activism was satisfied through supporting the complainant. One monitor notes:

A woman coming up to me after testifying and saying I'm glad you are here, is being effective.⁴⁹

⁴⁸ Questionnaire: January - July 1994.

⁴⁹ Interview: May 1994 - **

Chapter 6: Effects of the CMP

Cops coming up to me and comparing us to Mothers Against Drunk Drivers, lets me know that we are being effective.

*monitor: May 1994 - ** (interview)*

The perceptions of the CMP participants do not represent a monolithic view of the program, rather they reveal thought provoking and differing perspectives. However, in their totality, these comments provide insights into the research participants' perceptions of the effects of the CMP.

6.A Effects on Women who Monitor

What I had seen as one of the more valuable things of the program is the opportunity for women to gain that experience, to have some time to know the justice system because at some time in their life they or someone they know is going to have to deal with it for something. The more of us that have the experience the better.

Monitor: January 1993 - July 1994 (interview)

I asked the 11 interviewees who were monitors three questions regarding how monitoring affects them: in general terms; their perception of the legal system; and their perception of self, men and women. I also asked six interviewees if the experience of monitoring changed their attitude toward laying charges if they were a victim of wife or sexual assault. In addition, without prompting, five of the interviewees and 14 questionnaire respondents referred to how they are affected by monitoring. I also asked the 12 interviewees how they theorize the effect of monitoring on women who monitor.

6.A.1 How the Monitors are Affected by their Experience of Monitoring

I combined the answers to the general interview question; "How do you think you have been affected by your involvement in the CMP?" with the non-prompted answers of both interviewees and questionnaire respondents. Of the 32 respondents

who monitored, 25 offered a total of 41 responses. The number of responses per respondent, ranged from one to five answers. I grouped similar responses together in seven categories as detailed in Chart 6.1.

Chart 6.1 - Effects of Monitoring on the Women who Monitor

Responses	Question	Interview	Total
Learn/awareness/education	9	7	16
General overall effects (<i>worthwhile [3], fulfilling [1], enjoy [1], useful [1]</i>)	5	1	6
Specific emotional effects (<i>anger [3], depressing [2], triggers abuse her-story [1], overwhelming [1], frustration [1]</i>)	1	5	6
Activism	3	3	6
Empowering	2	1	3
Behaviour (<i>how they talk with others</i>)	0	2	2
Attitude (<i>people-hating phase/cynical</i>)	1	1	2
Total Number of Responses	21	20	41
<i>Number of Respondents</i>	<i>14</i>	<i>11</i>	<i>25</i>

The most cited effect of monitoring is learning or raised awareness (16 of the 25 respondents). Six women spoke in overall terms using positive words to describe the monitoring experience: worthwhile, fulfilling, useful, enjoyable, and empowering.¹ Six women listed specific emotional effects which are consistent with court room experience: feelings of anger, depression, being overwhelmed, frustration, and retraumatization. In reflecting on her conversations with the monitors, the Coordinator points out the retraumatization that many women may experience:

they can't sit through these cases without being retraumatized. It's just impossible. In talking to monitors one on one, debriefing and such, it brings up stuff again because we have all been touched by violence...it's impossible not to be.²

One woman emphasizes the weight of the experience coupled with her increased knowledge:

¹ I list empowering separately because it has a different connotation than the other words. Empowering has more potential for long term effect and changed behaviour. "empower: give power to, make able, (person to do)" J.B. Sykes, ed., *Concise Oxford Dictionary* 7th Ed., (Oxford: Clarendon Press, 1982) 316.

² Interview: December 1994 - **

Yes, I definitely do [think there is an effect], especially after coming out of the courts, it's a very weighty, heavy thing. It can be very depressing and I think it's just making me more aware...a lot of times it can provoke fear and suspicion, a negative side effect at times, even paranoia. A positive effect as well, a lot more aware.³

Six women referred to the opportunity to be active, to participate in changing the situation, and how these have been positive for them. Two of them claim: "I feel good to be contributing my time,"⁴ and "I feel like I'm doing more and more valuable things... doing something actively involved towards change."⁵

Two interviewees mentioned how the experience of monitoring has influenced how they talk to other people. One woman has changed how she communicates with her children: "I have been a lot more open with my children, telling my son 'you need to listen' and my daughter 'you have the right to say no, to be careful'."⁶ She also points out how she has a different communication approach to men: "If I was approached by a man, I would be a lot more clear in my communication, very direct, very rude."⁷ She further explained that she had been raised to talk to people in a certain manner, with a level of "politeness" that she now feels could be misconstrued as consent or encouragement in the courts. She is sad to have to be "very rude" but feels it is necessary to protect herself. This concurs with Catharine MacKinnon's assertion: "'I don't want to' is not in most women's sex-role learning."⁸ Other feminists share this position, comparing the different socialization of men and women and how it affects rape scenarios and is (mis)construed in the court room.⁹ This monitor's comments aptly

³ Interview: October 1994 - **

⁴ Questionnaire: September 1994 - **

⁵ Interview: October 1994 - **

⁶ Interview: January 1993 - July 1994

⁷ Interview: January 1993 - July 1994

⁸ MacKinnon, 1987:90.

⁹ Gilligan (1982), MacKinnon (1987, 1989), Madigan & Gamble (1991), Stoltenberg (1989).

demonstrate their assertion that women are socialized in one way (female standards) and judged in a court another way (male standards).

One questionnaire respondent reported that the experience of monitoring changed her attitude. Her entire questionnaire had a very different tone than that of the other respondents and in many ways was comparable to reading someone's diary of a personal struggle. It is an insightful account of her experience interwoven with her vulnerability and searching for answers that continued to elude her. *I feel honoured to read it. At times she reminds me of first year Women Studies' students and of the days when I first peeked out from under my veil of denial.*

I felt completely overwhelmed at how bad it was. The whole experience sparked a real people-hating phase for me. I basically resented/hated anyone who wasn't actively working to make our world a better place...I was very angry.¹⁰

The distribution of responses in four of the seven categories is generally consistent between the respondents who answered via questionnaires and via interviews. The three exceptions are: general overall emotional effect, specific emotional effect and behaviour. These exceptions may be due to the method of reporting: interview or questionnaire. The higher number of overall emotional effects cited by questionnaire respondents (5:1) may be due to the limitations of writing a response. Interviews allow for more detailed answers. Interviewees spoke more about specific emotional effects (5:1) and behaviour change (2:0). In addition to providing more time for detailed answers, interviews offer the personal contact that may elicit candid responses that include emotional effects and behaviour change.

While discussing how monitoring had affected her, one woman said she now questions whether she would lay charges if she became a victim of a violent crime: "If I

¹⁰ Questionnaire: May - September 1993

was assaulted on the street, I would have very very serious reservations about going to court, because there is so much pain you go through.”¹¹ Her disclosure led me to ask this question of five other women.

6.A.2 Does Monitoring Affect Women’s Choice to Go to Court Themselves as Complainants

If I was ever a complainant I would sure know lots of stuff and make sure everyone is on their toes. It makes a difference just to pass the information out that we have a right to the system.

*Monitor: October 1994 - ** (interview)*

Six women discussed how they thought monitoring would affect their decision to press charges if they were a victim of a violent crime. For four of the six women, it is a hypothetical question. One woman ponders what she would do if raped:

I would really have to think about it because of the length of time it takes to prosecute. I always thought ideally that I would, but now you ask...I remember passing a woman [seated in the court house hallway] waiting to have it over, and the case being delayed again.¹²

Before monitoring, two women were sure they would press charges if assaulted, now they question whether they would.

For two other women, it is not hypothetical. One woman is planning to charge her abuser. She entered the program to prepare herself for court. The other woman continues to struggle with the question of whether to lay charges. They both confirmed that participating in the program has not changed their decision to charge; however, it has changed how they see the experience and their expectation of the courts. One of the women explains:

I still want to do it and I am still terrified of doing it, the terror is a little different. Before it was questions of what will happen. Terror of what they will ask. I know now I have some power in what I can say and what I have to answer. I still don’t think it is as bad as I imagined it to be. Yes, for sure it has given me tons of strength in terms of just

¹¹ Interview: June 1994 - **

¹² Interview: June 1993 - **

demystifying the structure and learning how it is set up, what things happen, it won't be so alienating and I won't be as frightened as I would have been.¹³

She went on to explain how isolating it is to be a survivor and how monitoring has given her a new avenue to deal with the abuse:

Being a survivor is something that no one talks about, it's like there is no one out there, there is no one else to talk to, I don't know of anyone...it overpowers my life. So it [monitoring] was a good way of seeing that this happens and it is out there. It is tangible and people are dealing with it and also taking it to another level to politicize it. It has happened to me and how can I incorporate it in my life beyond therapy. So that has been a very important thing.¹⁴

The founders of the CMP did not foresee the potential for survivors to gain knowledge, confidence, empowerment and healing from monitoring. In The Courage to Heal, the authors argue that "Healing moves out from the Centre". While recognizing healing begins with the self, they state that "it does not stop there...Part of your healing is healing of the earth."¹⁵

6.A.3 Effects on Perception of Self, Men and Women

I wondered if monitoring court cases would affect how monitors felt in their relationships with men, so I asked the eleven interviewees "Has your participation changed the way you see yourself? women and men?" Generally this question came as a surprise to research participants. Answers did not come quickly as women searched for answers. Women tended to answer this as one question.¹⁶ Five said no, with one woman stating, "My reality testing was right on."¹⁷ Four women said yes. Two women had mixed responses (both answering yes to self; one answered no to men and women and the other no to women, yes to men).

¹³ Interview: October 1994 - **

¹⁴ Interview: October 1994 - **

¹⁵ Ellen Bass & Laura Davis, The Courage to Heal 3rd. ed. (New York: HarperCollins, 1994) 180.

¹⁶ This is likely to reflect in part how I asked the question. Separate or as one question.

¹⁷ Interview: June 1993 - February 1995

Three women talked about how it has affected their self perception. One woman is now considering going into law. Another sees a very positive change:

Yes, for sure. It has given me strength and knowledge. [It has changed] how I see myself and my experience and how I see my role in the court system. In a way it makes me feel less like a victim. I feel more empowered as a survivor.¹⁸

The third woman speaks about her relationship to safety and society:

I think not so much how I see myself but more in a sense that I feel like no one is going to take care of me, the legal system certainly is not going to take care of me, sometimes I feel really alone out there.¹⁹

Her words do not capture the intensity, the sincerity of her expression. Listening to her, I sensed a deep felt loss, perhaps a loss of innocence. For me there was some confusion. I could sense the deep emotion of this new found knowledge and yet this little voice in my head said, "What planet has she been on?" Then, a short time later, a friend returned from Central America where the "justice system" is less responsive. While there she encountered this same feeling. If someone was breaking into her apartment, who could she call, who would care? Before these experiences both women shared the belief that there is justice and that society will respond to help a citizen in need. Since that time, I have asked other monitors and some share this changed perspective. What a profoundly frightening thing to learn. I had assumed women did not feel safe, taken care of. I struggled to remember ever having this sense of safety, to remember when it was lost, but I don't remember.

Women did not report having a changed perspective of women, although one woman talks about how it had altered her view of wife assault, "starting to see the different sides of it and beginning to understand how it happens."²⁰ In contrast, three

¹⁸ Interview: October 1994 - **

¹⁹ Interview: June 1994 - **

²⁰ Interview: August 1993 - **

women did have a changed attitude toward men. One woman sees it as temporary after leaving court, "when I come out of court initially it does, because I carry a negative attitude towards men."²¹ Another woman is becoming more cynical about men wanting to change or be part of change. The third woman had a more positive change:

In some ways it has been redeeming. You see Crowns, judges who are really working hard at the law, who are handing down really good judgments, that are arguing in a very progressive way, and you also see the worst of the worst in defense lawyers and men testifying who really don't even conceive of what they have done, they don't get it.²²

It is interesting that this monitor's experience reflects Catharine MacKinnon's words:

"women are also violated every day by men who have no idea of the meaning of their acts to women"²³ but at the same time stands in opposition to her hypothesis that law is a unified structure. Theoretically, her position is more closely aligned with Carol Smart's position that law develops unevenly and that there is a distinction between law-as-legislation, the effects of law, and law-in-practice.²⁴ Notwithstanding this, an important point shared by MacKinnon and this monitor is that some men are blind to how their actions impact women. This raises an interesting point regarding social change and the potential for change within the legal system; within an adversarial system, it is difficult to imagine the potential for male offenders to understand a woman's experience of sexual assault.²⁵

6.A.4 Effects on Perception of the Courts and the Legal System

I thought it was slow and incompetent before, and with my new found experience, I think it's slow and incompetent.

Monitor: June 1993 - February 1995 (interview)

²¹ Interview: October 1994 - **

²² Interview: May 1994 - **

²³ Catharine MacKinnon. Towards a Feminist Theory of the State (Cambridge, Mass: Harvard, 1989) 180.

²⁴ Carol Smart, Law, Crime and Sexuality (London: Sage, 1995) 154.

²⁵ For a stunning demonstration of one man's inability to see rape from a woman's perspective, see "A Rapist gets Caught" as told to Janesk Skipper, JR & William McWherter, Feminist Frontiers III eds. Laurel Richardson & Verta Taylor. (New York: Random House, 1986) 399-401.

I asked the eleven interviewed monitors, "Has your participation in the CMP changed your perception of the courts and the legal system?" Nine women felt it had changed their perspective, one answered no, and one was not sure. Regardless of their answers, all the women characterize the court and the legal system as inadequate. One woman states: "Yes, absolutely. I used to be quite intimidated by the legal system and I thought it was working. Now I am not intimidated and I know it's not working. It's very dysfunctional."²⁶ Another monitor shares this sentiment, noting: "No, I knew they were bad to begin with."²⁷ Women whose perceptions have changed found the system worse than they thought. One comments: "Yes, it has very much. I guess you like to think courts are there to service the people but I don't think that is the case."²⁸ One woman says:

I knew quite a bit before I started...It is always excruciating to watch defense lawyers go at a witness. You hear about it and I see it on LA Law but you don't really think they are that cruel. It is particularly awful to see them go at children...That is new.

I didn't know how complicated it is, why don't they just ask the question, it's frustrating, so there is a lot of detail that is new.²⁹

Although all the monitors identify the legal system as inadequate for dealing with wife/sexual assault, they do not suggest that women should press charges. In fact, they are actively supporting women through the process in an effort to make the experience more tolerable. Carol Smart sees this as a dilemma:

The question we must ask is whether it is a valid feminist policy to make the trial process tolerable enough to encourage women to use it, without any guarantee that the basic phallogocentric assumptions of the trial have been altered. But here we have the horns of a dilemma.³⁰

²⁶ Interview: June 1994 - **

²⁷ Interview: October 1994 - **

²⁸ Interview: October 1994 - **

²⁹ Interview: May 1994 - **

³⁰ Carol Smart, Feminism and the Power of Law (London: Routledge, 1989) 49.

Unlike Smart, none of the monitors identify this as a dilemma. They appear to agree with the position of the CMP: regardless of the lack of “good” outcome for women in the court system (convictions and adequate sentencing for perpetrators), the CMP respects and supports individual women’s choice to pursue legal redress, while recognizing that some women’s engagement with the legal system is not of their choosing. Other monitors note that monitoring offers women the opportunity to demystify the legal system, thereby decreasing its power through intimidation.

Most of the women came to the CMP because they were interested in the legal system; all came with a feminist perspective. The training program for those entering the program after September 1993 includes information describing the reality of the court and legal system; however, the women predominantly learned through the experience of monitoring. Being in court, monitors learned at a different level, an experiential level that cannot be matched by words; these experiences validate and enrich the theory of everyday life and academia.

6.A.5 How Research Participants Theorize the Effects on Women who Monitor

All the women responded positively to the question, “Do you think that the CMP is making a difference to the experience of women who monitor?” Not surprisingly, monitors generally theorize that other monitors are affected in ways similar to themselves; for example, learning, emotionally draining, frustrating, and raising anger. They also talked about touching other people’s lives and how monitoring can prepare women for going to court themselves or supporting friends and family. One woman observes an additional outcome of monitors becoming activists in the community:

I think there were women coming into the program who had a general idea about it, who really learned a lot about the issue, who really became strong about it, and became a voice in the women’s community about it and they weren’t before.³¹

³¹ Interview: January 1993 - October 1994

Although the founders of the CMP had hoped to educate through public awareness, they did not foresee the lasting effect the program would have on the individuals who monitor and the people whose lives they touch. Despite the negative emotional impact of participating in the CMP, court monitors overwhelmingly experience court monitoring as positive through raised awareness, participating in collective action, and empowerment. The notion of consciousness raising addresses what appears to be the contradiction in this statement. "Consciousness raising: the collective critical reconstitution of the meaning of women's experience, as women live through it...shows women their situation in a way that affirms that they can act to change it."³² In the case of court monitoring, the affirmation that one can contribute to change, regardless of the gravity of the situation, has led to self empowerment.

6.B Perceived Effects on Complainants

The complainant often seems to appreciate my monitoring efforts and support. That in itself is worthwhile to me

*Monitor: May 1994 - ** (interview)*

Of the twelve women interviewed, ten believe the presence of court monitors has an effect on the complainant, while two do not know.³³ For seven of the ten who answered yes, they qualified it with "when the complainant knows". One monitor explains:

I think so to a certain extent, from my experience it really varies. I don't think it is adequate the way it is. Just as many times that women will talk to me and say "I'm glad you are here and monitoring" and know about the program, just as many don't know about the program. If one of our goals is to be there and support these women, then they should know who we are and why we are there.³⁴

³² MacKinnon, 1989:84-101.

³³ The interview participants were asked "Do you think that the CMP is making a difference to the experience of women complainants in the court room?" In some cases they also addressed this question in other parts of their interview.

³⁴ Interview: October 1994 - **

In addition, eight of the twelve women interviewed raised the concern that the women may not know who the monitors are or why they are there. Some feared that their presence could increase the complainant's anxiety rather than provide support. Under the present policy, monitors do not approach the complainant, but respond if a complainant approaches them. This policy is based on respecting the complainant's situation. As one monitor asserts, "I don't want to invade their space anymore than it has already been invaded by the court room."³⁵ Balancing the need to inform the complainant of the monitor's intent with respecting her privacy is a dilemma the CMP has tried to address throughout its her-story. The development of an information sheet directed to complainants was a direct result of this concern.

6.B.1 How the Presence of Monitors Affects Complainants

Monitors predominantly believe complainants feel supported. Support means a number of things: being heard and being believed -- "that even if the court wasn't hearing them, there was someone hearing them, who was likely to believe them."³⁶ It also means having someone else there that understands what the complainant is going through and that she is not alone:

In one case everyone was male except one juror, I just kept focusing on the complainant and when she looked over I smiled and she let out a breath and I know it made a difference.³⁷

Part of support is also acknowledging and recording. The Coordinator reports hearing from women whose cases had been monitored:

They have said thank you, thank you, thank you and that they felt really supported and not alone and someone was making a difference, someone was taking notes, someone was noting what was happening to them, it wasn't just disappearing, this is not for naught.³⁸

³⁵ Interview: May 1994 - **

³⁶ Interview: January 1994 - October 1994

³⁷ Interview: June 1993 - February 1995

³⁸ Interview: December 1994 - **

However, another monitor is concerned that we really are not doing enough, that complainants mistakenly believe we are doing more action and more with the data that we collect.

I think their expectations about us are way out of proportion, but the women who know we are there feel reassured by the fact we are there. There is someone keeping track of this stuff, and listening, and they think that we are doing something to change the system. If only they knew the truth.³⁹

*At times sitting in the court room is frustrating. Listening to all the garbage going on and feeling like I am doing nothing! But then I think about counseling and how important it is for someone to believe me -- to hear my story. Monitoring is like counseling in some ways -- listening, hearing and acknowledging the experience. It is important and it is action. As one survivor states: "For me the most important thing about therapy is that there is someone who will listen to you. Freely."*⁴⁰

Monitors supporting the complainant is an essential part of the CMP. For this reason, a requirement for monitoring is the commitment to believe the complainant's story and honour her truth. Without this baseline, monitors cannot accomplish this primary aim of the CMP. Carol Smart asserts that even if laws were changed so women could tell their story, "they would be listened to in the same old way."⁴¹ The CMP are attempting to shift this experience for the complainant by having someone there that hears and believes their story. Over and over again at meetings, women would talk about the trial process and how women were not able to tell their story their way. The monitors always seem to understand what was missing and share in the complainant's frustration.

³⁹ Interview: February - December 1994

⁴⁰ Cited in Bass & Davis, 1994. For further reading on the importance of counseling, listening, hearing and acknowledging the experience see The Courage to Heal (1994) as well as other books by the authors.

⁴¹ Smart, 1989:48.

6.B.2 How the Women Know Complainants are Affected

Research participants used their own experience to gauge their effects on complainants.⁴² Those involved in the program give examples of women complainants approaching them, thanking them, and telling them what a difference it has made to have a monitor present. Victoria Women's Sexual Assault Centre (VWSAC) counselors who accompany women in the courts, as well as other emergency support workers, told women that complainants appreciate having monitors present. In addition, VSWAG receives many phone calls requesting monitors to attend trials and thanking monitors for being there. One monitor repeats a woman's comment that "if only there was someone like you when I was in my case."⁴³ Overall, the research participants' responses suggest that the presence of court monitors is an important source of support for complainants and that the CMP is having a positive effect.

6.C Effects on Court Room Players

All of the interviewees who monitored believe that the presence of monitors had an effect on court room players. The Coordinator, who did not go into court, did not. As suggested by one women's comment, some monitors were unsure of the extent to which their presence affects court room players: "I think [it affects them] a little bit. Hard because I have nothing to relate it to. They know why the court monitors are there...to a certain extent that will alter their behaviour."⁴⁴

⁴² There was one exception, who felt unsure of her perspective without having statistics available. "[I am] not sure, I haven't seen any results that have come out. [I] really don't know." (Interview: August 1993 - **)

⁴³ Interview: June 1993 - February 1995

⁴⁴ Interview: October 1994 - **

6.C.1 How the Presence of Monitors Affects Court Room Players

Monitors believe their presence raises the awareness of the court room players.

One monitor states: "Just the fact that we are there brings the issue to the forefront."⁴⁵

Some monitors believe this awareness leads to changed behaviour. One monitor explains: "I think us being there makes them [court room players] more aware of what they are doing and kind of questioning 'why am I saying this'. [It] makes them more aware and they change their own behaviour."⁴⁶ Monitors believe that their presence may intimidate court room players who are not doing their job:

I think definitely that they are aware that we are there, that they are more self-conscious -- they seem more active, they watch what they are saying, I think they might feel intimidated. Like the ones that know they are doing fine, no problem. Those are the ones who are going to come up to you and say 'hey, you're doing a great job.'⁴⁷

A second woman notes: "I do believe that people behave better when they are being watched."⁴⁸

Monitors refer to the CMP establishing credible and respectful relationships within the court house as a part of its success in affecting change:

I think the program has a lot of respect within the system overall. I believe we make a difference in the court room. I have no question about that. I've met more that one judge who looked at me and then looked at the accused before passing a sentence.⁴⁹

The belief that people's behaviour changes simply through the experience of being observed is well researched. The "Hawthorne Effect," found in research on workers' output indicates "that the simple fact of being subjects in a study led to the increases in productivity."⁵⁰ The comments of the monitors suggest that their presence

⁴⁵ Interview: October 1994 - **

⁴⁶ Interview: August 1993 - **

⁴⁷ Interview: October 1994 - **

⁴⁸ Interview: January 1993 - October 1994

⁴⁹ Interview: June 1993 - February 1995

⁵⁰ J.E. Alcock, D.W. Carment, S.W. Sadava, Social Psychology (Scarborough: Prentice-Hall Canada, 1988) 34.

may have elicited a similar response. At least one lawyer agrees. *One day a lawyer came up to me outside remand court and asked me some questions about what was happening, as he had missed the first session. His parting remark was, "I am glad you [court monitors] are here; you keep me on my toes." I have heard other monitors relate similar statements.*

6.C.2 How the Women know Court Room Players are Affected

Of the eleven monitors who believe they are affecting the court room players, five give concrete examples. According to one:

I remember once a judge saying 'you will have to choose a foreman' and I looked up and my eyebrows were somewhere near the back of my head, and he said 'or forewoman, just a spokesperson in general.'⁵¹

Other monitors share similar experiences: "I have seen several cases where I think someone is aware of my presence. Sometimes the judge or a lawyer looks at me before they say something."⁵² She goes on to note that it is easier to detect reactions with judges, but also notes the inconsistency:

Their eyes for half a second dart over to you. You notice it more with judges because you are facing the judges, with some judges more than others. Some judges seem to be totally oblivious, others seem to be very aware. In some cases a lawyer does not seem to be aware of monitors and [then] acts differently when he is aware of a monitor being present.⁵³

The interviewees that monitored base their beliefs on their experience. They assert that their presence in the court room has an effect on the court room players' awareness and, in most cases, this is extended to included changed behaviour. For some court room players the presence of court monitors is a welcome addition to the court room.⁵⁴

⁵¹ Interview: May 1994 - **

⁵² Interview: February 1994 - December 1994

⁵³ Interview: February 1994 - December 1994

⁵⁴ For further discussion, see Chapter 5: In Court Relations.

6.D Effects on the Outcome of Trials

There were differing opinions on the effect monitoring has on trial outcome. As one monitor notes, "therein lies the loaded question."⁵⁵ If we are affecting the outcome of trials, then defense lawyers could call a mistrial and/or court monitors could be banned from the court. Other interviewees may have been aware of this when I asked the question. Three interviewees answered no to the question "Do you think the presence of court monitors is affecting the outcome of trials?" Four women said they did not know, one said maybe, and four said yes. How the four women see their presence changing the outcome of trials is consistent and noteworthy.

The monitors referred to their indirect effect on the length of sentencing or the verdict primarily through increasing court room players' awareness. For example, one woman who wasn't sure states: "Maybe, it is exceedingly possible. If it's affecting defense lawyers, if it's affecting Crown and sometimes you may see the judges, then it is affecting sentencing."⁵⁶

Another monitor notes that it was difficult to know what causes change: "Hard to say. It's hard to say what is causing any change, public effect, etc., hard to separate it all."⁵⁷

The research participants' perceptions support the belief that monitors are not affecting individual cases, but rather the legal system in general through changed attitude or behaviour of court room players which in turn may affect the overall business of the legal system.

⁵⁵ Interview: January 1993 - October 1994

⁵⁶ Interview: May 1994 - **

⁵⁷ Interview: October 1994 - **

6.E Effects on Others

Monitors note positive feedback from others in the court house, particularly relatives and friends of the complainant. Monitors support complainants' supporters by listening to their struggles of how to support and deal with the frustration and anger of the complainant. In addition, the CMP offers support to Victoria Women's Sexual Assault Centre (VWSAC) through access to the case lists. This has the indirect effect of allowing VWSAC to offer its services to more women complainants. In addition, court monitors' presence provides support to the VWSAC counselors in the court room. One monitor who is also familiar with VSWAC explains:

The CMP has the potential to make a difference to a lot of women. It supports the women who are in court today, it supports the counselors who are helping them and makes their work more effective.⁵⁸

She also explains how the CMP empowers the counselors through action:

Involving the sexual assault centre in the training, that is really empowering for the counselors who feel like they are ambulance drivers and no one is doing anything about the bodies falling off the cliff.⁵⁹

Another monitor asserts that the CMP supports all the other women's programs:

The CMP somehow touches it all in a different way, it all fits together. Sitting in the middle of it and seeing if it all come together and if it doesn't come together looking for the gaps.

*Monitor: May 1994 - ** (interview)*

6.F Summary

[T]here is something about anything that is opened to public scrutiny. While the court room has been opened to the public they haven't been very opened to the public. The players can say this is democracy and it is an open system but there are many ways that it is not open. The very fact that there are people sitting there and looking at why something is being said and how it is being said, [the CMP] has been going on for two years now, I think that [monitoring] always makes a difference.

Monitor: January 1993 - July 1994 (interview)

⁵⁸ Interview: January 1993 - July 1994

⁵⁹ Interview: January 1993 - July 1994

In this chapter, I summarize the court monitors' views on the effect of their monitoring. These data indicate that court monitors believe they make a difference, that they are effective. The only area where monitors are somewhat in doubt is the outcome of trials.

Chart 6.2 - Effects of Monitoring

Effect of Monitoring on:	yes	no	don't know/ unsure
Monitors	12	0	0
Complainants	10	0	2
Court Room Players	11	1	0
Outcome of Trials	4	3	5
Total	37	4	7
Percent of total responses [48]	77.1	8.3	14.6

The majority of women became involved in the CMP because of their desire to support women and learn, and because of their interest in the legal system, activism, and feminist work. The monitors' views of how they are affected by the program resonate with these aims; they see their participation as an activist-learning experience that is emotional and empowering. This indicates the program is fulfilling women's initial expectations. Women come to the program with theories/ideas, which their experiences in the courts confirm or deny. However, the women's conclusion/theorizing is predominantly based on their experiences rather than on learned theories they brought into the program.

At times participants are frustrated with only offering complainants support in the court room, with only being a presence. However this research points to the monitors' court room presence as a valuable contribution to individual women and

children as complainants and supporters of complainants. While recognizing some of the frustration women feel sitting in the courts, the positive effects are undeniable.

The monitors also assert that the CMP contributes to social change. Through presenting concrete examples, monitors claim their presence affects the awareness of court room players, which, in turn, is likely to affect the overall delivery of service of the legal system. The presence of monitors in the court room is part of the democratic process that calls for the courts to be open to public scrutiny.

Chapter 7: Theorizing, Experiencing and Practicing Social Change

And it is through connecting these practices, or praxis, that feminists redefine the borders of feminist activism and research and actually 'do' theory.

Margo Matwychuk & Pamela Moss¹

Court monitoring brings to life the statement "the personal is political": monitors live the constant dance between theory, practice and experience. In part, life experiences inform how we practice and theorize, how we make sense of the world and try to change it. The experience of monitoring enriches the lives of women who monitor and offers them new experiences to add to their theories of their world.

In comparing the court monitors and the CMP's approach to social change with that of contemporary mainstream academic feminist theory, it is not my intent to validate their theories through academic feminist theory. I seek to explore the similarities and differences to better understand the divisions, crossovers and how they interact.

7.A Research Participants' Theories of Social Change and the Legal System

There is an old saying to the effect that "justice must be done and must be seen to be done." Often I was the only person in the court room aside from those whose job it was to be there. Sometimes a mother or father would be present or an elderly man who was perhaps bored. If we have negative things to say about how trials are conducted just by reading an account in the paper, we should be prepared to spend some time in court. When judges and lawyers do their jobs in the face of massive public indifference, perhaps we should be glad the system is no worse.

Monitor: February 1993 - June 1994 (questionnaire)

I asked all interviewees if they believed there was bias in the court room and/or in sexual assault cases. All the respondents answered yes. I also asked them to explain where they saw the bias and what suggestions they have for creating positive

¹ Margo Matwychuk & Pamela Moss. "Rebordering Feminist Praxis" *Atlantis* 21.1 (1996) 3.

change. I asked them if they had suggestions, other than the Court Monitoring Program, for improving the court system. Although the questionnaires did not specifically address these questions, seven women identified biases and made suggestions for improvements to the court/legal system.

Nineteen research participants identified areas of concern or made suggestions for improving the court system.² The total number of responses is 123. I grouped these into 27 suggestions for change and/or identified problem (see Chart 7.1). Four groupings emerged in my analysis of these data: court room experience, social (outside the courts and the courtroom), legal theory and the CMP. I organized the responses under each heading from the general to the specific. This approach was not always straightforward since some suggestions can be located in more than one category. In addition, the responses are interrelated: the experience in the courts is set by the laws and laws are influenced by societal norms.

Research participants predominantly suggested approaches to social change that are located in the courts themselves with 55.3% of the responses falling in this category. In addition, they make suggestions for change in the area of law (18.7%) and at the societal level (20.3%). Three women specifically stated that the CMP was an effective approach to social change (5.7%). Within each category, women point to specific areas and approaches to change.

Not surprisingly, many of the court monitors' suggestions are reflected in the BC Law Society's Gender Bias Report.³ The Gender Bias Committee sought input from those with expertise in the areas of law, law enforcement, academe, and the community (individuals and organizations).⁴ Predominantly the report contains input

² The number of responses from research participants ranged from one to twelve.

³ Law Society of British Columbia, 1992.

⁴ Law Society of British Columbia, 1992:1-3-1-5.

Chart 7.1 Research Participants' Approach to Change

	#	#	#	%
1: In the Courts			68	55.3%
<i>Process of the Courts</i>		40		32.5%
- eliminate whole structure	2			
- make courts less alienating, safer for women	7			
- more open to public scrutiny	1			
- application of the law	11			
- eliminate preliminary hearings	3			
- crown: more time w/ complainant, est. rapport	3			
- decrease length of trial	3			
- more severe sentencing	10			
<i>Logistics of the Court Room</i>		9		7.3%
- general set up of the court room	2			
- screens and separate rooms for complainant.	3			
- microphones for amplification	1			
- allow support for complainant to be near/ visible	3			
<i>Court Room Players</i>		19		15.5%
- accountability (system and players)	3			
- education/training for lawyers, judges, crowns	11			
- language shift	1			
- crowns challenge more	3			
- more guidelines regarding questioning children	1			
2: Societal Level			25	20.3%
<i>With general public</i>		19		15.4%
- systematic social change	7			
- raise awareness	6			
- awareness in schools	4			
- lobbying	2			
<i>Social Programs</i>		6		4.9%
- services for victims	4			
- rehabilitation and prevention	2			
3: Law			23	18.7%
<i>At the level of laws and legislation</i>		8		6.5%
- change laws	8			
<i>Intent and process of the Law</i>		15		12.2%
- eliminate advantage to defendant/men	9			
- eliminate the adversary aspect of the law	3			
- go beyond punishment and retribution	3			
4: CMP			7	5.7%
Total responses to: How to improve the system			123	100%
Total Number of Respondents			19	100%

from people who directly or indirectly experience gender bias in the legal system, be it professionals within the system, activists, workers in the victim services field or consumers. To highlight similarities between the findings of the Gender Bias Report and the views of the research participants, I have followed the research participants' comments relating to particular suggestions with the number of the corresponding or similar recommendation from the Gender Bias Report (noted as GBR: #).⁵

7.A.1 In the Courts

Over half of the responses (68) are in the category "in the courts". This captures suggestions that look at the actual courtroom process (40), logistics of the court room (9) and the court room players (19). The layers of issues and solutions are not easily delineated or categorized and there is considerable interaction or overlap within and between the categories. For example, monitors refer to the actions of the court room players (19) that influence both the alienating atmosphere in the court room (7) and the application of the law (11). All of the issues play a part in the second assault women and children experience as complainants in sexual assault trials.⁶

7.A.1.1 Process of the Courts

"for most [of] the women going to courts, it is just another abuse"
Monitor: January 1993 - July 1994 (interview)

There were some general comments about the courts and their process: eliminate or change the whole structure (2), make the courts less alienating and safer for women (7) and open the courts to public scrutiny (1). In theory, the court is open to public scrutiny, but in practice this is not the case. The alienating atmosphere of the

⁵ The recommendations come from Chapter 7 of the Gender Bias Report, therefore the recommendation numbers presented here are preceded by a 7 in the report itself.

⁶ For discussion of second assault in the court room, see Razack (1991); Smart (1995, 1989); MacKinnon (1989, 1987); Madigan & Gamble (1991); Thornton (1991); Estrich (1987); Morrison (1992); Savage (1990)

courts may discourage members of the public from exercising their right to scrutinize court proceedings.⁷ As part of the criminal justice apparatus, the legal system is charged to protect society⁸ and, as such, citizens have the right, and some would suggest, the responsibility to scrutinize the law and its application.⁹ However, not everyone agrees that the court rooms should be open. One respondent acknowledges the need for raising public awareness, but is concerned about the courts being opened:

Letting the public know what is happening - This is a hard one, but anyone could be in there when they [complainants in sexual assault trials] are testifying. It's not that they are lying, it's just hard enough to say in the first place without having to say it in front of boys from a Grade 12 class. It's just such a private issue. I would like to see empty court rooms.¹⁰

This was not an easy statement for this monitor to make. Perhaps as important as its context, is the woman's conflict in making the statement. This was not unusual. Over and over again women struggled with the contradictions in finding solutions.¹¹

Other monitors' comments about the general court process focus on the "institutional atmosphere that is not conducive to solving many of the problems that come before the courts"¹² and the haphazard ways in which the courts seem to be run. "I see little coordination between the police, the crown attorney and the defending lawyers (GBR: 2). The civilians involved often seem to be dazed and unsure with what is actually going on" (refer to Victim Services Advocacy GBR: 3, 34,41-44,64, 80).¹³ Monitors also referred to specific issues contributing to the atmosphere: lawyers

⁷ For further discussion of the alienating atmosphere of the court room, see also Chapter 5: The Court Experience.

⁸ Griffiths & Verdun-Jones, 1994:210.

⁹ Griffiths & Verdun-Jones, 1994:40-44.

¹⁰ Interview: October 1994 - **. For an example of a sexual assault trial and discussion of the violation of women's sexuality as reproduction for "mass public consumption in a manner to satisfy the internal logic of the legal system." (140), see Kristin Bumiller "Fallen Angels: The Representation of Violence against Women in Legal Culture" *International Journal of Sociology of Law* 18 (1990) 125-142.

¹¹ For discussion of aspects of contradiction in legal reform and action, see Smart (1995, 1989); Thornton (1991); Hinch (1988) and Olsen (1990).

¹² Questionnaire: October 1994 - **

¹³ Questionnaire: October 1994 - **

badgering witnesses and the sexual/heterosexual energy in the court room. Two monitors identify these problems and the lack of solutions:

enormous amount of sexual energy in the courtroom, so a lot of that is heterosexual...a lot of gender play...I don't know if that will ever go away. You see it in business offices as well...it is based on sexual energy not just gender bias, it can be quite subversive and then there is all kinds of power relations around that.¹⁴

Although only two respondents spoke about sexual energy, monitors increasingly recognize this influential aspect of the court room. To a great extent sexual energy is created by the court room players; however, monitors also link it to the pervasive sexualization in society. This link has led monitors to call for changes at a societal level in order to make significant change within the court room.

Application of the Law

The changes that have been made on paper have not made their way to the court room. [This] depends largely on the judge. Judges let defense [lawyers] go into the victims' past. I don't think I have seen any examples where the law is the source of any challenges, it usually has to do with what the judges allow.¹⁵

Eleven monitors expressed concerns with the application of the laws and the message this application conveys. Women talked about the outcome of cases, emphasizing the influence of "which judge you get"; the disrespectful treatment of witnesses and complainants by particular judges and defense lawyers; and crown prosecutors' inconsistent application of the laws. Most monitors believed that the judges bear the largest responsibility. For example, monitors witnessed judges allowing the inclusion of a complainant's past sexual experience (GBR: 73) and judges using drunkenness as a determining factor in sentencing (GBR: 3, 5). One monitor asserts:

¹⁴ Interview: June 1993 - February 1995

¹⁵ Interview: February - December 1994

They revised the sexual assault criminal code to address not bringing women's past sexual history, but judges still allow it....[they] say alcohol is not an excuse, and yet they [accept drunkenness as a defense] repeatedly, so I'm disillusioned with that whole process.¹⁶

In 1983, Bill C-127 was enacted. It is generally referred to the "rape shield law" because it restricted the inclusion of a complainant's sexual history in a sexual assault trial. Following the case, *R. v. Seaboyer* in 1991 and the subsequent passing of Bill C-49 in 1992, the admission of a complainant's sexual history is again allowable under certain circumstances.¹⁷ Bill C-49 sets out the guidelines that judges are to use to determine whether sexual history is included.¹⁸ Feminists feared that the repeal of the rape shield was a backward step for women, returning them to "the bad old days" before the enactment of the rape shield law in 1982.¹⁹ Court monitors attended court after the repeal of the rape shield law and the enactment of Bill C-49. Monitors' experience in the courts indicates that gender myths and stereotypes influence judges' decisions to admit testimony of past sexual history when it is not appropriate. Others also questioned the effectiveness of the rape shield law in light of its interpretation and application in the courts. For example, Sahjpaul and Renner conducted a study during the period when the rape shield law provision was in effect and conclude "that the new law in Canada which replaced the offense 'rape' with one of 'sexual assault' has not had its intended effect on reducing the burden on a victim when she testifies in court."²⁰

Since the period of my research, monitors' concerns include another legal backslide for women. Since late 1995, as a result of the O'Connor case, defense lawyers and defendants can access complainants' personal and therapy records. This

¹⁶ Interview: June 1994 - **

¹⁷ Martha Shaffer, "Seaboyer v. R.: A Case Comment" *Canadian Journal of Women and the Law* (1992:5) 202-211.

¹⁸ See *Martin's Annual Criminal Code* (1998) CC510-511.

¹⁹ Shaffer, 1992:208.

²⁰ Suresh Sahjpaul & K. Edward Renner, "The New Sexual Assault Law: The Victim's Experience in Court" *American Journal of Community Psychology* 16.4 (1988) 503. See also Hinch (1988, 1985).

access to personal records represents a further invasion of a complainant's privacy. It increases the intensity of the 'second assault' by giving her abuser access to her personal documents and by revealing the documents' contents in the open court room. Such records are used to discredit the complainant through establishing prior sexual abuse allegations, health issues or past behaviour that could challenge her credibility. As in the case of complainant's past sexual history, the judge determines whether such records are to be included in the trial and released to the defendant.²¹

Monitors referred to four specific areas to improve the process of the law: decrease the time for a case to come to court and the length of trials (3); eliminate preliminary hearings (3); increase sentencing (both convictions and length of sentences) in cases of genderized violence (10); and increase Crown Prosecutors' time with complainants to establish rapport between them (3).

Court monitors believe that the lengthy time involved in the court process is detrimental to the complainant's healing process. One woman states: "By the time it gets to court, they want to start healing and put it all behind them. The accused can keep changing [postponing] it. [We] need to make the process faster."²² Deferrals can reflect the court's concern for the defendant's employment, rather than the woman's right to a timely trial. For example, one monitor cited a case that was deferred because the defendant is a cab driver and he did not want to come to court during the busy cab season.²³ In addition, the legal necessity for a preliminary hearing for indictable

²¹ Karen Busby. "Discriminatory Uses of Personal Records in Sexual Violence Cases" Canadian Journal of Women and the Law (1997:9) 148-177. See also Katherine Kelly, "'You must be crazy if you think you were raped': Reflections on the use of Complainants' Personal and Therapy Records in Sexual Assault Trials" Canadian Journal of Women and the Law 9(1997) 178-195 and Diane Oleskiw and Nicole Tellier, Submission to the Standing Committee on Bill C-46 (Ottawa: National Association of Women and the Law, 1997).

²² Interview: October 1994 - **

²³ Monitors noted that the court put the defendant's employment as a priority, not only in scheduling the case, but also in sentencing and serving incarceration time.

offenses increases the length of a trial.²⁴ Monitors suggest eliminating preliminary hearings to shorten the trial process and decrease the number of times a complainant has to testify. Although the Gender Bias Report does not raise the specific issues the court monitors identify, it does recommend expediting the trial process in the area of wife assault (GBR: 28, 31, 35, 37, 39, 40), sexual assault (GBR: 65, 69, 71, 74) and child sexual abuse (GBR: 65, 100).

Monitors identified two specific concerns regarding sentencing: lenient sentences (7) and plea bargaining (3). Monitors compare shorter sentences for sexual assault with longer sentences for property crimes, questioning the value system this reflects:

The amount of time someone spends in jail for sexually abusing a woman is just nothing compared to [property cases] loss of money [which] gets longer sentences. [The latter is] not harming a person, not shattering an individual's life – it's so crazy.²⁵

Although the Gender Bias Report does not recommend more severe sentences, it does suggest some qualifying considerations in determining sentencing; these would likely result in more severe sentences (GBR: 55 - 60). Plea bargaining also affects sentencing, although it can be attractive to a complainant because she does not have to testify. A complainant must then make the difficult decision to face the often horrendous experience of testifying or to have her experience diminished through a reduced charge and sentence. One monitor expresses her reaction to plea bargaining in which the sexual nature of the crime is erased:

I was angered when a rape victim told me the Crown Counsel had suggested she agree to drop charges of housebreaking and sexual assault to one of assault, to which the defendant would plead guilty and make it unnecessary for her to go on the stand again.²⁶

²⁴ In criminal law, there are three levels of offenses: summary (offenses of a less serious nature); indictable (serious offense) and hybrid (offenses that could be either summary or indictable).

²⁵ Interview: October 1994 - **

²⁶ Questionnaire: April - October 1993

Monitors are also concerned about the relationship between the complainant and the Crown Prosecutor. Monitors referred to cases where complainants had up to five different Crown Prosecutors and met with them only moments before the court session began (GBR: 32, 38, 64). Monitors suggest that Crown Prosecutors should spend more time with the complainant before the trial, establish rapport and prepare the complainant for the court experience by explaining the court process and the procedures and outcomes that a complainant should expect (GBR: 65, 99).

Finally, monitors point to the Crown Prosecutors' lack of concern for the complainant's best interest (GBR: 68). Whereas the defendant has an advocate, his lawyer, the complainant does not. The Crown Prosecutor does not represent the complainant or her interests. The Crown Prosecutor's concerns lie with the state: has a crime been committed, did the defendant do it and, if so, is s/he a threat to society. The Crown Prosecutor is not necessarily interested in the complainant receiving justice or having her experience validated. The victim of the crime is merely one witness for the state.

The monitors suggest changes that range from general statements such as making the courts safer for women, to concrete recommendations such as eliminating the preliminary hearing. The court process is intrinsically linked to the logistics of the court room and to the court room players that dominate the court process.

7.A.1.2 Logistics in the Court Room

Nine monitors referred to the physical layout of the court room. Two monitors saw the potential for intimidation of complainants when the judge is seated above them and the defendant faces the witness box. One monitor also calls for women to have some physical separation from the defendant in the hallways: "If a man is not in

custody he can wander the hallways, he can potentially come up and talk to her. I find this very disturbing and quite frightening."²⁷ Monitors also argue that women and children should have the option of testifying behind a screen or in a separate room (GBR: 28, 36, 70, 75, 79, 97, 104, 106):

Because women are considered consenting adults, they are not allowed to have screens, not allowed to testify from another room. It is interesting that the law thinks if they [women complainants] don't look at their alleged offender, that somehow her testimony will be less true. I think the opposite is true: if they have to testify in front of their offender, their fear and their horror interferes with their testimony, when giving a forthright testimony is so important because they are judged on how they testify.²⁸

In some cases children are allowed to testify from behind a screen or in a separate room, however, this is the exception. The defendant has the right to face his accuser, therefore a child may only testify in a separate room if the crown prosecutor can prove that the defendant's right is outweighed by trauma to the child or that the child's testimony will be unduly or adversely affected.²⁹ The effects of testifying can be devastating on an child:

Immediately you are retraumatizing the child by making them face their perpetrator and making them say what happened to them in front of their perpetrator, when in a lot of cases the child has been told that they will be killed if they tell and [there is also] the stigmatization attached to telling...It is obvious that this is not a fair way or good way of doing things.³⁰

Three women emphasized the importance for women and children of having consistent support in the courts (GBR: 101, 107). They advocate for support through counselors, victim services and the CMP (GBR: 3, 34, 41-44, 64). Increasingly, this is becoming difficult, particularly with cases of historical abuse because counselors are being

²⁷ Interview: May 1994 - **

²⁸ Interview: May 1994 - **

²⁹ For discussion of children testifying in cases of sexual assault, see Bronwyn Naylor, "Dealing with Child Sexual Assault" *British Journal of Criminology* 29.4 (1989) 395-405.

³⁰ Interview: October 1994 - **

blamed for “false memory syndrome.”³¹ One monitor expresses her frustration with the present situation:

A child or a woman who is in trauma can't have their counselor sitting in the same room, because that seems to be somehow putting words in their mouth. They [the counselor] can't be in their [the complainant's] vision. There is something wrong with this picture.³²

Although only one respondent referred to amplification in the courts, this is an issue that monitors raised many times in meetings:

The microphone issue. Women can't be heard, you can't hear in most of those court rooms. Judges get very angry and ask them to repeat their answers over and over again. They are speaking in a normal woman's voice, but it's not loud enough in the court room -- air conditioners, lawyers talking, people in the audience talking.³³

Another monitor speaks about the problem of audibility of children's testimony even when microphones are used:

I saw one child of 11 or 12 and the child would get three words out and the judge would interrupt and say “I can't hear, move closer to the mike,” until she literally had her mouth on the mike. You have to be out to lunch around sexual abuse, the issue of shame and secrecy around it, and the issues of how young people feel about their sexuality at that age and being on the stage on any issue, let alone sexual assault. What I think we need is education.³⁴

More important than the issue of hearing is the lack of understanding on the part of the judge. Education of judges and other court room players represents over 50% of the suggestions made by CMP monitors regarding court room players.

7.A.1.3 Court Room Players

I believe the judicial system took the abuse of women too lightly and still does. If we can usher in some accountability where the judges are concerned, we will have scored a victory for all abuse survivors. Most [abuse survivors] are terrified to lay charges, as they fear the court

³¹ Since the data collection period, a complainant's relationship with her counselor has the potential to be more difficult in a sexual assault case. Now a counselor could be called as a witness by the defense and her records used to discredit the complainant. See Busby (1997) Kelly: (1997) and Oleskiw & Tellier (1997)

³² Interview: January 1993 - July 1994

³³ Interview: June 1993 - February 1995

³⁴ Interview: January 1993 - July 1994

system. Most are made to feel like the accused, not the victim. Thus the abuse continues.

*Monitor: February 1993 - ** (Questionnaire)*

Eleven research participants made 19 suggestions regarding the court room players. Three women call for the system and the players to be more accountable for their actions (GBR: 28). Consistently, CMP monitors refer to the inconsistency of court room players: "so much is mitigated by the judges. There are good judges and those that fall asleep in court."³⁵ One monitor suggests more guidelines regarding questioning children (GBR: 109) and three monitors want to see the Crown Prosecutor challenge the defense lawyer more. One women includes the judge in voicing her concern (GBR: 77):

defense lawyers badger and harass prosecution witnesses (usually women) by asking the same question over and over -- I never saw a judge who intervened or a Crown who objected in an effective way.³⁶

All eleven monitors interviewed call for educating and training court room players on violence against women/children and the devastating effects of sexual assault (GBR: 65, 67, 73, 124-127). One woman expresses her concern about court room players' lack of sensitivity and knowledge:

just the total insensitivity to the effects of sexual assault and sexual abuse. What I think we need is education. People who are doing that need to have skills in this area. It's not about the accused getting a fair trial, it's about you having to have some knowledge about the crime and its effects.³⁷

Another monitor adds the need to address language in the court room (GBR: 64):

Lawyers and judges being more empathic, more understanding of the power of gender relations and policy language. Emphasis on the importance of language -- raised awareness.³⁸

³⁵ Interview: May 1994 - **

³⁶ Questionnaire: February 1993 - June 1994

³⁷ Interview: January 1993 - July 1994

³⁸ Interview: October 1994 - **. For a discussion of language and the legal system see Bavelas et al. (1993) and Coates et al. (1994).

A third monitor suggests that court room players need to keep abreast of change: "A compliment to a woman in the 60s is an insult in the 90s. Appropriate behaviour changes over time."³⁹ She suggests that the legal system and the court room players should reflect societal norms, while other monitors suggest the courts reflect the dominant perspective that actually devalues women and their experience. Monitors assert that the problem originates at the societal level, therefore solutions must begin there as well.

Several monitors identify male/patriarchal bias in the courts, as well as racism, classism, stereotypes regarding prostitutes and other forms of dominant ideology. They suggest that court room players receive education and training to improve their empathy and sensitivity. Important issues include the psychological, emotional and physical effects of genderized violence, the pervasiveness of sexual assault in society and its effect on all women, gender bias and stereotyping, the impact of testifying in a court room, the power of language, and the power of gender relations and consciousness raising. Monitors believe that the court room players' bias reflects their socialization, thus they also call for change at the societal level.

7.A.2 At the Societal Level - The Bigger Picture

We need to teach people when they are very young not to hurt people they love. It's a really long process. Start with more awareness with kids at grade school, more social programs for people who feel they are getting to the point where they are going to do something [hurt someone]. So I think it goes beyond the court system, it needs to be changed everywhere else, then the court system.

*Monitor: August 1993 - ** (interview)*

Twelve monitors argue that change needs to occur outside the court room at the societal level. Seven of these women spoke in general terms calling for overall

³⁹ Interview: June 1993 - February 1995

systematic change. They argue that the “court is a symptom of the larger society”⁴⁰ and suggest two sites for change: raising awareness in general (6) (GBR: 120-123) and raising awareness specifically in schools (4) (GBR: 122). Six monitors point to more social programs to deal with the effects of sexual assault, counseling and support programs for victims (4) (GBR: 92) and rehabilitation programs for offenders (2) (GBR: 57, 61-2, 89, 91-2). As well, two monitors believe that lobbying the government is an important approach to meaningful change.

Monitors also discuss the grand narratives that exist in society and how they are played out in the court room. They refer to psychologizing and how people’s expectations are mitigated by their social location, particularly gender (GBR: 112-115). For some, the recognition of the interaction between society and the courts/court room players, can be overwhelming:

We have to change everything. At times it is a source of despair. How do you make a judge understand that they have to act differently when they don’t even realize that there is anything wrong with the way they are acting?⁴¹

When the monitors discuss the relationship between society and the courts, they only present it in one direction: the courts reflect society’s norms.⁴² Despite this uni-directional analysis, monitors do not locate change only at the societal level. In fact, the majority of their suggestions for change are within the courts themselves. In addition, monitors discuss changes to the process and intent of law.

⁴⁰ Interview: February - December 1994

⁴¹ Interview: February - December 1994

⁴² This is in opposition to Canadian theorist, Kathleen Lahey, who suggests that “we should not be as concerned with the socialization of judges as we are with the effects that judicial bias has on the socialization process, on the population as a whole.” Lahey concentrates on looking to law, legal actors and the legal system for effecting change. “Feminist Theories of (In) equality” Equality and Judicial Neutrality eds. S. Martin & K. Mahoney (Toronto: Carswell, 1987) 72.

7.A.3 Law

Monitors offer 23 responses relating to law. These proposals refer to changing the process or intent of the law other than the written law; in fact, two monitors said the laws are quite good. Most monitors acknowledge the significant changes Canada has made in the area of sexual assault and the law. For example, in 1983 and 1992, Bill C-127 shifted the burden of proof regarding consent to the accused and defined sexual assault as any form of unwanted sexual contact. Also in 1995, the Minister of Justice responded quickly to the use of drunkenness of the accused as defense in sexual assault trials.

Seven of the eight monitors who call for a change to laws point to the need to change the law's application. One monitor says she thought the laws need a little work, but that the application, or lack of application, is the big problem:

Probably a bit of fine tuning of the law, but I don't think there is much to do to improve the written word of the law. Very definitely there needs to be changes in the application of those laws, which include training, therapy and all kinds of consciousness raising programs for the judges and lawyers, and very definitely major change in the way the court system works. In a perfect world, the aim of everyone in the court system is to get justice. Now that's not so.⁴³

Another monitor points to the bias in the law:

Generally sexual assault has been defined from the perspective of those making the laws. Those are generally not the people who have been sexually assaulted. The violation and the sense of violation is being defined by people who have not been violated, and so you immediately face the fact that your violation may not be seen as legitimate sense of violation in the law.⁴⁴

Certainly, this monitor's words reflect the position of theorists such as Catharine MacKinnon who advocate for law reforms. However, when the monitor discussed possible solutions, her emphasis was on the application of the law, not the law itself:

⁴³ Interview: February - December 1994

⁴⁴ Interview: May 1994 - **

There is the idea of changing the law, changing the documents, changing the legislation [but]...the thing you come up against, as has been shown by sexual assault, [is that] you can have your laws that, on the face of them, in the letter, look progressive, but if you have people judging these laws, arguing these laws, and adjudicating these laws who haven't made a shift to where these laws are, how much good is it? That's what you see a lot in court. You have a great law but no one who is willing to use it, or they still interpret it from their bias.⁴⁵

This is the general approach of the monitors. Women who argue for changing the laws are not optimistic that such changes will likely produce satisfactory results on their own. Discussions of changing the law usually ended with pointing to the need to address the application of the law, its procedures, process or intent. Historically, men have created laws, laws which reflect a male point of view.⁴⁶ The monitors recognize the efforts being made in Canada to eliminate gender bias through law reforms. They attribute the lack of concrete outcome from these law reforms to the manner in which the law is applied.⁴⁷ Because the letter of the law is open to interpretation, its intent can quickly be lost in the practice of law. This is well stated by Deborah Stienstra and Barbara Roberts when discussing the Canadian constitution: "Even a good law is only as good as its enforcement mechanisms and the resources and determination to apply it."⁴⁸ At times, the monitors observed procedures and court room players' biases that rendered the intended change ineffective.

⁴⁵ Interview: May 1994 - **

⁴⁶ MacKinnon, 1989:216.

⁴⁷ For discussion of the effects of sexual assault law reforms in Canada see Hinch (1988, 1988, 1985). For discussion of the effects of the Canadian Charter of Rights and Freedom, see Fudge (1989).

⁴⁸ Deborah Stienstra and Barbara Roberts Strategies for the Year 2000: A Women's Handbook (Halifax: Fernwood Publishing, 1995) 88.

7.A.3.1 Changing the Intent and/or Process of the Law

There were three suggestions for shifting the intent or process of the law: eliminate the advantage for defendants/men⁴⁹ in violent crimes against women and children (9); eliminate the adversarial aspect of the law (3); and go beyond punishment and retribution (3).

Advantage to Defendants/Men

All of monitors discuss the advantages to the defendants/men, both in general and specific ways. In general terms, they refer to law's overall intent:

there are lots of ways that the legal system says that if you are an accused, you have all the rights in the world, and if you are a victim of sexual assault, you have none, your experience is up for question.⁵⁰

In specific terms, monitors point to the following: the complainant does not have anyone representing her, whereas the defendant has his own lawyer (2); the complainant is not allowed to be in court to hear all testimony, whereas a defendant is (2); and the burden of proof is on the crown (4). Generally, monitors recognize the difficulty of shifting the burden of proof from the Crown: "If there was a way somehow to balance the testimony, men would have to be more forthright about giving testimony. It needs to be more equitable between accused and accuser."⁵¹ The bias inherent in the presumption of innocence plays out very differently in a case of sexual assault than in other cases, such as robbery or even assault, in which the victim is not scrutinized in the same way. The cases also differ in that the issue of whether the crime occurred is

⁴⁹ I write defendants/men because some monitors identified an advantage for men while others said for defendants. In some cases the two terms are interchangeable, in others they are not. In other cases, the advantage was identified as towards men, regardless of their role in the courts.

⁵⁰ Interview: January 1993 - July 1994

⁵¹ Interview: May 1994 - **

not generally the focus of the trial, whereas it often is in the case of sexual assault.

This puts the victim on trial in sexual assault cases.

Monitors also spoke about the difficulties of sexual assault cases. The specifics of sexual assault and the law, particularly in the case of acquaintance rape, do not fit well with the presumption of the defendant's innocence. In a sexual assault case, a major consideration is whether a crime in fact occurred. Was it consensual sex or rape? As there are seldom witnesses, this issue becomes a case of credibility of the complainant versus the accused. It is easier for the accused to maintain credibility. The complainant has to make an official statement to the police, testify at the preliminary hearing and at the trial. All three of these statements are held up to scrutiny.⁵² If the complainant is not consistent on the most minute details, her credibility is called into question. The defendant does not have to testify at all. If he does testify, he has heard the testimony of everyone else, whereas the complainant cannot. This gives him an advantage in matching stories. At times, all the defendant says in his defense is that he did not do it, she is lying and this is all that is necessary, since the burden of proof is on the Crown Prosecutor.

A recent ruling that allows the admission of the complainant's personal and therapy records as evidence clearly demonstrates the bias contained in the burden of proof. A defendant can use personal and therapy records of the complainant to prove inconsistency in her testimony, thereby undermining her credibility. Conversely, and perhaps ironically, a complainant cannot use her records to corroborate her evidence.⁵³

In all cases, the complainant and the accused both have a great deal to lose. If the accused is not found guilty, the woman is "found guilty" of the grand narratives

⁵² Since 1995, the admission of counseling records can be used to establish inconsistency in testimony of the complainant as well as the other 3 records: police statement, preliminary hearing and the trial.

⁵³ Busby, 1997:158.

presented by the defense lawyer that cast women in various roles (temptress, vindictive liar, jealous jilted lover, vengeful woman). Although women going to court do not generally risk going to jail, they experience a “second assault” and surely risk the same public humiliation as the accused. This is unlike other crimes. For example, a complainant who testifies against a robber faces little embarrassment or humiliation when describing the robbery. Thieves cannot excuse their behaviour by saying the shopkeeper consented to the robbery and s/he enjoyed it. The dynamics of sexual assault are clearly different than those of property crimes and, to a great degree, other crimes of violence. This difference has led to some monitors expressing frustration with the contradictions when looking for solutions to sexual assault within the legal system. After four months of monitoring, one woman sums up the situation as:

The balance is way towards the man trying to defend himself. The woman has to prove it happened. Preliminary hearings are brutal. It's hard enough to have to tell your story once, but to have to tell it over and over again, and that she is not able to be there before she testifies and he is - he has power within that environment, he has more power in terms of controlling things. It is so blatantly set up that way.⁵⁴

The Adversarial Aspect of the Legal System

Four monitors discuss the adversarial aspect of the legal system. Two women suggest eliminating the adversarial aspect of law and making the courts less confrontational. Whereas, one questions the nature of the process and who is benefiting from it:

How can lawyers say some of the things that they say? How can they do what they do to women on the stand and just call it a day's work? It brings up a whole lot of question about our legal system. What are we doing? Why are we having this adversarial relationship with people? Who is benefiting? It certainly is not victims.⁵⁵

⁵⁴ Interview: October 1994 - **

⁵⁵ Interview: October 1994 - **

The monitors also question the adversarial nature of the courts as a process of justice: "There is a problem because of the adversarial gain aspect of the system. The lawyers are allowed to play games that really do not serve the true cause of justice."⁵⁶ It is difficult to imagine the justice system being transformed into a non-adversarial process while maintaining a mandate to determine a truth from often contradictory perspectives. The establishment of this singular truth is a necessary requirement for the court system in assigning or not assigning punishment. As an outcome, this singular truth discounts all other perspectives.⁵⁷

Beyond Punishment and Retribution

Two respondents state that the legal system must go beyond punishment and retribution. In this discussion, the purpose of the legal system arose. I asked one monitor, "What do you think the purpose of laws are?" She answered: "I guess it is for punishment, but I would like to see it as a deterrent, because people just keep doing [crimes]."⁵⁸ Survivors of abuse also state that they want the legal system to stop the recurrence of abuse. In handing down sentences judges, generally speak of both punishment and deterrence⁵⁹ (GBR: 47; 56; 85). Although most monitors agree that both are important, the court's attempts to achieve both often seem inadequate. For example, one monitor cites cases where judges demonstrate the value they placed on deterrence for the accused during their sentencing statement, as well as how this was influenced by their bias:

In assault cases [involving] common law relationship, the accused would be convicted or even plead guilty and would get a suspended sentence because they were not living together anymore. It's mind boggling. It happens again and again. No need for a deterrent because there is no

⁵⁶ Interview: February - December 1994

⁵⁷ Smart, 1989:26.

⁵⁸ Interview: October 1994 - **

⁵⁹ There are 5 principles of sentencing: protection of society; punishment; deterrence of both the accused and the public in general; rehabilitation; and restitution to the victim. (Court Monitoring Program Manual, 1997:10).

opportunity for him to re-offend. It was viewed as a relationship problem, not that he is an abuser.⁶⁰

This position suggests an inherent bias among some judges; particularly those who see violence in a relationship as a relationship problem, not as genderized violence and who intend to use punishment as a deterrent to the accused. One monitor questions punishment as an effective deterrent when the abuser does not recognize his responsibility:

[The]court does not deal with sexual assault in terms of rehabilitation. While I am glad that men who rape women are put behind bars for a certain amount of time, it worries me that they sit there being pissed off about a woman sending them there, and they are going to run right out and do it again. That's where I think the penal part of the judicial system deals with sexual assault inadequately. In the sense of, is it protecting women or not?⁶¹

It is questionable if punishment could ever offer a effective approach to stopping sexual assault and creating a safe environment for women and children. For example, Malamuth, Haber and Feshback conducted a study of 53 college males in 1980. They found: "51 percent indicated a likelihood that they, themselves, would rape if assured of not being punished."⁶² This suggests that punishment does not deter men from raping women, but from being caught. Fear of punishment can only ensure men will stop assaulting women if we have a system that guarantees all men who assault will be punished, an unlikely possibility. This is perhaps why monitors suggest that we must go beyond punishment and retribution to seek solutions in education and rehabilitation, changing men's attitudes and behaviours so that they recognize that regardless of punishment it is not acceptable to sexually assault.

⁶⁰ Interview: February - December 1994

⁶¹ Interview: May 1994 - **

⁶² Quoted in Diana Scully & Joseph Marolla. "Riding the Bull at Gilley's: Convicted Rapists Describe the Rewards of Rape" *Feminist Frontier III* eds. L. Richardson & V. Taylor (New York: McGraw-Hill, 1993) 402.

Court monitors suggest changes to the structure, underlying assumptions and procedures of law that create an adversarial process, afford defendants/men an advantage, place the burden of proof on women, and focus on punishment and retribution rather than decreasing the recurrence of sexual assault. Certainly, considering the law at this general level can be overwhelming and has led to some monitors to call for a complete restructuring, perhaps seeking or creating alternative approaches.

7.A.4 Summary

The monitors' approaches to social change are diverse covering a wide range of suggestions in a number of categories /themes. Predominantly, the monitors focus on the experience in the court room, offering suggestions that will change the daily experience of women engaging with the legal system. They do not see law reform as a viable direction for a great deal of feminist energy. Instead, they argue that the greatest potential for change is in the area of intent, interpretation, process, and application of the laws. The greatest number of monitors (11 of 19 respondents) suggest changing the application of the law and educating/training court room players.

7.B Mainstream Contemporary Academic Feminists' Theorizing Social Change and the Legal System

Mainstream academic feminism offers diverse theories of social change and the legal system, reflecting different analyses of women's relationship to law, and suggesting different solutions. Although there is a great deal of variation, scholars frequently use traditional labels to categorize feminist theory. For example, a traditional way of viewing feminist theory uses political labels: such as liberal, Marxist, socialist, radical, or postmodern.⁶³ Sandra Harding has suggested using an alternative typology

⁶³ Smart, 1995:3.

based on how feminists construct knowledge: feminist empiricism, standpoint feminism and postmodern feminism.⁶⁴ However, these divisions are based on theoretical positioning, and result in an overlap in grouping, albeit with different names. It is impossible to capture all the nuances of various feminist approaches. Moreover, my focus in this research is not feminist academic discourse, but rather the CMP and the monitors' theories and actions. To narrow my discussion of mainstream academic theory, I focus on two theorists who fall into different "camps": Catharine MacKinnon (radical or standpoint feminism) and Carol Smart (postmodern/ post-structural feminism).⁶⁵ Neither author is Canadian.⁶⁶ Although laws vary among countries, their basic theoretical positions transcend borders: theorists discuss the source of legal power, how law operates and feminist approaches to effect positive change for women. MacKinnon and Smart share some common perspectives of a "gender lens"; however, they see law through a different "theoretical lens" within feminism. These lenses create different languages, and identify different sources of violence against women, solutions and action for change. In this thesis, I do not attempt an in-depth theoretical summary of MacKinnon and Smart's theories; rather, I compare their general approaches to law with the action of the CMP and the theories of the court monitors.

7.B.1. Catharine MacKinnon

MacKinnon identifies sexism as the primary form of oppression. Although she includes other forms of oppression in her analysis, gender remains the primary

⁶⁴ See Sandra Hardy *The Science Question in Feminism* (Milton Keynes: Open University Press, 1986).

⁶⁵ These positions are mainstream feminism. The two theorists are from privileged social locations and, as such, this presentation does not hope to represent all the feminist perspectives. My decision in reflecting on mainstream feminists to a great degree parallels feminist's challenge to patriarchal law. Mainstream academic feminists claim the knowledge/right to define/theorize feminist position on sexual assault and the law. However, rather than challenge the academic feminist right to claim this position, I endeavour to compare it with grassroots feminist theories and action.

⁶⁶ For discussion of the different Canadian feminist perspectives on law, see Boyd & Sheehy (1986). For discussion of feminist legal research in Canada, see Smith (1989). See also Brockman & Chunn (1993).

identification to which she attaches on other aspects of identity.⁶⁷ She locates sexuality and its construction as the centre of male dominance. This position is often misread as biological determinism,⁶⁸ when in fact MacKinnon is suggesting that “sexuality is a social construct of male power”⁶⁹ based on the inequality of male domination and female subordination. She argues that “Sexuality is socially organized to require sex inequality for excitement and satisfaction.”⁷⁰

MacKinnon sees law as patriarchal. Law incorporates the male standpoint and holds the one-sided male view as the objective, neutral, universal, unbiased perspective. This approach legitimates male dominance at the same time that it renders it invisible.⁷¹ An important anti-feminist aspect of law is the treatment of gender as a difference, rather than looking at how gender as a social construct makes a difference to experience.⁷² Law assumes equality in society, when equality does not exist. Law is defined by the male standard, therefore “gender neutrality” is the male standard.⁷³ Women find themselves in a paradoxical situation. Women are socially defined as a group different from men. Law judges men’s and women’s equality by the inherently unequal male standard. Since men and women are unequal socially, this legally enforces their inequality. When law recognizes gender, it rationalizes and neutralizes gender by calling it difference, when it is actually based on dominance. Because gender difference is not recognized as gender dominance, claiming difference has often led to special protection rules which have been dangerous to women.

⁶⁷ For an anti-racist critique of MacKinnon, see Marlee Kline “Race, Racism, and Feminist Legal Theory” Harvard Women’s Law Journal 12 (1989) 115-150 and Angela P. Harris “Race and Essentialism in Feminist Legal Theory” Stanford Law Review 42 (1990) 581-616.

⁶⁸ Smart, 1989:128.

⁶⁹ MacKinnon, 1989:128.

⁷⁰ MacKinnon, 1989:243.

⁷¹ MacKinnon, 1989:237.

⁷² MacKinnon, 1989:218-9.

⁷³ MacKinnon, 1989:221.

MacKinnon concludes: "The difference route incorporates and reflects rather than alters the substance of women's inferior status, presenting a protection racket as equal protection of the law."⁷⁴

In her discussion of rape, MacKinnon focuses on rape as a condition of heterosexuality. Law generally defines rape as "intercourse with force or coercion and without consent."⁷⁵ This is an important point in MacKinnon's argument. According to her, force or coercion is a normal part of heterosexuality, therefore to describe a particular act of intercourse as occurring "without consent" would be redundant. For an act to be considered rape, the force or coercion must exceed the normal level of force in heterosexual intercourse. MacKinnon asserts that it is difficult to distinguish between "normal" heterosexual intercourse and rape, because there is little difference.⁷⁶

MacKinnon draws parallels between the battery cycle and heterosexual sex that the law's separation of marital rape and battery of women is incorrect. She asserts that wife assault should be considered sexual, as it is often the result of women's non-compliance with gender requirements. Sexuality is defined by the socially constructed gender roles of dominance and submission, regardless of the biological sex of the players. She concludes: "in boldest terms, sexuality is violent, so perhaps violence is sexual."⁷⁷ MacKinnon sees no reason for separating violence and sex; in fact, she questions if it is possible: "A feminist perspective suggests that sexuality is the primary social construction of male power."⁷⁸

Consent is a second consideration. MacKinnon contends that consent is presented as a free choice under conditions of equality, when in fact equality does not

⁷⁴ MacKinnon, 1989:233.

⁷⁵ MacKinnon, 1989:172.

⁷⁶ MacKinnon, 1989:87-8.

⁷⁷ MacKinnon, 1989:179.

⁷⁸ MacKinnon, 1989:529.

exist, therefore consent does not exist.⁷⁹ She further asserts that the law ascribes women to categories of presumed consent. For example, under-age women are not legally able to give consent, whereas women who are prostitutes or wives have historically been unable to withhold consent.⁸⁰ Although rape within a marriage has not been legal in Canada since 1986, it remains difficult to prosecute because of the myths that influence the interpretation of the law. Similarly, it is difficult to obtain a conviction for assaulting of a prostitute. Therefore, consent is judged more by the “category” a woman is assigned to, than by her agreement to participate in a particular sexual encounter. A deeper problem that MacKinnon points to is the socialization of women into passive receptivity; she concludes that “the absence of force does not ensure the presence of control.”⁸¹ When women’s sexuality is defined by dominance/ submission dynamics, the issue of consent as a meaningful concept is called into question.

A feminist inquiry into the distinction between rape and intercourse requires the investigation of the act from a women’s point of view. MacKinnon’s strategy for change begins with a methodology of consciousness raising.⁸² This process is rooted in the practical experience and reality of women’s lives. Although MacKinnon believes that existing laws must be challenged, she accepts law as a regulator of social order. Therefore, MacKinnon calls for a feminist jurisprudence that defines new relations between society and law, where law does not passively reflect society but acts to change it. A feminist jurisprudence is not neutral; it is based on and accountable to women’s concrete experience. Through a feminist jurisprudence, MacKinnon hopes to obtain sexual equality and change the relations of power in society. She contends that

⁷⁹ MacKinnon, 1989:175.

⁸⁰ MacKinnon, 1989:175.

⁸¹ MacKinnon, 1989:177-8.

⁸² MacKinnon, 1989:83-105.

the potential for a feminist jurisprudence -- which has only just begun to emerge -- should not be dismissed through theorizing, because it can only be evaluated through concrete experience.⁸³

In sum, MacKinnon discusses some of the fundamental problems facing feminists when addressing law and sexual assault. The law assumes sex equality, when it does not exist in society. Law does not see crimes as gendered, when rape is clearly a gendered crime (men predominantly rape, women are predominantly raped). Law is seen from the male point of view and rape is experienced from a woman's point of view. Men believe they had sex; therefore, to the law, it is sex. MacKinnon presents law as an omnipotent male structure that ultimately requires feminists to develop a feminist jurisprudence, and she advocates for and supports challenging law as it now exists.

7.B.2 Carol Smart

Carol Smart's theories of power, feminism and the law have been greatly influenced by the work of Michel Foucault, thus I begin with a discussion of Foucault's theory of power and knowledge in order to contextualize her position.⁸⁴ Foucault challenges the traditional modern concept of sovereign power that positions power as repressive and locates it in the state and the state's apparatuses such as law. This he refers to as judicial power. Foucault argues that in the twentieth century we have seen the rise of disciplinary power in the form of medicine, criminology, pedagogy, epidemiology. Foucault believes we should move our focus from the repressive nature of power, to "an analysis of its constructive functions, as discipline, surveillance,

⁸³ MacKinnon, 1989:249.

⁸⁴ Smart, 1989.

normalization, and a discourse of power/knowledge.”⁸⁵ Foucault sees power as productive because it creates new ways of knowing through relations of power and opposition. Theorists do not agree on how Foucault theorizes the relationship between judicial and disciplinary power.⁸⁶

Carol Smart argues that Foucault mistakenly sees judicial power diminishing with the rise of disciplinary power.⁸⁷ She maintains that by integrating with other sciences such as psychology and medicine (disciplinary powers), law increasingly intrudes into every facet of people’s lives. Other theorists, such as Anne Bunting, argue that Smart has misread Foucault. Bunting states that “I doubt...that Foucault himself would disagree with this thesis as Smart implies.” Bunting argues that Smart misses the subtlety of Foucault’s theory:

Foucault suggests that sovereignty as a form of power is diminishing, he does not suggest that the legal system, with its multifarious forms and mechanisms of power, is declining in importance as a site for the exercise of power.⁸⁸

Whether Smart disagrees or agrees with Foucault is less important than her analysis of how law interacts with other disciplines, most notably the “psy” disciplines. Smart aptly demonstrates how law’s use of “psy” disciplines has allowed law to extended into areas of family matters and children,⁸⁹ suggesting that a symbiotic relationship is developing between law and the ‘psy’ professions.

Following Foucault, Smart focuses on law as a discourse that has the power to disqualify other forms of knowledge. Accordingly, the law claims a truth that silences other ways of knowing. Law as the definer of truth offers the power to right wrongs.

⁸⁵ Anne Bunting. “Feminism, Foucault, and Law as Power/Knowledge” *Alberta Law Review* 30:3 (1992) 838.

⁸⁶ Foucault at times appears to contradict himself, this has led to different interpretations of his theories. For a discussion of this, see Bunting, 1992.

⁸⁷ Smart, 1989:6.

⁸⁸ Bunting, 1992:839.

⁸⁹ Smart, 1989:15-20.

Smart connects law's sexuality with the term "phallogentric culture", a concept she uses to describe the social world "structured to meet the needs of the masculine imperative."⁹⁰ Sexuality is understood as the pleasure of the phallus and the pleasure of penetration and intercourse for men. The law reflects phallogentric culture and does not recognize women's sexuality.

The disqualification of women's sexuality is played out in the court room through grand narratives and societal assumptions. The legal mechanisms that deny women an opportunity to tell their own story further invalidate women's experience. In her discussion of the consent/non-consent issue, Smart focuses on the effect of binary logic that is completely irrelevant to women's experience of sex.⁹¹ A woman's experience of rape may include consent to a certain amount of intimacy, but not to sexual intercourse. The legal system tends to see consent to the former as consent to the latter. In effect, the legal process narrows the possible interpretations of behaviour in its pursuit of the one truth. This one truth disqualifies all other possibilities. This not guilty verdict essentially finds the victim guilty of sexual complicity and lying. Through the process of a sexual assault trial, the woman is subject to a horrific experience that redefines her experience in the language of the phallus and the binary discourse of law. In essence, the victim is on trial. Smart emphasizes the importance of language and the inability of women's experience to be understood because they stands outside the dominant discourse of law.

Smart sees the necessity to approach rape as a crime of sex as well as violence. She does not agree with MacKinnon that all heterosex is violence, but rather points to the need to contextualize rape as part of the more difficult problems of

⁹⁰ Smart, 1989:27.

⁹¹ Smart, 1989:32.

phallogentric sex. She concludes that "male sexuality, and its prerogatives, are precisely what rape, and the rape trial are about."⁹²

Smart does not suggest that feminism ignore should law because its power is too great to go unchallenged by feminists; however, she suggests that engaging with law ultimately empowers it. Smart contends that "in accepting law's terms in order to challenge law, feminism always concedes too much."⁹³ She concludes: "it is law's power to define and disqualify which should become the focus of feminist strategies rather than law reform as such."⁹⁴

Smart argues that law develops unevenly and she rejects the idea that law is unified or simply a tool of patriarchy or capitalism.⁹⁵ She sees law as part of a "complex unity" of social structures. Thus, law-as-legislation, law-in-practice and the effects of law may be quite different. Smart provides several examples of how law-as-legislation is not necessarily reflected in law-in-practice and vice versa. Uneven development in law over time may facilitate development in a key structure and at other times provide obstacles to development.⁹⁶

In recognizing this lack of unity, Smart notes the contradictions in action. For example, she suggests a desirable approach to rape laws may be to lobby for change that would allow women to provide their alternative account of rape, although she cautions that they may be listened to in the same old way.⁹⁷ Smart questions the value of feminist policy that would encourage women to undergo the devastating experience of sexual assault trial with little hope of a positive outcome.⁹⁸ She suggests that, as

⁹² Smart, 1989:44.

⁹³ Smart, 1989:5.

⁹⁴ Smart, 1989:164.

⁹⁵ Smart, Carol. "Feminism and Law: Some Problems of Analysis and Strategy" (International Journal of the Sociology of Law 14 (1986) 117.

⁹⁶ Smart, 1986:118-9.

⁹⁷ Smart, 1989:48.

⁹⁸ Smart, 1989:49.

alternatives to law reforms, feminist strategies should focus on challenging law's power to construct truth, direct action or policy formation, as well as non-legal strategies and local struggles.

7.B.3 Summary

Smart and MacKinnon are both feminists and, as such, it is not surprising that they agree on a number of aspects of law and sexual assault. For example, they agree that men shape and control law as an institution, practice and source of meaning.⁹⁹ Both see law as having power, albeit in different ways. MacKinnon sees law as unified structure, whereas Smart views law as a complex unity of social structures that is fractured. They also recognize the "second assault" women face in the court room through repeating and redefining their experience in legal language and the inclusion of grand narratives that portray a woman as temptress, vindictive liar, jealous jilted lover and vengeful, and a man as natural predator.

MacKinnon and Smart theorize that law presents itself as an objective, unbiased perspective when, in fact, it is a male, patriarchal, biased perspective. As with MacKinnon, Smart sees the necessity to approach sexual assault as a crime of sex as well as of violence. However she does not agree with MacKinnon that all heterosex is violence, but rather sees sex as a continuum. Both MacKinnon and Smart discuss problems with consent and the burden of proof resting on the victim.

Smart constructs part of her theoretical position in opposition to traditional theories, most notably radical feminism and Catharine MacKinnon. Smart posits that radical feminists such as MacKinnon simplify "women" into a unified group, setting up white privileged women as the social norm for all women and reducing oppression to an

⁹⁹ Lynn Henderson. "Law's Patriarchy" *Law & Society Review* 25:2 (1991) 412.

essentialized oppressor (male) and oppressed (female).¹⁰⁰ While Smart recognizes that MacKinnon demonstrates a consciousness of differences within the group “women”, she rightly asserts that MacKinnon renders invisible women who are not white and/or otherwise privileged, by presenting gender as the primary form of oppression and women as a unified class that is oppressed by male power. Smart’s analysis bears consideration and presents legitimate concerns with MacKinnon’s theory. However, I argue that again Smart shows similarities to MacKinnon. Smart’s theories challenge the essentialism of radical feminism, but her practice of theorizing does not address or demonstrate a movement away from this essentialism. When Smart discusses law, she uses language that often represents women as a monolithic class and encourages a ‘women’ versus ‘men’ analysis. For example, as MacKinnon talks about law as being male, Smart regards it as phallocentric. Neither incorporates an analysis of how the law is also racist or homophobic. Similarly, Smart has been criticized for demonstrating inconsistency by asserting that law is not a unity, but proceeding to discuss law as if it is.¹⁰¹

Most of the similarities between Smart and MacKinnon lie in their description of law and women’s interaction with it, whereas their differences lie in where they locate power and their focus for political activism. Where Smart locates power in discourse, MacKinnon locates it in the patriarchal structure of sexuality. Their different location of power and resulting theoretical perspectives account for their different strategies for action. Smart’s belief that power is not centrally located and is expressed in phallocentric discourse leads her to strategies that are built on the everyday experience

¹⁰⁰ Smart is not alone in her criticism of MacKinnon’s theory of a totalizing feminist jurisprudence that renders non-privileged women invisible. However, others have been more successful in demonstrating their theory in practice. For example, Harris (1990) and Kline (1989).

¹⁰¹ Bunting, 1992:840.

of women and involve de-centralized (uneven development) theory. MacKinnon's belief that power is centrally located in patriarchy and is expressed in all its institutions such as law, leads her to strategies built on consciousness raising and the development of a totalizing feminist jurisprudence.

7.C Comparing CMP's Action & Research Participants' Theories with Academic Feminist Theories of Social Change and the Legal System

The court monitors¹⁰² identify with many of the problems and concerns of Smart and MacKinnon. They speak to the horrendous experience women face in the court room, the effect of language, the sexual and violent nature of sexual assault, issues of consent, and the burden of proof resting on the victim. At a concrete practical level, the court monitors' theories for effecting change are reflected in both Smart and MacKinnon's theories in part because the court monitors do not present a monolithic theory, but rather multiple practical approaches. The differences lie in the language/discourse used to discuss sexual assault and the law, the focus of attention, differing conceptions of women as individuals and as a group, and in some areas of political activism.

Language has a determining influence on theories. Smart theorizes that discourse, more simply considered as "language", is the source of phallogentric power. She asserts that the power of law is located in legal discourse that silences other discourses such as feminism. Although Smart recognizes and discusses the power relations between feminist and phallogentric discourses, she does not address the power of her feminist discourse and how it may silence or diminish other women and

¹⁰² I find in this presentation that I talk in terms of "court monitors," which may be misleading. Their theories do not represent a monolithic position. There is no monolithic "court monitors" as such. What I do present is a summary of their theories/perspectives - a generalization. So I present the magnitude of their comments, which does not represent all monitors and what "they" see as major issues. Again this does not represent each monitor, only the greatest number.

discourses. A further problem arises in the “interpretation” between languages. For example, in reading the perspectives of the monitors simultaneously with those of MacKinnon and Smart, it is difficult at times to compare their words, frameworks and discourses. Court monitors do not use terms such as phallogentric and feminist jurisprudence. Court monitors speak in concrete terms. This leaves me with the difficult task of comparing theories between different languages. This requires a “translation”. Helen Rapp states:

When you translate from one language into another, you are translating in however subtle a way the historical, geographic, climatic, religious, emotional experience of one group of people for the benefit of another group.¹⁰³

In a sense I may be in a good position to translate, as I have a foot in each world; however, it remains a challenge. I find Smart's language is particularly difficult to translate. For example, what do non-legal strategies encompass? Do they include the CMP that supports women in the court room? Although this is a non-legal strategy, Smart questions feminist policy that would make the trial process more tolerable, thereby encouraging women to undergo the devastating experience of sexual assault trials.¹⁰⁴ However, Smart supports local struggles. This certainly appears to include the CMP, as it is a local initiative. However, the CMP engages with the legal system, while Smart suggests that feminists should not engage with the law which ultimately empowers it. Smart's suggestions for activism and change are vague and difficult to translate into practical strategies.

By taking liberties in translating Smart's strategies for change, I see considerable parallels with the court monitors and the CMP. Smart recognizes the need for local struggles that respond to the specific experience of women. She

¹⁰³ Quoted in Donald Davis Poetry in Translation (Milton Keynes: University Press, 1975) 6.

¹⁰⁴ Smart, 1989:49.

theorizes that law is a complex unity that results in differences between law-as-legislation, law-in-practice and the effects of law. This is consistent with court monitors and the CMP, who point to the inconsistent application of law. Smart and the court monitors point to the contradictions that may arise in taking action in the arena of law, because of its complexity. Some court monitors went so far as to say that the laws (law-as-legislation) are good, and that problems arise from how the court room players interpret and apply them (law-in-practice). Recognizing these problems, Smart calls for different action at different times, suggesting multiple approaches. Similarly the court monitors talk about creating change in the court room (physical layout, process, court room players), society at large (social programs, systematic change, raising awareness, lobbying, education), and laws (legislation, intent and process).

Smart recognizes the need for non-legal strategies that challenge the phallocentrism that defines men's and women's genderized roles in society. The court monitors take a similar position, calling for raising public awareness about gender bias and changing society's attitude (grand narratives) that are played out in the court room.

When comparing Smart with the court monitors, a further difficulty arises: when Smart speaks in general terms, there is a great deal of consistency with the court monitors; however when she speaks in specific terms, her position diverges from theirs. For example, Smart expresses concern when considering educating juries on rape trauma syndrome.¹⁰⁵ While recognizing such education may lead to more convictions, it does not afford women the opportunity to tell their own story, but rather the "psy" profession speaks for them, thereby "making women embrace their victim status even more warmly."¹⁰⁶ This is inconsistent with court monitors who believe educating court

¹⁰⁵ Smart, 1989:46.

¹⁰⁶ Smart, 1989:47. Other feminist theorists share Smart's concern. Elizabeth Schneider (1992) discusses the use of "psy" professionals as experts in defense of women who retaliate against their abuser. She

room players is a good approach. *I do not agree with Smart's conclusion. This is a rather harsh judgement of women. Having a "psy" professional speak may validate their experience, which can be part of the healing/empowering process.*

In general terms, Smart's overall approach most closely reflects that of the CMP/court monitors. However, she may offer less to women in practical terms, as her theory remains inaccessible (in language) to many women and gives little practical direction. In fact, when Smart discusses the concrete, she tends to veer off into theory without giving her support to a course of concrete action, or she theorizes it into a problematic approach.

MacKinnon speaks in concrete terms more readily than Smart. The court monitors' language/ discourse is more closely related to hers, making comparisons easier. For example, like MacKinnon, court monitors use words such as consciousness raising and patriarchy. MacKinnon calls for consciousness raising, engagement with the law, and a feminist jurisprudence. The CMP and monitors reflect a methodology of consciousness raising and advocate engagement with the law. However, MacKinnon

asserts that experts are used to demonstrate a woman's actions are reasonable by "pathologizing" a woman as a battered woman. She questions the effectiveness of this approach because expert testimony has been used by lawyers to further entrench sex-stereotyping of women as helpless victims. Women who do not fit this stereotype are not successful in court. She uses the example of Anita Hill to demonstrate her position. (Schneider's simplification of the Anita Hill trial to Hill's lack of portrayal as a helpless woman victim is a misrepresentation of the complexity of the issues involved and leaves out the central issue of race. See Morrison [1992]) Although some women may win their freedom, it is not a beneficial feminist strategy because it reinforces sex-stereotyping and women's victimhood, thus having a negative impact on women as a group. It is doubtful that any monitor would disagree with her assertion that entrenching sex-stereotyping is detrimental for individual women or women as a group, however they reach different conclusions. This may in part be due to the different situations facing women. Schneider discusses cases where women are defendants, not complainants. The use of expert witnesses in sexual assault cases is also used to demonstrate the "reasonableness" of a woman's action, however the reasonableness is used to demonstrate the credibility of her testimony as a victim, not as a defense for committing a violent act. Consistent with Smart's multiple approach, I assert these different positions are likely to call for different approaches and have different effects. In addition, I do not believe she successfully demonstrates that the difficulties that have arisen in using 'psy' experts necessarily leads to abandoning their continued use. Her examples demonstrate the complexity and depth of the problem and the need for complex solutions. Certainly this supports the monitors' assertion that law continues to be interpreted according to a sexist bias. I would also argue that it demonstrates the need for a complex and multiple approach to education and training as well as patience. Deeply entrenched gender bias will not change quickly or simply.

appears to put more emphasis on law reform than do the monitors. Court monitors do not talk about developing a feminist theory of law: however, they do talk about changing the intent and process of the law and the underlying principles that advantage men over women. Some monitors see the overwhelming systemic inadequacy of the legal system, and to conclude that we need an entirely new system rather than reforms. Although I believe this could be interpreted as a theory of the law, there is an underlying difference between the approach of MacKinnon and that of the court monitors. MacKinnon advocates the creation of a feminist jurisprudence which will lead to change in relations of power in society. Conversely, court monitors focus on concrete changes in the court room and societal change that will influence the application of the law. Laws are only as effective as the society that upholds them and the people who administer them.

In a sense, communicating between the different discourses is one of the main focuses of the court monitors that is not reflected in Smart or MacKinnon. Overwhelmingly, the court monitors identify education and raised awareness as a focus for activism. The court monitors call for educating and sensitivity training for court room players and the general public to understand women's experience through women's eyes and understand individual women's experience of sexualized violence. This does not necessarily involve a monolithic woman's experience, because they include power dynamics and social issues that affect sexual violence. Monitors also grapple with this issue through opposing an adversarial system that discourages hearing another person's perspective. They call for rehabilitation, prevention, and a legal system that acts as a deterrent for offenders, rather than looking only for punishment and retribution. Monitors focus on genderized violence; therefore, they also focus on understanding the different experiences of women and men and how to understand

each other's individual and collective differences within a multiplicity of experiences. An example of this took place since the research period. Monitors observed a murder trial in which both the defendant and the victim were First Nations. The monitors could not and would not ignore the 500 years of colonization that preceded this event. They did not reduce the issue to gender. In fact, because the man was present and, of course, the woman victim was not, the monitors witnessed the blatant and painful racism directed only at him. They found themselves feeling an alliance with the defendant. During the debriefing session, we talked about how we did not need to fall into the trap of adversarial law by "choosing sides" but should rather seek to understand the complexity of the situation. Every monitor who witnessed that trial left with a clear understanding that the application of the law was racist as well as sexist. Any simplistic notion of law as male or patriarchal was quickly lost.

Neither Smart or MacKinnon discuss how to communicate between the different discourse. MacKinnon does not address how a feminist jurisprudence would interact with the dominant one, nor does Smart talk about how communicate between the phallocentric discourses of law and feminist discourses. Although Smart grapples with the notion of multiplicity and difference, she does not suggest that we look at how we might find ways to communicate between these discourses/languages.

The court monitors do not call for and the CMP does not challenge the law's power to define truth as Smart suggests. Both the monitors and MacKinnon appear to accept law as a social regulator. Perhaps for different reasons, MacKinnon accepts law as a social regulator while challenging the male standpoint of law, and as such focuses on law as an area for effecting change. Court monitors do not focus on law, but rather on the application of the law and how it affects women and children. Moreover, while they accept that law reform holds some merit, court monitors do not see this as an area

for a great deal of energy. This may be in part a reflection of the different experience of law reform between the United States and Canada. Canada responded to some of the radical feminists' critiques implementing laws that promised to improve the situation for women/children in sexual assault trials with little practical positive outcome.¹⁰⁷

Although MacKinnon and Smart both point to the need to begin from women's experience, neither one offers solutions that directly impact the day-to-day experience of women engaged with the justice system. For example, both talk about the "second rape" in the court room, but do not address how to improve women's experience in court. Both tackle it at a theoretical level, MacKinnon suggesting a feminist jurisprudence and law reform, and Smart challenging the phallocentrism that disqualifies women's experience. Theories such as these are removed from the daily experience of the court room. Although Smart's abstract solutions quite closely reflect those of the court monitors and the activism of the CMP, her language is most removed from the experience. *I experience a lack of congruence between Smart's theories and her practice of theorizing. To see the parallel between Smart and the CMP/ court monitors, I need to have a distance from the court room experience. Reading her after leaving the court room, I was frustrated and angry. Words like discourse and phallocentric seemed to have nothing to do with my experience in the court room, and suggestions to challenge the power of the law seemed absurd in the wake of women's painful experience of the first and second assault.*

Both theorists talk in terms of feminism when addressing strategies/theories and individual women when describing experience of abuse. MacKinnon takes into consideration women as active participants in achieving change through consciousness raising. However, she appears to assume they will come to share her theory of radical

¹⁰⁷ See Hinch (1988, 1988, 1985)

feminism through this process rather than coming to other conclusions. I find a great deal of similarity between MacKinnon's consciousness raising and Smart's call to challenge the phallocentrism which is part of women's (and men's) unconscious that constructs subjectivity.¹⁰⁸ In addition, Smart tends to present feminists' collective action as a catalyst for individual women's actions rather than as a dynamic relationship between the two. I find Smart's separation particularly problematic. For example, in Smart's concluding remarks on rape, she considers directions for feminist legal work. She presents women as potential pawns of the feminist movement and calls for feminists to consider the morality of this. She states:

It might be argued that rape remains an important area of feminist legal work... To a certain extent this is true, but there can be drawbacks. The first and paramount drawback is that we have no justification for using women who have been raped as horror stories in a kind of propaganda war... It is also a dubious practice that puts vulnerable women who have 'gone public' on their abuse in the vanguard of a struggle that concerns all women.¹⁰⁹

Although Smart's concern that feminists may use individual women is valid, she fails to recognize the self-determination of women who engage with the legal system. She does not acknowledge that individual women are forced¹¹⁰ or choose to engage with the legal system, nor how feminists may support them, nor how individual women's engagement with the legal system may dovetail with strategic change for women as a group. Her approach is not consistent with that of the court monitors who do not question women's decision to go to court and who respect their self determination in doing so. The CMP, the court monitors, and complainants who request that court monitors attend their trials do not indicate that the women's decision to chose legal

¹⁰⁸ Smart, 1995:78-79.

¹⁰⁹ Smart, 1989:48.

¹¹⁰ In Canada, a man can be charged with wife assault without the victim laying charges. She must testify or risk being held in contempt of court. This has resulted in some women being forced into an engagement with the legal system.

redress was influenced in any way by the collective action of the CMP. Regarding Smart's valid concern of the morality of feminist activism, feminist activism is still possible without "using" individual women. For example, court monitors leave the court room if requested to do so by the complainant, and their activism is directed toward issues rather than specific cases or individual women.

The theorists' separation of women and feminists poses some concern as it tends to focus on women's victimhood rather than their strengths, empowerment and self-determination. For example, going to court can be an empowering process for women, even if the outcome is not optimum. During a recent presentation,¹¹¹ a counselor who works with women survivors of sexual abuse stated that she helps complainants focus on the process rather than the outcome, because going through the courts can be an empowering experience even if the defendant is found not guilty. For a survivor, the experience of the "second rape" in the court room can be outweighed by the empowerment of standing up against her abuser and telling her story, particularly if she gets support, information about the trial process, and does not focus on the sentencing. Sentencing is not the only way that a woman's experience is acknowledged in the legal system. For a case to go to trial, the police and the Crown Prosecutor must believe that the crime occurred and that there is enough evidence to prosecute. In some decisions, judges state that they believe the woman's story, but there is not enough evidence to meet the burden of proof. The counselor emphasized the need for women to make their own choice to go to court, weighing the negative and positive effects. Many women she works with decide to go to court, with the full knowledge of what they will face and the unlikelihood of getting a conviction.¹¹² This is

¹¹¹ Presentation during CMP Training Program, August 6, 1997.

¹¹² The counselor keeps statistics on the cases she works with and 30% have resulted in a conviction.

consistent with court monitors who identify the difficult experience of witnessing court proceedings in sexual assault cases, while continuing to monitor because of the accompanying positive effects.

Women's actions hold the possibility to create direction for collective political activism and theory. For example, women continue to go to court regardless of whether feminists theorize the merit of this. Asking why women go to court (for example, retribution, punishment, deterrence) may lead to creating alternative processes to meet these needs or to finding ways to change the process to decrease victimization and increase empowerment. The questions we ask influence the "theory" we arrive at. I agree with the theorists' assertions (although I question their practice) that we must begin from women's experience to define the problems, the questions we ask, possible solutions and where to look for answers.

The court monitors do not make this separation of women (experience) and feminism (theory). When asked to describe their feminism, some women hesitated. They did not know how to separate their ideas from their practice: "Feminism is not a theory that is separate from me, it is the way that I live"¹¹³ and "I don't know what it would not effect, that's why it is so hard to answer."¹¹⁴

Smart and MacKinnon focus on locating power (the problem) and from this they theorize the best approach to making positive change. They predominantly discuss men and the accompanying structures of power (patriarchal structures of sexuality and phallocentric culture), whereas the court monitors do not focus on locating power and their theories for change come from their lived experiences. They predominantly discuss women's experience and what can be done to change it. They do not engage

¹¹³ Interview: May 1994 - **

¹¹⁴ Interview: October 1994 - **

in a discussion of the best approach, but rather look at various solutions arising from their experience. For example, when asked about other approaches to improving women's experience of the court system, court monitors responded by listing alternatives and recognizing the need for different approaches to tackle the different experiences/needs of women and children.

7.D Summary

There is consistency between the CMP's practice and the court monitors' approach to social change with respect to sexual assault and the law. Monitors call for a diverse approach that focuses primarily on changes in the court room, but also includes changes to laws and changes at a societal level, where they locate socialization of gender bias. In attempting to situate the court monitors' theories and the CMP's action in mainstream academic theories of sexual assault and the law, I found the focus quickly moved from comparing theories of feminism and the law to comparing theories of feminist organizing for change and bridging difference. The court monitors and the CMP do not disagree with the suggestions for action put forward by either Smart or MacKinnon. Rather they appear to support all of them, calling for a diverse approach. They do not posit a grand theory of where power lies; instead, they focus on concrete solutions and local action in response to lived experience.¹¹⁵ In general terms, their approach is best reflected in Smart's theories, although with the previously noted limitations.

I believe that MacKinnon's and Smart's success in presenting a convincing theoretical perspective while failing to find practical measures to effect meaningful

¹¹⁵ Susan Boyd and Elizabeth Sheehy (1986) assert that Canadian feminists generally take this approach. They avoid a theoretical perspective and focus instead on concrete issues. They conclude that this leads to an adoption of a dominant liberal paradigm. However, this is not reflected in the court monitors' or the CMP's approach to activism.

change, cannot simply be attributed to the complexity of the situation. They both focus on theorizing/ explaining a singular source of violence against women and finding a “correct” approach for effective change, leading both to an adversarial presentation. In theory, Smart presents a multiplicity of approaches and yet her theorizing narrows the scope of action. At times, Smart’s theories border on paralysis, as she identified herself. After presenting her position on rape and political activism, she states: “of course to follow this argument to its logical conclusion would lead to total inactivity and political paralysis.”¹¹⁶

The CMP satisfies both MacKinnon’s and Smart’s assertion to begin from women’s experience. The experience of women in the CMP leads not to theories of power relations but to local initiatives that respond to women’s everyday life and strategies for improving individual women’s experience while creating social change. Through witnessing women’s experience in the courts, while respecting their self determination and ability to make the best choice for themselves, court monitors believe it is worthwhile activism to support women through the court process and lobby for change within and outside the legal system.

Recently, the “difference” between academic and grassroots feminists has been added to the ongoing struggle for feminism to be inclusive.¹¹⁷ Setting up a dichotomy of difference, grassroots versus academe, obviously does not represent the situation. Grassroots and academic feminists likely agree more than they differ. This is partly demonstrated by the number of individual women who work in the two “spaces”; for example, some of the CMP participants and some participants in the recent Praxis

¹¹⁶ Smart, 1989:49.

¹¹⁷ For further discussion of bridging the gap between academic and grassroots feminists in Canada, see Wine & Ristock (1991) 254-358.

/Nexus conference that focused on the intersection of feminist practice and theory.¹¹⁸

In some ways, the CMP is a pioneer in occupying the space in between. It does not offer direct support to complainants as do many grassroots feminist organizations, although some complainants and support workers do experience the court monitors' presence as supportive. As a grassroots organization, it draws on academic studies to support its activism as it crosses over into the "academic world" of research and theory. The CMP offers the feminist community activism, theory and research, as it sits at the crossroads of grassroots and academic feminism. What remains a challenge for the CMP, and for grassroots and academic feminists, is communicating between the different discourses/languages and experiences to share in the common goal of feminist social change.

¹¹⁸ Maxine Molyneux postulates a similar theorizes of different feminist strategies. She suggests that feminist interests can be divided into practical and strategic. Practical interests arise from the immediate problems of women's everyday life. Strategic interests are more theoretical in nature and address the structural problems that underlie practical interests. "Mobilization without Emancipation? Women's Interest in the State, and Revolution in Nicaragua" *Feminist Studies* (1985:11) 227-254.

Chapter 8: Recommendations, Considerations and Concluding Remarks

As authors, we have been criticized for our lack of academic credentials. But you do not have to have a Ph.D. to listen carefully and compassionately to another human being. In fact, our perspective as lay people helped us...to present them [survivors] as strong, capable people who'd been hurt.

*Ellen Bass and Laura Davis, 1994*¹

The purpose and intent of this thesis is to create an academic space for grassroots feminists' theories, bridge the division of grassroots and academic feminism through considering these theories in relation to academic feminist theories, document the development of the Court Monitoring Program and evaluate its effectiveness. I believe I have satisfied these goals, as well as providing some considerations for future action. What remains is to present recommendations for future development of a court monitoring program, discuss methodological and theoretical considerations of this thesis and review possible implications of the Court Monitoring Program on feminism and social change.

8.A Considerations and Recommendations for Future Court Monitoring Programs

This research points to a number of difficulties and concerns raised by the research participants. The difficulties are related to external challenges (e.g., the painful process of witnessing the court process in cases of violent crimes against women and children, the overwhelming nature of working towards eliminating gender bias that is at the core of our socialization) and to internal challenges (e.g., lack of preparation before entering the court room, lack of funding and resources). Although important, these difficulties do not detract from the CMP's success; instead, they

¹ Bass and Davis, 1994:14.

provide insights about recommendations that could alleviate some of the difficulties.

Perhaps more importantly, this research suggests that the CMP is a successful feminist approach for supporting and empowering women and affecting positive social change.

This research suggests the first objective of the Court Monitoring Program, monitoring in the courts, has produced a positive effect for both individual women and women as a group. The presence of monitors in the court room affects the awareness of court room players, which in turn is likely to affect the overall delivery of service within the legal system, rather than the outcome of individual trials. Contact with complainants has indicated that they feel supported by the presence of court monitors and that this has had a positive effect on their experience in the court room. An important and challenging requirement for this positive outcome is the necessity for complainants to be aware of who the court monitors are and why they are in the court room. In part, the CMP has accomplished this through ensuring that people who work with complainants are aware of the program and its aims, and, in addition, the court monitors wear identification buttons and have information sheets that explain the program which they give to complainants.

The court monitors continue to choose to enter the courts despite the difficulties they face there, in part because the painful experience is outweighed by the benefits to themselves, the complainants they support and women in general. Similarly, complainants also continue to make the difficult choice of seeking legal redress in the face of its painful shortcomings. Despite the potential negative emotional impact of participating in the CMP, court monitors overwhelmingly experience court monitoring as positive through raised awareness, participation in collective action, and empowerment. This indicates the program is fulfilling monitors' initial expectations of learning, interest in the legal system, activism, feminist work, and a desire to support women. The

research also indicates that court monitors contribute to public education through their own network of friends. Court monitoring provides women with valuable information that they may use themselves or in supporting friends who engage with the legal system.

The two remaining objectives, researching and raising public awareness, have received limited attention; therefore, their full potential for social change has not been realized. Some of the court monitors felt frustrated with only working towards supporting individual women without also working on the two additional aims that address conditions in the courts and contributions towards social change for women in general. The following recommendations in part address how all three objectives may be integrated and consequently decrease monitor frustration.

This research suggests a group needs to do considerable preparation before entering the court house. The recommendations call for:

- the development of a Court Monitoring Program infrastructure (e.g., volunteer base and accompanying support system, concrete aims, procedures, and necessary tools to monitor)
- the securing of funds for the project
- the external preparation of the community for the program activities, particularly people in the court house
- the development of an external support system (e.g., develop relationships with other organizations to share resources, knowledge and activities, research other court monitoring program in order to obtain support and share resources and knowledge, and develop relations with allies in the media and court room).

In addition, the Court Monitoring Program works in a number of different directions requiring diverse skills. The difficulties of recruiting volunteers or hiring staff with all the necessary skills has been a challenge for the program. One possible solution is through sharing resources and expertise with other organizations.

Developing a volunteer base includes community building. This research indicates that monitors are able to cope with the painful court process if they feel supported by the program and each other and share basic philosophical assumptions. Debriefing, support and sharing are consistent positive aspects of the CMP meetings. Predominantly, women feel more comfortable in the court with another monitor and appreciate the chance to debrief at the CMP meeting. They also call for in-depth training before entering the court room, in order to have a basic understanding of court process and procedure, the issues to watch for, and court house logistics. Consistent and thorough training contributes to monitors feeling more comfortable in the court room and to increasing the integrity of the data they collect.

This research also points to the possibility of developing positive relations with court room players and court house staff. It suggests that a court monitoring program can develop these positive relations without the dangers of co-optation that often accompanies mainstream tactics. This is most probable with court house staff who may not have a vested interest in the court process.

The CMP's experience of creating a database offers a warning to other programs that creating a database requires the involvement of someone with computer expertise commensurate with the magnitude of the database project. It further demonstrates the need to clearly conceptualize the whole data collection process, of which the database is but one part. This includes a data collection tool with

accompanying guidelines for data entry and ongoing monitor training on bias and the law.

Many of these recommendations require substantial financial and human resources. A specific requirement is a paid staff member to attend to the program's administrative needs, represent the organization to the public, and undertake volunteer management (monitor recruitment, training and support). A full time staff member offers volunteers the administrative and emotional support necessary for their engagement in the Court Monitoring Program's activism. In the present financial environment, this is a challenging consideration for not-for-profit organizations.

8.B Methodological Considerations

In reviewing my research methodology a number of issues arose that set it apart from traditional feminist research and raise research issues. Traditionally feminists have located themselves in their research by stating their assumptions, biases and revealing their social location. I have endeavoured to expand on this through specifically locating myself in the research as the research progressed, as well as reaching beyond the traditional categories used to define identity. I did not want to simply state my social location, in part because it is the interaction of my "different locations" at a specific points in time that influences the research and the research question. For this reason I began the thesis with a preamble to reflect my subjectivity and used italics to identify my personal experiences. I wanted to bring myself more completely into the research by introducing the specifics of my experience both in the research project and in my personal process during the research. I believe the process offers the reader a better understanding of the research. First, the reader can better interpret my presentation and position through understanding the part I played in a

particular event. Second, as a research subject, it allowed me to insert my voice and further demonstrate the experience of a court monitor. Inserting my voice also allowed me to anchor my writing in the experience.² This methodology more closely reflects my theoretical perspective that includes an integration of practice (activism), theory and experience.³ In a sense, I am suggesting expanding the notion of praxis to include experience and her/history.

My discomfort with being considered an outsider led me to approach participatory action research from a different perspective. Traditionally feminist participatory action researchers are outsiders who use their research skills to capture “insider perspective”. However, I did not enter the project as a researcher, but entered as an activist and participant in the CMP. The research project developed from this perspective, leading to me to play a dual role of researcher and research subject. This dual role called for the inclusion of my voice in italics and provided me with a unique inside perspective, while also presenting some concerns.⁴ However, approaching research as a research subject and including subjectivity through an italicized voice offers an alternative approach that holds potential for future research.

In evaluating the inclusion of traditional sociological research categories, such as marital status, this research suggests that it may be prudent for researchers to consider the meaning and value of such categories. Such considerations could lead to asking more direct questions that clearly address relevant questions. This approach further challenges traditional categories and calls for researchers to examine possible underlying biases.

² This approach of including the writer's voice and grounding the writing in experience was borrowed in part from Janetta Ozard. She used this method in a Women Studies paper (“Rape Crimes in the Former Yugoslavia” University of Victoria, 1995).

³ I use the word experience in part to bring in one's her/history.

⁴ See Chapter 3 - 3.B Participatory Action Research.

8.C Theoretical Considerations

The development and process of this thesis offers some consideration for feminist theory and practice. Within this thesis, I have endeavoured to create an “academic space” for grassroots feminists to contribute their perspectives to the field of feminist literature on sexual assault and the law. I have attempted to change my role as a sociologist from a creator of knowledge to a facilitator/communicator of knowledge. Rather than “study” the practice of court monitors to create theories, I have presented the court monitors’ experiences, perceptions and theories within an organizational framework. In doing this, I step outside sociology as an academic pursuit that creates knowledge through observation and separation from the process of experience. The impetus for this approach is the belief I share with the CMP founders that court monitors are experts on the experience of violence against women and thus offer theory and research an important perspective. My research supports this contention. In addition, this research demonstrates that court monitors are pre-eminently experts on women’s experience of the court system. In part, this research and the CMP challenge the traditional feminist and sociological division of theory (academe) and practice (grassroots) by presenting grassroots discourse and theories as equally valuable to those of academics. I believe this approach can be extended beyond the specifics of this research project to offer valuable consideration for future research. Through recognizing experience and practice as equal but perhaps different contributors to “expertise” from that of formalized training, we can expand sociology’s role in contributing to knowledge and understanding of experience and interaction.

Within this thesis I have attempted to practice the theory of cross-cultural communication between academic and grassroots feminism through a presentation that

endeavours to reach both audiences. In doing so I have only begun to meet the challenge of communication between difference. I have challenged traditional notions of academic writing and at times I may not have successfully reached either audience; regardless of the success or failure of reaching this goal, the process and presentation remain an important and inherent part of the underlying intent of this thesis: challenging the traditional separations of practice and theory within grassroots and academic feminism. Communication and collaboration between different feminist disciplines/groups offers a valuable direction for social change. In addition comparing the court monitors' and the academic theorists' approaches, has highlighted the importance of practicing alternatives to adversarial approaches to effecting change.

The court monitors' theories and action both support and challenge mainstream contemporary academic feminism while adding some thoughtful considerations for future action, theorizing, and communication between different discourses and groups. One notable consideration is the need to ground theory in experience. Both Carol Smart and Catharine MacKinnon rightly advocate this, yet at times they move away from this practice. This research suggests the need for further attention to how theory supports activism and the role activism plays in theory development. In addition, integration of experience and her/history into theory and praxis bears consideration.

8.D Concluding Remarks

A further consideration of this thesis is the value of a court monitoring program and how it may fit into the wider context of feminist activism and theory. The CMP combines activism that supports individual women in their experience of the court system with political activism to decrease women's oppression/ disadvantage both in society and the legal system. Although, in practice, the program has had some

difficulties in reaching all its objectives, the balance of work in both areas is very attractive for monitors. The immediate gratification of feeling/seeing the results of action (supporting women in the court room) is important when facing the long-term and often difficult-to-measure task of social change. The Court Monitoring Program and the court monitors view support for individual women and lobbying for social change as compatible and complementary activities. Through supporting individual women in the court room, the monitors collect data to lobby for women as a group. They do not see the necessity to choose between these two areas of work, but rather find the pursuit of both a satisfying balance. The integration of this approach contrasts with traditional dualistic approaches that focus on either supporting individual women or working towards social change for women as a group. The Court Monitoring Program presents feminist activism as a dialectic relationship between individual women and women as a group.

In theorizing an approach to effective change for women as a group, the court monitors challenge the adversarial nature of the legal system and go beyond the group “women” to look for solutions at a societal level. Predominantly they see necessary change which includes both men and women (ex. court room players, raised awareness of public). This position is in contrast to both MacKinnon and Smart, who have not disengaged from the adversarial position of patriarchy (men) vs feminism (women) perspective. Both set up opposition/challenges to law without suggesting a non-adversarial alternative process for women. Neither discuss the difficult and challenging question of communication across difference discourses.

Not all feminist theorist take this approach. For example, Patricia Monture-Agnus presents a position that moves beyond an adversarial approach and challenges

the purpose of justice. In her analysis of Aboriginal Justice⁵ she asserts that to work only to develop specific Aboriginal programs, although valuable, does not meet the need to reconstruct the larger society so that no form of marginalization exists.⁶ She discusses the concept of justice as well as its intent, suggesting that “justice as healing” includes healing of individuals as well as healing of people as a society. She recounts an aboriginal process of justice that focuses not on retribution, but on the two parties working individually with counselors to rid themselves of their bad feelings and cleansing their spirit.⁷

Another approach that moves away from the adversarial nature of justice is youth diversion programs. In youth diversion program located in Sparwood, BC,⁸ the community takes responsibility to resolve the issue. This is done through bringing together the offender and the offended to tell their perspective of the event in question. Both parties are encouraged to have support people present. The victim takes a central role in the process that allows both people to tell their story in their own way. Presently diversion programs are only used for minor offenses. They have been very successful both in decreasing re-offenses and creating a healthy and satisfactory process for the participants. In many cases the process addresses the social issues that contributed to the offender committing the crime. The community as a whole takes responsibility for the process and all participants are supported through it.

Both of these approaches focus on responsibility rather than rights, including theory and practice for affecting change. They both focus on the need for healing and resolution of the community as well as those intimately involved with the crime. Both

⁵ Patricia Monture-Angus, *Thunder in my Soul* (Halifax: Fernwood Publishing, 1995).

⁶ Monture-Angus, 1995:222.

⁷ Monture-Angus, 1995:243.

⁸ Jake Bouwman and Glen Purdy, “Presentation to Standing Committee on Justice and Legal Affairs”, 1 November, 1996.

approaches, although to differing degrees, avoid the adversarial approach that hinders the healing process and involvement of the whole community. An important aspect of these alternative approaches that is shared with the Court Monitoring Program and Smart is the local (community) focus and everyday experience. In addition, the Court Monitoring Program in part endeavours to bring the community into the court system.

With few alternatives, women continue to access the legal system. The question remains what can be done to support this choice for individual women and women as a group. This research supports the assertions of the Law Society of BC,⁹ and Sahjpaul and Renner,¹⁰ that a court monitoring program is an important element in ensuring the accountability of the courts.

Similar to Smart's contention that phallogocentric discourse silences alternative discourses such as feminism, feminists are increasingly pointing to silencing within feminist discourses. Angela Harris asserts;

Just as law itself, in trying to speak for all persons, ends up silencing those without power, feminist legal theory is in danger of silencing those who have traditionally been kept from speaking, or who have been ignored when they spoke.¹¹

Feminism now challenges the notion of "global sisterhood" and calls for a celebration of difference and rethinking the hierarchy of knowing and experiencing. Most recently this focus includes differences and privileges of power within grassroots and academic feminism. As a program that sits at the crossroads of academic and grassroots feminism, the CMP challenges the divisions and offers hope for communication and collaboration. The work of the CMP and the accompanying theories and strategies of

⁹ Law Society of BC, 1992:419.

¹⁰ Sahjpaul & Renner, 1988:512.

¹¹ Harris, 1990:585.

the court monitors contribute valuable information to the continuing relationship between feminist practice and theory.

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Appendix A

Development and Process of the Court Monitoring Program

A Introduction

In the closing months of 1992 the Victoria Status of Women Action Group (VSWAG) conceived and formed the Court Monitoring Program (CMP). The program had one part-time paid coordinator, a number of volunteers and was housed in VSWAG's office space. The successes, challenges and significant events of the CMP unfolded in the context of VSWAG. As it evolved, the program went through a number of changes, stops and starts. In this narrative, I endeavour to capture the her-story -- significant events and issues -- as described in participants' recollections, my experiences and CMP documents. In this section I have two objective in reconstructing a her-story of the CMP: to offer a detailed her-story for the CMP and its members, and a framework for other women's organizations that may wish to establish a court monitoring program. To accomplish this, it is necessary to present a detailed narrative and include all working documents, resulting in a lengthy report.

It is a challenge to present this material in a manner that flows chronologically while presenting important issues in their entirety. To accomplish this, I am using a combination of the two formats. I begin with a chronological narrative of the program that includes important events in their entirety, while only highlighting significant issues. Following this, I focus on the significant issues of the program: the button issue; development of policy, literature, and operational documents; volunteer development and support; and liaising in the court house and community. By presenting an issue in this manner, it is contextualized within the her-story while maintaining its integrity as it develops over time. But before turning to the her-story, I begin with the context within which the program began and grew and the impetus for the program's development.

A.1 The Context

The her-story of the CMP developed within the context of its parent organization, VSWAG. VSWAG was formed in 1971 to improve the status of women in economic, social and political life.¹ VSWAG is like many other feminist organizations: chronically under-funded, over-committed (energy dispersed in a multitude of different directions), understaffed, housed in dismal physical space with over-taxed (emotionally and physically) members and staff.

In 1992, VSWAG's office consisted of (three rooms in a row) located in an old office building in downtown Victoria. It was extremely congested, and there was no private space for staff to work undisturbed. Trying to maintain a high level of programming, deliver outreach to individual women, and deal with the emotional fall out of work in this small congested space created a frantic emotional atmosphere. One monitor recalls the relationship between the physical space/VSWAG and the CMP:

¹ Status of Women Action Group brochure.

the way VSWAG was operating at that time...dismal physical space, meeting in that room, it had all kinds of other emotional freight, etc. the frenzy that was present...that whole mode of working. I think parts of that were really detrimental to the program that needed rest and a little calmer.²

In addition, the Co-Coordination of VSWAG had a huge task to manage the overwhelming workload that was demanding both emotionally and physically. In this atmosphere the CMP was conceived. Because it was conceived as a small project that would require approximately five hours of staff time a week rather than the enormous task it became, it added to the already overburdened VSWAG.

A.2 The Idea

VSWAG conceived and formed the CMP in the closing months of 1992. Two key events precipitated its development. First, in a well publicized Vancouver court case, a man convicted of sexual abuse was given a lenient sentence because the judge claimed that the three year-old victim was being sexually aggressive.³ This case raised several questions for women working at VSWAG: If this was in the newspaper --how many are not? Who is keeping track of what is happening in court cases such as this one? Who is doing something about it on a consistent basis? The second impetus was the Law Society of BC's 1992 report: Gender Equality in the Justice System. In this report, the Law Society's Gender Bias Committee concludes that "Gender Bias still exists in our society and is reflected in our legal and justice systems."⁴

In response to these two events, VSWAG began to envision a long term court monitoring program to focus on violent crimes involving victimized women and/or children. A Coordinator of VSWAG researched different models of court monitoring programs but was unable to find a suitable model. Some were short term whereas others focused on unrelated issues. The only similar program VSWAG located was in Prince George. This program, "Equal Justice For Women", began the same time as VSWAG's CMP so it had no history to offer VSWAG.⁵

VSWAG's CMP struggled through a painful birthing with little concrete direction and support from similar organizations. Initially, we did understand the complexity and enormity of the work. We thought of the CMP as a small project that would require approximately five hours of staff time a week. We had no sense of the need for extensive training, the traumatizing effect of attending court, the high turnover of volunteers, the complexity of the database, or the enormous amount of time, energy and commitment that it would take to operate the program.

² Interview: January 1993 - July 1994

³ Phil Needham, "Appeal Court Finds Judge Erred only in Word Usage" The Vancouver Sun 13 Jan. 1990: A1.

⁴ The two volume report looks at how gender bias manifests in the various legal arenas, with one chapter focusing on "The Justice System's Response to Violence Against Women." Law Society of British Columbia, Gender Equality in the Justice System 2 vols. (Victoria: Law Society, 1992) v.

⁵ There were difference and similarities with the programs. One big difference was the rural/urban setting. "Equal Justice for Women" felt they had to take a more conservative stance because they were in a smaller community with a different population than Victoria.

B Chronological Overview

The her-story of the CMP can be divided into three stages. These stages are defined by changes in the CMP's administration. The first stage was the tremulous period from inception until the first restructuring meeting in September 1993. During this stage the Coordinator of VSWAG was primarily responsible for administration. The Second Stage began with the restructuring meeting and ended with the hiring of a designated Coordinator in September 1994. In this stage the administration was divided among key volunteers and the Coordinator of VSWAG. The third stage covers the period from this hiring to the completion of the research on April 30, 1995. During this period the CMP had a designated half time coordinator who was responsible for the administration of the program.

B.1 The First Stage: November 92 - September 93

The CMP began by bringing together representatives of various community organizations whose work focuses on women. The initial meeting was in November 1992. The minutes of the meeting were brief and they did not record attendance.⁶ The first meeting covered basic information: information sheets, availability and responsibility of volunteers, and an overview of the situation in the courts. After considerable discussion, those in attendance reached the decision that men could monitor along with a woman as "Friends of VSWAG" but could not be active members.⁷ Another decision called for the program to concentrate on court monitoring before moving on to more active lobbying. There were two more meetings before monitors entered the courts in January 1993. In the beginning the program was referred to as both the Courtwatch Program and the Court Monitoring Program. Over time, the former name was dropped.

Monitors were ill prepared to enter the courts in January 1993. There were not enough volunteers, the training was inadequate, the aims were ill-defined, and there were no guidelines or directional policy. As well, the program did not prepare the community to ease the shock of monitors arriving in the court. Before entering the courts, the CMP did not build a relationship with the people the monitors would encounter in the courts (e.g. court house staff, police, Victim Services staff). In retrospect, the founder states "The approach we had was - we are going to jump into those courts and figure it out as we go along and it just doesn't work that way."⁸

During the first few monthly meetings after entering the courts, volunteers began to identify issues they were dealing with in terms of their needs and those of the program. By the April meeting, the effects of monitors being ill-prepared and their lack of a common understanding of the program's goals became apparent. Tempers flared and a heated debate consumed the meeting. One monitor describes the meeting as:

lengthy, emotionally charged, and relatively unproductive. It appeared some women had personal agendas which they were not willing to set

⁶ Participants' names were not listed in the beginning because women were concerned for the safety of the monitors. A numbering system was used for identification.

⁷ To my knowledge no men ever monitored, although in the beginning one man was listed as a "Friend of VSWAG".

⁸ Interviewed December 1994

aside for the good of the program. Some women expressed their intention to quit the program if the "atmosphere" did not improve.⁹

The members disagreed on how the program should proceed. Some women believed the priority was to work within the system and tread softly, gaining the respect of the court room players -- the delicate dance of acceptance and respect from those you wish to monitor and influence. Other women saw this as a cop out. They wanted to hold public protests, to make a stand on the button issue by being held in contempt of court, and to make strong statements in the media about the court system and players. The differences led to heated debates, losing members and alienating others. The CMP was attempting to support individual women but at the same time work for the betterment of women as a group. Keeping these aims in balance was essential and yet difficult. We decided not to lobby on behalf of individual women while their cases were in progress because such actions could be interpreted as an attempt to influence the outcome of a trial. Some women disagreed with this policy and left the program. It was amidst this turmoil that the CMP created its aims and guidelines and began to develop a database.

The issue of wearing the court monitoring identification button was central to the controversy at the April 1993 meeting. It remained a point of discussion throughout the program and research participants identified it as a critical issue for the program.¹⁰ Differences arose through a discussion of the "button issue" and media contact; however, the roots of these problems lay in the program's lack of direction and participants' divergent perspectives. The latter was due in part to inadequate screening criteria and training program. VSWAG's only screening criteria for entering the program was to be a women who supported women's reproductive rights. After coming out of the alienating court room atmosphere women, arrived at the meeting with emotions running high. The meetings did not offer the safety of a common perspective or support. One monitor explains:

you are dealing with a situation where there is a lot of emotions too. I don't think there are any of us who have gone into court who don't get angry, upset and hurt, and then to come into a situation where there wasn't any stability or any sense of being able to be calm or hear each other.¹¹

Although VSWAG is a feminist organization, a woman did not have to be a feminist to become a CMP member.¹² Some women did not believe we should always support the complainant, some felt at times women "ask for it". It became obvious that it was necessary to have a common philosophical ground to work from.¹³ The Coordinator describes the situation:

⁹ Questionnaire: April - June 1993

¹⁰ For an in-depth discussion of the "Button Issue" see 4.C Critical Issues.

¹¹ Interview: January 1993 - July 1994

¹² The Coordinator at the time did not ask women if they were feminists. This was done partly because of a perceived need for many monitors (interview: December 1994 - **).

¹³ After September 1993 it was necessary for a woman to identify as a feminist to participate in the CMP and an interview was conducted to determine the suitability of the program to the individual as well as the individual to the program.

In March, how are we going to take action? How are all the issues going to be dealt with? It became apparent then that not all the women were feminists. That was part of it. Then it came up -- do you have to be a feminist to be a court monitor? It became clear for me and everyone that yes, you do, you can't possibly go monitor and come back to the meeting and not be a feminist in the meeting -- you have to have the basic concepts, otherwise stuff comes up at the meetings, a need to have some amount of commonality of beliefs.¹⁴

Monitor participation declined following the tremulous spring of 1993. The program survived through the difficulties of the button issue and the creation of a statement of aims with diverse perspectives, but it lost monitors.

The summer of 1993 brought a new concern to the program: volunteer burnout. There were few active monitors and three women were monitoring full time in two court houses.¹⁵ The stress of being in the courts four or five days a week was tremendous. Other women in the program were concerned that it was not healthy for women to be in the courts full time, believing it is difficult to maintain autonomy and keep the experience in an "emotional perspective": the experience could quickly take over a woman's life. The problem was compounded by VSWAG's small staff and their limited knowledge of the program. The Coordinator did not have the time or energy to deal with all the CMP's demands and the monitors often went without important support.

The situation became increasingly polarized. The Coordinator wanted the program to pull out of the courts for a few months to concentrate on putting the necessary supports in place for the program to survive. She discussed it with the VSWAG Coordinating Collective who supported her. When she brought this suggestion to the CMP meeting, the full time monitors were upset. They did not want to leave the courts. They were in the courts every day, not the Coordinator, and they felt it was not the Coordinator's decision. What about all the work they had invested in creating a presence in the courts? What about the complainants they were supporting? To help deal with this sensitive situation the Coordinator brought in a non-VSWAG member to chair a meeting. This further alienated some monitors who saw it as the Coordinator exerting further control. *...I was trying to negotiate through the middle, I was feeling a level of distress and anxiety, afraid the program would not survive. I was more closely aligned with the monitors. They had a good knowledge of the courts. I was committed to a consistent presence in the courthouse and that seemed impossible without them. Two of the monitors and I met to discuss our concerns, in order to present our position to the Coordinating Collective so that we could remain in the courts. For some time I was blind to the effect of this constant monitoring. I could not see beyond the task. I spent considerable time and energy trying to mend fences and make it possible for the two sides to come together and resolve the differences. I was having a hard time letting go. At one point the three of us met with the Coordinator to review our concerns. Although our concerns were valid, I began to see how the situation left little room for open communication and support. By late August, I realized that I was trying to be the communicator between two sides who weren't communicating. I had a long look at my part in this situation. I began to see that I had become part of the polarized energy and was part of the problem.*

¹⁴ Interview - December 1994 - **

¹⁵ Two women were monitoring full time in the Victoria courthouse and one in the Western Communities court house.

Letting go, I was able to see the hurt we were feeling and visiting upon each other. It was a major learning experience for me. Having met with "both sides" and again together at the Restructuring meeting in September, 1993, I could see how similar the perspectives were. We had not been listening with compassion and understanding, but with pain, anger and frustration born from the work of the program and our own experiences. The court room experience caused secondary trauma to the monitors¹⁶ and the Coordinator was burnt out from overwork while dealing with her own ownership issues.

Throughout this period the Coordinating Collective of VSWAG did not have the time and energy to provide a necessary support to the CMP. An unhealthy dynamic developed with the paid staff Coordinator as the only bridge between the two. Some of the monitors involved in the earlier stages of the program were angry with VSWAG's lack of support and direction. As the bridge, the Coordinator said she took the brunt of this anger: "As a Coordinator of VSWAG, people who were angry at VSWAG would direct it towards the Coordinator."¹⁷ The Coordinator also acknowledged her role in the conflict: "this was my baby, I had some ownership and responsibility. It took some time for me to separate that, if you attack the program - you attack me."¹⁸ Also, during the first very difficult year, the Coordinating Collective offered little support or direction to its Coordinator. Boundaries were not set for her and she mixed paid staff hours with long volunteer hours to keep the program functioning.

The program survived this difficult period, but not without its losses. All three women who monitored full time left the program in September 1993. One of the three regular monitors remembers the critical period:

The summer saw the virtual collapse of the program. Three monitors, each going 2 or 3 times a week, held it together. Early in September, two of the monitors left. I was the only one left going regularly. Then a Restructuring Committee was set up. It met for 5 1/2 hours one Saturday to discuss the basic requirements to enable the [Victoria] Status of Women [Action Group] CMP to continue. One or two very dedicated women came forward to take steps towards a recruiting and training program and administrative assistance. Most of the original court monitors left out of frustration.¹⁹

The CMP held a restructuring meeting in September 1993. This was a turning point for the program.

Restructuring Meeting

The meeting began with a great deal of tension. The first step was to give everyone an opportunity to express their feelings about the CMP and identify what they saw as critical issues. At times this was very difficult, with women expressing their frustration with each other and the program. After clearing the air of pent-up emotions and reviewing the her-story, one monitor suggested we now put this aside and move forward through reviewing our common goal: setting priorities and direction for the

¹⁶ see Chapter 5: The Court Experience

¹⁷ Interview: December 1994 - **

¹⁸ Interview: December 1994 - **

¹⁹ Questionnaire: April - October 1993

future. The energy shifted. As the discussion turned to the future, the Coordinator's tasks were reviewed. It became clear that a great deal of the frustrations arose from the Coordinator trying to do tasks that required 55 hours a week in 10 hours of staff time.

Those present set priorities and outlined basic requirements. We flagged key areas of the work for continuation and expansion: the database, liaison with the court personnel and others, court monitor support, actions and administrative tasks (minutes, etc.). We also identified two new areas as priorities: funding and a training program. In the future the Coordinator would dedicate her paid time to acquiring funding for a designated CMP Coordinator. The other tasks of the Coordinator would be set aside or taken up by volunteers. VSWAG/CMP relationship was discussed as well as VSWAG's contribution to the program.

By the end of the restructuring meeting, there was renewed energy in the program. Of the ten women who took part in the meeting, two were staff. Of the eight volunteers, five remained active participants in the program, two left the program after that meeting and one a month later. This meeting remains an important milestone in the CMP's development and laid the foundation for the next stage of the program.

B.2 Second Stage: October 1993 - August 1994

We laughed tonight. What a relief.

Journal Entry following September 21/93 CMP meeting

During this stage the CMP successfully developed an extensive training program and acquired funds to hire a half time CMP Coordinator. At the October 5th, meeting a volunteer presented a breakdown of the Coordinator's responsibilities into seven roles. A few key volunteers took responsibility for significant roles in the administration. One monitor spent 4 hours a week monitoring and 4 hours a week doing several administrative tasks: typing and sending out minutes, maintaining the phone list, contacting people to sign up for monitoring shifts and attending meetings. During this time she also started producing a case list.²⁰ Another volunteer with experience in training, developed and implemented a training program for new volunteers.²¹ This created a more consistent team of volunteers who were better prepared to monitor in the courts. A third volunteer concentrated her efforts on supervising the database program.

In this period the program "settled down" in many ways and tensions eased. Rather than relying on the Coordinator for all the direction and support, the volunteers began to share tasks. Their ongoing dedication kept the program together and allowed the Coordinator to concentrate on fundraising.

The Coordinator researched different funding options (e.g. Canadian Secretary of State, and the BC Attorney General and Women's Equality.) Peter Holmes, the Manager of Court Registry offered to speak favourably about the program to funders. In January 1994, the Coordinator submitted a proposal to the Secretary of State for a "Court Monitoring Research Project". The proposal was for one year: April 1994 to March 1995. In February 1994 the Secretary of State responded positively to the proposal, although for a reduced amount. The CMP expected the money in April or

²⁰ For more information on case list see 4.C Critical Issues: Development of Policy, Literature & Operational Documents: Monitor Support Documents.

²¹ For more information see C.4 Critical Issues: Volunteer Development & Support: Training.

May, however it arrived in August 1994. The funding facilitated hiring a half-time Coordinator (20 hours per week) and the acquisition of a computer.

The CMP posted the job in August and hired the new Coordinator September 6, 1994. This again marked a shift in the program. It was the first time a paid staff member dedicated all her efforts toward the CMP.

B.3 Third Stage: September 1994 - April 1995

The CMP Coordinator entered the program in June 1994 as a volunteer monitor, so she came to the position with previous CMP knowledge and experience. Her approach was considerably different from the previous Coordinator and to a great degree this influenced a change in the "mood" of the program. The first Coordinator did a great deal of liaising, which is not surprising as this was part of her overall position as Coordinator of VSWAG. This also made her more externally "visible and connected." Conversely, the new Coordinator focused her efforts internally on monitor support, the training program, and the database.

Early in this stage, the three volunteers doing the administrative tasks left the CMP.²² The program gained a paid Coordinator but lost key volunteers who had dedicated many hours to the program both in and out of the courts. The new Coordinator took over the tasks of the volunteers, leaving little extra time. Unlike her predecessor, she spent at least one shift a week in the courts, maintained regular monitor contact, and acted as a mentor. Although this was a time of few actions, the CMP launched its one major letter writing campaign in November 1994.²³

In November 1994, the CMP began talking about funding again. Discussion took many directions: provincial and federal Ministries, the Law Foundation and other foundations, as well as suggestions for pursuing a social work practicum student. In December 1994, four women formed a Funding Committee to create desirable projects for funders that would also support the general ongoing program and a paid Coordinator. This was necessary as core funding for programs is very difficult to secure: generally funding is granted for projects only. An additional barrier to funding was VSWAG's lack of charitable tax status.²⁴

During this period, there were changes within VSWAG that effected the CMP. In December 1994, VSWAG moved to a new bright, clean and roomy office space. This created a positive shift in energy with room to work and meet. There were also staff changes at VSWAG and a major controversy that split women working within VSWAG. At this time the CMP lost at least two key volunteers due to VSWAG politics.

In January 1995, the CMP held another day-long planning meeting. Again this was very successful with thirteen women attending. We did a great deal of planning in the areas of database, media, liaising, and housekeeping (administration). However, the enthusiasm of the meeting did not carry forth enough energy to complete the ambitious plans. Again the priority became funding.

In February 1995, the Coordinator sent letters to provincial politicians requesting information and support. These requests were not successful. One bright spot was Attorney General Colin Gabelman's endorsement: "I recognize your court monitoring

²² All three volunteers participated in this research: one through a questionnaire, the other two through interviews.

²³ See C.5 - Critical Issues: Liaising in the Community

²⁴ Many foundations do not consider grants from organizations who do not have charitable status.

work as important.”²⁵ The CMP approached VSWAG to expand their core funding to include staffing for the CMP. This was not possible. In March 1995, the Coordinator wrote a grant proposal to Legal Services. Considerable follow up did not have positive results. Another grant proposal to the Ministry of Women’s Equality was not successful.

At the end of the research period ongoing funding was not secured. The database program was progressing slowly. A coop student was working with the CMP, in the courts and in the office. The program was stabilized with a strong volunteer base, a computer, a good training and orientation program, new brochure, and a successful letter writing campaign completed.

C Critical Issues

The CMP dealt with five issues that called for in-depth consideration: the wearing of an identification button in the court house; development of policy, literature and operational documents; volunteer development and support; database development; and liaising with the community. Discussing the issues in their entirety offers a more focused approach and will lend to a better understanding of their impact on and their place within the CMP.

C.1 The Button Issue

There was a time when the button issue had the potential to cause some real division in the CMP because people clearly felt we should be there, even if it meant not wearing the button. I always agreed that if you do not feel comfortable about wearing the button you should not, but we need to feel clear about why we are being asked not to. So it was a big issue. A good issue for the group because it made us look. If you are going to look at a system and say some things are not right and we are going to point them out, then it is kind of naive to think that people in the system are going to say, oh great, glad you are hear to tell us what we are doing wrong. I felt it was important to put it into perspective.

Monitor: January 1993 - July 1994 (Interview)

The CMP’s first major issue was the decision to wear identification buttons. In November 1992, a lawyer who attended a CMP meeting to answer questions warned that ‘pin wearers’ typically receive a great deal of pressure based on the rationale that pins distort the outcome of a case. In April 1993, Judge Smith addressed monitors at the end of a morning session. He said that the buttons were political and as such could not be worn in “his” court. He stressed that court monitors were welcome, but the buttons were not. Other judges also asked monitors to remove their buttons (e.g. Judge Palmer and Judge Owen-Flood.) When Judge Owen-Flood asked one monitor to remove her button she refused. Judge Owen-Flood consulted with another judge and then decided it was fine.

Several monitors involved were disturbed by the experience and brought this to the April meeting. Others hadn’t had difficulties and reported positive experiences and

²⁵ Letter to Court Monitoring Program from Colin Gableman, Attorney General, dated March 30, 1995.

feedback in the courts. At this point the issue became divisive. The atmosphere at the meeting was confrontational and emotions ran high. One monitor argued that it was imperative that buttons were worn, as they identify monitors to women complainants in the courts. She described how a complainant had approached her and another monitor because she could identify them as monitors due to their buttons. They then were able to offer the woman support. This monitor identified supporting women as an important aim of the CMP²⁶ and felt that everyone should agree to wear the button, even if this meant contempt of court charges and going to jail. Not everyone was willing to take this position. Others believed a better approach was to not wear the buttons and challenge the system through lobbying. *I raised the concern that the button issue would become more important than monitoring. We were getting off track from our original purpose and allowing the system to distract us from the important issue of the women and their experience. What effect would our making a huge issue of wearing a button in court and being charged with contempt of court have on the women we wished to support?* Some women agreed with my position while others felt the button issue should become the main issue. They argued that we had to stand up to the system: first it would be the buttons, next the clipboards²⁷ and eventually us.²⁸ With no consensus and a considerable amount of polarity, the members agreed upon a compromise. Women should make the decision based on their own level of safety. A comment by the Coordinator reflects her view of the decision:

The CMP button led to discussion about how we conduct ourselves in the courts, what we are willing to put up with and what we are not willing to put up with. It became clear the court monitors at the time, [as well as] the Coordinating Collective were in favour of wearing the button.²⁹

At the May 1993 meeting, the CMP attempted to deal with the button issue before it escalated further. At that time, it appeared that only two judges were asking for the removal of the buttons. The CMP position was that "the buttons are not political, they act as identification in order that complainants know who monitors are."³⁰ It was from this position that the CMP began lobbying for approval to wear buttons in the court. Action began in a number of directions.

In the courts the monitors were taking action. When judges did not allow monitors to wear buttons, some began to wave their clipboards. This did not last long. The CMP Coordinator at the time explains:

²⁶ This began a discussion that spanned several meetings. At this time it became clear that CMP members did not have a common understanding of the aims of the program. I will return to this issue under the discussion of aims.

²⁷ The clipboards were bright pink with SWAG written on them. Some of us had already been told that we must keep our clipboards out of sight in the courtroom.

²⁸ Myself and one other monitor appeared to be in very opposing positions on this issue. The other monitor left the program but I met her again 2 years later. I reminded her of our first meeting. We discussed the issue in the pleasant atmosphere of a reception for a video premiere. The emotionally charged environment was not recreated. Over time emotions settled. As is often the case with the passage of time, we agreed on most issues and were able to have a good exchange of philosophies, concerns, feelings, etc.

²⁹ interview: December 1994 - **

³⁰ The data collected in this research project supports this claim. In reviewing the completed Court Case Forms up to January 1995: 8 contacts with complainants - 5 monitors wore buttons, 2 did not and 1 was unknown: 3 contacts with others in the courtroom - all monitors wore a button: 4 contacts with court room personnel - 1 wore a button, 3 did not.

at one point court monitors were waving the clipboards. We had to back down on that one. Constant balancing on how far can we go and maintain our integrity. We are not there to make friends with Crown or whatever -- if we do, great -- but that is not our mission.³¹

One monitor who attended Judge Palmer's court in the Western Communities wrote a letter to the Attorney General. The Attorney General's office took action and spoke to Judge Palmer, who in turn spoke with the monitor. He agreed to allow her to wear the button in court, but suggested that it be made less "offensive." In July, a defense lawyer pointed out to Judge Palmer that a court monitor was wearing a button in the courtroom. Judge Palmer said he had spoken with the monitor and was comfortable with her wearing a button in his courtroom. Monitors were excited with this victory: only Judge Smith remained.

The Crown Counsel were also discussing the button issue. However, at their May 1993 meeting, they were unable to reach consensus on the issue. The CMP Coordinator gave the Administrative Crown Counsel CMP information which he planned to photocopy and distribute at the next meeting.³² The CMP Coordinator also wrote a letter and sent it with a button to the Policy Analysis Division of the Attorney General's office and to Head Judge Diebolt regarding Judge Smith's position on the button issue.

Amidst inconsistency, it was more difficult for court monitors to accept the position of Judge Smith. In July 1993, the mass Clayoquot trials were in full swing in the Victoria court house.³³ The courtrooms and halls were full of protesters and supporters wearing buttons with political statements on them in the same colours as the CMP buttons (see appendix D for example of buttons). They were not asked to remove their buttons. This inconsistency added to the absurdity of the CMP's situation.³⁴

Although the button issue was contentious and remained sensitive for some time, other concerns began to take the attention of the program. However, in an October 1993 meeting, each monitor at a meeting expressed her feelings about wearing the button. The responses varied: "don't feel comfortable wearing button; wear it in the halls only; wear it proudly; wear it except in Judge Smith's courtroom; in theory feel it is important to wear."³⁵ After some discussion, those present reached consensus to take a positive stand supporting wearing the button in court. The CMP took two steps to reflect this: CMP guidelines were changed to include: "court

³¹ Interviewed December 1994 - **

³² There was no follow up on this meeting recorded in the minutes. It is unknown whether it was discussed again and if so what the outcome was. For more on Crown Counselors and their relationship with the CMP and monitors, see C.5. - Critical Issues: Liaising in the Community and Chapter 5 - The First Aim: Acting in Solidarity with Complainants: In-Court Relations.

³³ Clayoquot Sound is an old growth forest area in central Vancouver Island that was being logged. There was an international protest against this logging. During the spring and summer of 1993, protesters sat in the road leading to Clayoquot Sound to stop the logging trucks. Each day the RCMP arrested protesters who would not move. There were over 900 people charged who required a trial. In July 1993, the largest mass trial in the history of Canada began in the Victoria court house. For details see: Ron MacIsaac & Anne Champagne, *Clayoquot Mass Trials*, (Gabriola Island: New Society, 1994).

³⁴ The Clayoquot Trials also offered glaring examples of disturbing sentencing norms. For example, a grandmother sitting on a logging road, protesting the clear cutting of ancient forest, received a longer sentence than a man convicted of sexually assaulting his minor sister-in-law who was in his care.

³⁵ From minutes of October 5, 1993 meeting.

monitors should wear the CMP button and carry a CMP clipboard in court" and on the CMP Case Form, monitors were asked if they wore their button in court and if not, why.

In February 1994, the CMP Coordinator finally met with Head Judge Diebolt. He agreed to speak with Judge Smith and arrange for the CMP Coordinator to meet with him. In April the CMP Coordinator met with Judge Smith. Smith would not change his position regarding monitors wearing buttons in his court, however, he made one concession: he would not intimidate monitors, but rather he would have the sheriff quietly ask the monitor to remove her button. The button issue appeared to be resolved one year after the first action.

The button issue only emerged once more in July 1994. At that time, sheriffs asked monitors to remove buttons in other judges' courts. The CMP initiated follow up letters and meetings to ensure that the sheriffs were informed that this only happened in Judge Smith's court.

Monitors' Feelings and Perceptions

Not all the court monitors involved in this issue were content with the outcome and process. One woman's responses on her questionnaire continually referred back to this issue:

I felt very conspicuous in the courtroom. VSWAG's agenda seemed confrontational. They wanted us to be very visible -- insistence on wearing the button, etc. This was counterproductive as many judges resent our presence and even tried to keep us out. I felt it might be more productive to be less conspicuous and confrontational and quietly gather the information that would empower the program.³⁶

During the early days my position was close to this monitor's. I was very timid in confronting the "system" and concerned about the effect on the women complainants. The program took a compromised approach that alienated monitors on either end of the debate and those that did not feel comfortable with the highly charged emotional meetings, however, it did appear to win the respect of the court room players without giving up wearing identification buttons.

The women involved in the research often connected discomfort in the courts to wearing the CMP button and this did not seem to diminish over time. Three monitors expressed their discomfort with wearing the button, however, with some variation. One monitor states:

[I am] not comfortable wearing the button yet, unless I am with others. It feels very controversial, it's a high profile thing. I'm not sure how people are going to react to it yet, so I am a bit shaky on that, I carry the clipboard.³⁷

Another states her ambivalence:

³⁶ Questionnaire: June - November 1993

³⁷ Interview: October 1994 - **

After being asked to remove it on one occasion, I didn't like allowing myself to be intimidated, but I also didn't want to disturb the court process, or cause any distraction or stress to the complainant.³⁸

Some monitors felt that others pressured them to wear the button:

I never wear my button because I feel like such a target...I used to feel bad about it, and I used to feel self conscious putting the button on, then I just decided I didn't want to put it on, so I wasn't going to put it on, whether other women felt different about that or not.³⁹

Monitors also stated that they are more likely to wear the button if they are with another monitor. Although it is no longer the contentious issue it once was, monitors generally give time and attention to making the personal decision on wearing it. While a few monitors felt the button's distasteful appearance was an issue, personal safety has always been the biggest deterrent to wearing it in the courts.

Over time the memories of these controversial "button days" diminished as fewer monitors involved were left in the program. As well, some monitors began to agree with the judge's recommendation to change the button. One monitor states:

I wish the buttons and clipboards were more "tasteful." Hot pink is not for everyone and even goes so far as to be a deep-seated psychological turn-off for some.⁴⁰

In the summer of 1995, the CMP designed a new mauve "button" that replaces the hot pink one (see appendix D for example).⁴¹ It remains to be seen what effect the new button will have on the judges' positions and the monitors' comfort with wearing it.

Although the button issue took enormous amount of energy and focus, it established the CMP's validity in the courts and opened dialogue between the CMP and court room players and government representatives. It resulted in a great deal of education about the program and its aims. It brought forward the fundamental issue of the aims of the program and which method was best to obtain these aims: disengagement, mainstream or the vast gray areas in between. It soon became apparent that the CMP must reside in the delicately balanced gray area.

C.2 Development of Policy, Literature and Operational Documents

The CMP developed several types of documents: those outlining aims, policy, and procedures; those offering information about the CMP and the issues it addresses; and those that provide information for the monitors.⁴² The policy and procedures documents developed as the program evolved in response to the emerging needs. The CMP produced only three documents before entering the

³⁸ Questionnaire: January - July 1994

³⁹ Interview: January - December 1994

⁴⁰ Questionnaire: May 94 - **

⁴¹ The new identification badge is pale mauve, square paper that fits into a plastic sleeve on a pin or a string.

⁴² Some of the suggestions did not happen and will not appear here but rather under Suggestions.

courts: the Court Form, the Court Watch Question and Answer Form and the Courtwatch Program Information Sheet. Some documents changed over time, whereas others did not; however, all documents reflect growth, changes and issues of the CMP.

The following overview of the three types of documents explains why, when, and how the documents were developed.

C.2.1 Policy and Procedures

The program produced several documents that capture the essence of the evolving policies and procedures. These documents are the Statement of Aims, Guidelines for the CMP, Agreement of Confidentiality, Courtwatch Overview, and the Volunteer Commitment Policy.

Statement of Aims and Guidelines

At its inception, the program had two aims: to gather information on sexual assault cases; and to provide support for women and children involved in sexual assault cases. However, the CMP provided little written information on these aims or how to accomplish them. The only written aims were expressed on the Courtwatch Program Information Sheet. It simply states:

By compiling statistics from the courts, VSWAG can evaluate how the courts are treating women in regards to sexual assault. If there are any indiscretions or unfairness, VSWAG can lobby for a change.

This limited statement quickly proved inadequate. At the April 1993 meeting, when each member explained her view of the aims of the program, it became apparent that there was no consensus on what the members of the CMP wanted to accomplish in the courts. The Coordinator at the time explains:

What do we want to do? Make a lot of noise in the court room and get kicked out and not be able to take notes, or do we want to basically compromise some of that activism and fill a bigger purpose -- and this sort of baffled some of the initial volunteers who wanted to do direct action. The program has evolved in a different way, yeah, we want to be active, but first we want to collect this data.⁴³

As this comment suggests, there was disagreement; however, after considerable discussion we agreed on three aims:

- 1) to compile data
- 2) to act in solidarity with the complainant
- 3) to take action as a group where we see it to be needed.⁴⁴

The CMP members developed these aims further over the next two meetings by expanding the wording and determining an order of importance. Although reviewed at

⁴³ Interview: December 1994 - **

⁴⁴ Minutes: April 6, 1993

different times over the course of the program, the aims have essentially remained unchanged. However, program members have recognized shortcomings within the aims and recently recommended rewriting them. For example, although monitors focus on gender bias, they also record classism, racism, ageism, homophobia, etc.⁴⁵

During the May 1993 meetings, the court monitors created and adopted a set of guidelines. The guidelines outline procedures and responsibilities of the program and the monitors. Over time the guidelines have changed to reflect changes in the program. For example, following the September 1993 restructuring meeting, the program developed a Volunteer Commitment Policy and added it to the Guidelines.

Agreement of Confidentiality

In the spring of 1993, monitors raised concerns regarding confidentiality. The Coordinator drafted an Agreement of Confidentiality (AC). The purpose of the AC is to assure that volunteers respect the confidentiality of others at the meetings; not talk to the press on behalf of VSWAG or the CMP; or disclose information on cases under a court publication ban. Each woman who wishes to monitor must sign an AC before entering the courts.

Courtwatch Program Overview

The CMP developed the Courtwatch Program Overview sheet early in the program for new members. It became obsolete with the new training program. However, the section outlining what the CMP entails was modified and retained as part of the training manual.

Volunteer Commitment Policy

At the September 1993 restructuring meeting, the CMP changed its approach to volunteers. At first, it accepted anyone who was interested. After this date, the program screened women for suitability: that is, on their basic beliefs in and commitment to feminist principles. The Training Coordinator developed a Volunteer Application Form that was used between October 1993 and November 1994. When a woman showed an interest in becoming involved in the CMP, she applied by completing this form. The form was used to establish if the woman was suitable for the training. The Coordinator established final suitability through a one-on-one interview at the end of the training session.

C.2.2 CMP Information Literature

The CMP developed literature to raise awareness about the program and about the situation in the courts. Raising awareness about the program has two purposes: recruiting members; and letting people in the courts, particularly the complainants, know who monitors are.

The program discussed information literature for the first time in July 1993. Some monitors expressed a concern that complainants may not know who monitors are and therefore our presence may be causing stress rather than offering support. In

⁴⁵ At a philosophical level, this is within a socialist feminist approach. To truly monitor gender bias, it must be understood and seen as it interacts with other "isms".

response, the members decided to create a brochure that would outline the program and explain the CMP's objectives. In January 1994, the Coordinator had a first draft ready. After input from monitors at three meetings, the final draft was approved and ready in April 1994. In keeping with the button and clipboard, the brochure was bright pink.

In December 1994, the new Coordinator again identified the need to ensure that women in the courts knew why the monitors were present. The first brochure was informative and good for recruiting, however it was not directed towards the complainant. At the Planning Meeting of January 1995, the members decided to create an information sheet for complainants and redesign the brochure. The CMP completed the information sheet in early 1995 and the new brochure in the summer 1995. The information sheet remains bright pink, while the brochure is the new "CMP colour": mauve. The CMP also created a number of recruiting posters and one information poster.

C.2.3 Monitors' Support Documents

The program developed and revised a number of documents to support monitors in their work in the courts and in their follow-up actions.

Court Form and Guidelines

The founders of the CMP used the Mothers Against Drunk Driver's Court Watch Form as a model to develop a Court Form for monitors to collect court room data. Very soon after entering the courts, monitors recognized the form's inadequacies. In May 1993, VSWAG hired its first Coop Student to develop a database program. This student also designed a new Court Form and accompanying guidelines for the form's completion. The process of developing the Court Form took considerable time and involved all monitors present at meetings. It was developed during a difficult time in the program when there was little experience in the courts and a lack of research and database knowledge. For some women involved there was a great deal of frustration. As the input grew so did the Court Form, from one to four pages.

In addition, the Coop Student developed a comprehensive guide on how to complete the Court Form. The CMP began using this second form in the summer of 1993 with final revisions completed in October 1993. Because the membership at this time had little understanding of database research, the second form was created to capture narrative information, rather than systematizing the information. This form was used until the end of the research period.

At the January 1995 planning meeting, members formed a Database Committee and once again revisited the Court Form. At this time there was an effort to systematize the data collection by creating a form that was consistent with inputting data on the computer. This third edition is two pages. It has less space for narratives but includes a witness sheet. Monitors write narratives on a separate paper and these are handed in with the Court Form to be kept as part of the case file. To increase the scientific integrity of the data, the Court Form has categories of "psychologizing" to identify actions in the court room.⁴⁶ In July 1995, monitors began using this third edition of the Court Form.

⁴⁶ As identified by Linda Coates and Alan Wade in "Psychologizing: The use of Psychological Explanations in Sexual Assault Trial Judgments" (unpublished) Victoria: University of Victoria.

Court Watch Question and Answer Form

On the suggestion of a lawyer in November 1992, a volunteer compiled a list of common statements to answer questions that people may ask monitors in the courts. It supplied monitors with appropriate answers to three questions: Who are you? Why are you here? Why is monitoring necessary? The intent of this form is to assure that monitors present consistent statements about the CMP to the public. This form has not been updated and remains part of the orientation manual.

Action Sheet

At the April 1993 meeting, members decided to produce an action form. A monitor designed the Action Sheet to keep track of and follow up on incidents that occur in the court room. A monitor fills out the Action Sheet to request CMP action on an issue or incident that occurred in a court case or a number of court cases. The CMP has used the Action Sheet since May 1993.

Criminal Code Listings

The Court Lists identify cases by codes. For example, 271 indicates that the defendant is charged with sexual assault. Monitors use these codes to identify which cases fall within the CMP mandate. In the beginning, monitors used the short list supplied at the bottom of the Court Lists. However this list quickly became inadequate as monitors learned its limitations. In April 1993, a volunteer made a Criminal Code Listing which included all charge codes relevant to the CMP as well as the abbreviations used on the Court Lists to identify the procedure taking place in the case. A volunteer keeps the list current.

Court Monitoring Priority/Preference List

As there is often more than one relevant case underway, new monitors requested guidance in choosing the most appropriate case to monitor. To provide this a volunteer created a priority list. This list is a set of general guidelines, as monitors are encouraged to use their own judgment. This list remains unchanged and is an asset to new and experienced monitors.

Case Lists

In 1993, monitors discussed the problem of too few or too many monitors in the courts: some days there are no cases to monitor and on other days there are three or four. It would be helpful for monitors to know court schedules in advance. In November 1993, through researching, a monitor found there is a provincial court "daily list" which lists all upcoming cases. Each month she worked with one other volunteer to transfer the case information relevant to the CMP onto a computer spreadsheet. Initially this took considerable time, however, updating each month only took four hours for two monitors.

Although scheduled times for cases change, the list was valuable for CMP's scheduling of monitors. It was also valuable for the Victoria Women's Sexual Assault Centre that used it to ensure protocol was being respected.⁴⁷ The list contained between 150 and 200 cases over a four to five month period. In compiling the list, monitors learned more about charge codes, tracking cases and repeat offenders.

The Case List was not maintained after February of 1995 when the monitor responsible for it left the program. The CMP needs volunteers as well as a portable computer to maintain the Case List.

To offer consistency to new monitors, the CMP took all of these documents, as well as information on the judicial system and sexual assault, and created an Orientation Manual. This manual is the basis of the training program for the CMP.

In conclusion, literature and operational documents serve the CMP as well as reflect back the program's intents, beliefs and priorities. Development of literature and operational documents takes considerable time and commitment, therefore the CMP's documents are limited by the CMP's available time and energy.

C.3 Volunteer Development and Support

A major task for the CMP is maintaining and supporting a trained volunteer base. To a great degree this task falls to the volunteers themselves because of the limited paid CMP staff time, (5 to 20 hours per week). The CMP success in meeting volunteer needs varied.

In this section, I begin by reviewing how the CMP seeks to maintain a volunteer base, where and how the CMP finds volunteers, why volunteers chose to stay or leave the CMP. Following this, I turn to the development of the training program, ongoing monitor support and communication.

C.3.1 Maintaining a Volunteer Base

The CMP requires many volunteers. At the restructuring meeting of September 1993, the program developed a policy that monitors must commit to three shifts in court per month for a minimum of four months.⁴⁸ Under this policy, the CMP needs a minimum of 26 monitors to cover the court shifts.⁴⁹ The CMP has not been able to acquire this many active monitors at any time;⁵⁰ therefore, the CMP has never reached and maintained the necessary number of volunteers to successfully deliver the program on a full time basis.

Volunteer Recruitment

⁴⁷ See also C.5 - Critical Issues: Liaising in the Community.

⁴⁸ At this time the CMP also requested that monitors not attend court more than 4 times a month in an attempt to avoid monitor burnout.

⁴⁹ With 2 court shifts a day, two monitors per shift, 4 monitors per day X 21 court days a month. Monitors were asked to commit to 3 shifts a month (84/3). Minimum requirement: 26 monitors. This does not allow for illness, more than one case taking place at the same time, or all the other CMP work outside the courts.

⁵⁰ At times the CMP Membership List had 26 or more, but not all the women were monitoring or monitoring regularly. It is difficult to determine how many women were actively monitoring at any given time. There is a sign up calendar but not all women sign up who go to court. Some who sign up do not go. For some time the calendar was an erase board, so even this record was not kept.

The research shows that 50 women heard about the program through: VSWAG (12), University of Victoria (10), media (6), Volunteer Bureau (6), a friend (6), CMP outreach (4), other organizations (4) and work (2) (see appendix B). This reflects the program's promotion for new monitors. Women come to VSWAG looking for volunteer opportunities and learn about the CMP. The CMP also does considerable advertising at the University of Victoria: on the campus radio station,⁵¹ in Women's Studies classes, posters, information tables and through the Women's Centre. Women also hear about the CMP from other organizations which liaise with the CMP. Court monitors tell friends who join. On a few occasions, the CMP Coordinator did speaking engagements as well as media coverage. Victoria has a Volunteer Bureau where the CMP keeps a current listing of volunteer opportunities.

Monitor turnover

In this research I wanted to establish why women left the program or why they decided to stay. This question offers the CMP valuable information on maintaining volunteers. Generally, those involved in the CMP assumed women left the program for two reasons: the difficulty of monitoring in the courts and personal commitments. The Coordinator states:

Exhausting -- that's why there is such a turnover of women. Women can't endure it for any great deal of time without taking a break -- actually experiencing it -- that's why its so exhausting.⁵²

The women involved in the research supported only one of these beliefs. Eleven women (50%) left because of personal constraints (health, work or other commitments, lack of time). However, of the 22 women who left the program, only one woman⁵³ agreed with the Coordinator. She states: "the agony of hearing witnesses describe the abuse hit too close to home and I found the experience was too draining emotionally."⁵⁴ Although women overwhelming found the experience in the court room to have negative effects, it caused only a few women to leave the program. Another woman left due to a political controversy within VSWAG. The remaining women (50%) listed some form of concern with the program as their reason(s) for leaving.

Three women listed lack of effectiveness or productivity of the program as a reason for leaving, two pointed to lack of preparation for the courts, while two others referred to poor administration. Two women left in part due to ageism. One woman felt the ageism directed at her:

I didn't feel comfortable at the meetings and this is unusual for me, as I believe I can fit in just about anywhere. Maybe some monitors weren't

⁵¹ On Sunday evenings at 5:00 to 6:00 is "Women on Air". This show covers women's issues in a variety of forms. Two of us appeared on this program on two occasions to promote the program, raise awareness and attract new monitors.

⁵² Interview: December 1994 - **

⁵³ One woman, still involved at the time of her interview stated, she had not been participating very much lately and did leave the program shortly afterwards due to the court room experience: "There are times when I had to leave, that's part of me not being in the courts the last few months is in part being overwhelmed by the court system, there has been a couple of times I just had to get up and go, I was so angry" (Interview: June 94 - **)

⁵⁴ Questionnaire: February 1993 - **

comfortable with elderly persons. Maybe we didn't get enough opportunity to chat -- I don't know. But it was a strong feeling and one reason I quit.⁵⁵

A young woman agreed, stating: "I saw dedicated older women (housewives) discouraged in an effort to encourage younger, more militant women."⁵⁶ *This was also a complaint I had and expressed to the Coordinator in the summer of 1993. All the older women involved at the beginning of the program left during the troubled early months. I felt there was a move towards getting younger women -- targeting the university for recruitment. I encouraged the Coordinator and members to direct recruitment towards older women as valuable, reliable volunteers. There has been only a little effort made in this direction.⁵⁷ I believe this is a great loss to the program and feminism.*

Chart 1 - Reasons for Leaving the Program

Reason	#	%
personal constraints	11	45.8
lack of effectiveness/worthwhile outcome	3	12.5
lack of orientation & training	2	8.3
ageism	2	8.3
poor administration	2	8.3
lack of support from program	1	4.2
overall group process	1	4.2
controversy with VSWAG	1	4.2
court room experience	1	4.2
Total⁵⁸	24	100

Problems or concerns with the program represent 50% of the reasons for leaving the program. The research points to the need to improve the atmosphere, training, administration and support. Except for one, all the women who expressed concerns with the program were involved during the first stage. Five left during this time, while the other three left in the spring of 1994, January 1995, and March 1995. It is difficult to know if these concerns remain as administration, monitor support, and training have received a great deal of attention since the opening year of the program.

Some research participants also stated why they continued to volunteer with the CMP. Women have a variety of reasons: "focused concrete way of volunteering", "effective program", "being in court is important", "very effective to change social policy", "learning experience", "a good thing that needs to be done".

Of the eleven women who left for personal reasons, some mentioned their ongoing support of the program. Of the 18 past participants who completed questionnaires, nine would like to return to the program and three stated they may return.

⁵⁵ Questionnaire: February 1993 - June 1994

⁵⁶ Questionnaire: June - November 1993

⁵⁷ The new Coordinator hired in September 1994 sent a letter to the Oak Bay Seniors requesting volunteers for the program.

⁵⁸ Of the 22 women who left the program, two women offered two responses resulting in 24 answers. 13 participants were continuing or returning to the program, the remaining person was a past Coordinator of the program.

In conclusion, this research indicates that women are able to face the negative experience of being in the courts when they feel supported by the program and see the work as a valuable contribution to positive social change.

C.3.2 Training

Monitor orientation and training began as an "individual chat"⁵⁹ with the Coordinator and evolved into a training program of 3 or 4 sessions complete with a 37 - page Orientation Manual.⁶⁰ In the first stage, the Coordinator talked to an interested woman about the program and the court system. If the woman was interested in joining, she was given a clipboard, a button, the Courtwatch overview form, and the minutes of past meetings. The research indicates that this 'training' was considered inadequate by participants and it reflected the limited knowledge of the program at that time. The CMP and its members' knowledge about the courts and the legal system evolved with the program. What became important issues were not known in the beginning. The evolution of the training and orientation was a necessary growing pain for a unique program with no predecessors.

Two months after entering the courts, a monitor raised the issue of more in-depth training. Specifically she was concerned that not all monitors were approaching the issues of women abuse from the same perspective and knowledge. A member wrote an information sheet on gender bias that was made available to monitors. A few months later monitors also identified the need for training in the area of law. In August 1993, members agreed to broaden the orientation program to include a tour of the court house and to require new monitors to attend court with an experienced monitor for the first few times.

At the Restructuring Meeting of September 1993, members affirmed training and orientation as a priority. One of the active monitors at this time brought her experience of training for the crisis line at the Victoria Women's Sexual Assault Centre to the CMP. She states:

things became clear to me as soon as I got into the courts, that we needed to have some kind of formal training... going into the courts cold was not particularly helpful for women who are monitoring and probably wasn't the best for collecting useful information either...having a knowledge and a shared understanding of what the issues are about, also a discussion of issues of setting boundaries...[And to assure] there was some vehicle set up for debriefing and support.⁶¹

This monitor set up and facilitated the training program from September 1993 to August 1994. The training program, which was designed to accommodate the concerns expressed by the monitors, included orientation to the CMP, the legal system, the courthouse and its procedures, genderized violence, consequences of sexual assault, the process a woman goes through if she proceeds with legal action,⁶² and assessment

⁵⁹ The length varied. The Coordinator described it as a two hour chat. Two monitors described it as "20 minute talk by Coordinator" and "one hour orientation".

⁶⁰ See appendix D for contents of the Orientation Manual.

⁶¹ Interview: January 1993 - July 1994

⁶² Victoria Women's Sexual Assault Centre has a program that prepares women for court who are complainants in cases of sexual assault. A counselor from VWSAC accompanies the complainant through the trial. A counselor from this program conducts this part of the CMP training program.

of a woman's suitability to the program. The Training Coordinator developed a Volunteer Application Form and compiled a variety of handouts for the sessions to complement the presentations. In late 1994, the CMP compiled these handouts into an Orientation Manual that continues to be used at all training sessions.

There were 6 training sessions from the fall of 1993 to February 1995. Participation ranged from 6 to 9 women, for a total of 49 monitors. Not all women who completed the training went on to monitor and a few women monitored without taking the formal training. The training sessions varied in length of time and presentation style as a number of monitors and Coordinators were involved in facilitating the different sessions. One shortcoming of the CMP Training Program is the lack of consistent program delivery. There is no overview of what the Coordinator should cover in the training sessions. The Orientation Manual remains the only source of consistency.

Research Participants' Responses to Training

In this research project, women who expressed concerns about the training were involved during the first stage before the CMP introduced the training sessions. For one monitor, this influenced her to leave the program: "I would very much like to return to the program, providing that I receive some training and orientation."⁶³ Not all monitors agree. Another monitor felt she was prepared for monitoring while recognizing "preparation for court does not really prepare you for the emotional impact, but I don't really think there is a way to prepare you for this."⁶⁴

Information from evaluation forms indicate that generally women were satisfied with training after the CMP introduced the formal training program in November 1993.⁶⁵ The responses to "satisfaction with the training program" were all positive. When asked what information was the least helpful, 14 of the 19 responses stated it was all helpful. What was cited as "most useful" varied; for example: "self care. That's what I understand best right now," the poems; terminology and brainstorm sessions; presentation from court room support worker; the handouts and court tour; talking with experienced court monitors; practical information on where to go, what to do, who to talk to; all of it.

The development of the Training Program is a measurable success of the CMP. It strives to strike a delicate balance between creating a baseline for data collection and respecting and encouraging women to monitor from their own experience. It prepares monitors for their experience in court and creates a common ground for women to monitor from. The Training Program educates women who take that information out into their world. In addition, the Training Program provides information to other organizations considering developing a court monitoring program.⁶⁶ Through its ongoing development and delivery, the CMP Training Program not only trains women for court monitoring, it also meets the third aim of the CMP: public awareness.

⁶³ Questionnaire: April - June 1993

⁶⁴ Questionnaire: May - October 1993

⁶⁵ An evaluation form was part of the new training program. It was used after each training session for one year starting in November 1993. 31 participants completed the evaluation forms.

⁶⁶ For example, during the Praxis/Nexus Conference in Victoria in 1996, CMP members gave copies of the CMP Training Manual to women from different countries and areas of Canada who were interested in the program.

C.3.3 Meetings

The friendliness and shared experience of the CMP meetings are a treasured memory...I always appreciated the meetings.⁶⁷

the first year they were not run well, they started late, went late, we were hungry and tired and cranky -- it was a disaster.⁶⁸

As with other areas of the CMP, feelings and opinions of the meetings differed. To some extent this depended on the time period in which women were involved. However before turning to the women's overall impressions of the meetings and how they changed in relation to the time period, I begin with the content of the meetings and the process. I end this discussion of meetings with concerns and suggestions expressed by research participants.

Content of the Meetings

The meetings have the dual purpose of debriefing and administration. Debriefing offers monitors the opportunity to share their experience in the courtroom and receive support from other monitors. This was the original intent of meetings. At the first meeting after entering the courts, monitors identified debriefing, support and sharing as important aspects that should be a part of each monthly meeting. Because meetings are the main venue for monitors to debrief, confidentiality was important and was incorporated into the Agreement of Confidentiality. By April 1993, with tempers flared and emotions running high, meetings were changed to bi-weekly to offer more time for the ever growing administrative tasks while still maintaining adequate time for debriefing. As administrative tasks were still not getting done, in September 1993 members decided to have two different meetings each month: one meeting for Court Monitors to debrief and talk about cases and one for administration only. However, this never really happened, as women came to both meetings regardless of their role(s) and there was seldom any difference between the two meetings.

In the spring of 1994, the CMP decided to eliminate debriefing from meetings because it was taking a great deal of time. It was suggested that at meetings members could discuss specific cases along with suggested actions and that monitors could rely on the buddy system to debrief emotional issues arising from court experience. However, this was not successful: members continued to debrief informally at meetings. Four months later, debriefing was re-instated as a necessary component and since that time it remains at the beginning of meetings.

Research participants were generally satisfied with the debriefing portion of the meeting. Two monitors expressed their satisfaction with the support they received at the meetings: "Meetings provided good support after monitoring."⁶⁹ and "I felt very safe and understood. People doing the monitoring shared plenty of experiences and they also were very kind."⁷⁰ However, two other women talked about the difficulties of hearing the stories. One woman states: "The meetings were unusually exhausting as

⁶⁷ Questionnaire: September 1993 - September 1994

⁶⁸ Interview: June 1993 - February 1995

⁶⁹ Questionnaire: October 1994 - **

⁷⁰ Questionnaire: May - July 1993

I am a very emotional person and the stories women related in the debriefing sessions really got to me.”⁷¹

The three areas monitors identified at the first meeting (debriefing, support and sharing) have remained part of every meeting, whether formally incorporated or not. Furthermore, they are the three positive aspects of meetings predominantly cited by research participants (16 of 24).

The administrative portion of the meeting usually involved: identifying necessary tasks; designating someone to oversee them; and reviewing tasks that were ongoing from previous meetings. Administrative tasks included program maintenance (meeting administration, volunteer support, recruitment and training, promoting the program, liaising with VSWAG, funding) and action (database, letter writing, public awareness, court, media and organizational liaising). The administrative part of the meeting led to a great deal of frustration. One monitor describes the meetings as: “Administratively poorly run, previous business not attended to. Many of the same items brought up time and time again.”⁷² At the meetings the members would have great ideas, but there was no one to take the ideas and make them a reality. Another monitor agrees: “things were brought up at each meeting over and over again and we needed to deal with it, but weren’t able to.”⁷³ Many, many tasks were not attended to and frustration grew. The lack of staff time and uncertainty about the roles of the paid staff and volunteers contributed to this situation.

Five research participants spoke about the role of the paid Coordinator and the need to have someone doing more of the administrative tasks or supervising volunteers. Some saw the Coordinator’s role as supervisory, suggesting that volunteers could do more administrative tasks with the necessary support or supervision of the Coordinator. For other women, the administrative tasks were definitely the role of the paid staff, not the volunteers. However, realistically, the program never had enough paid staff time to do this.

The research participants’ responses suggest a lack of common conception or understanding of the responsibilities of the paid staff and the volunteers, or of how they differed. Although, during the second stage, volunteers and the Coordinator had specific tasks, it is uncertain that even during this time all members were aware of the overall “picture” of the administrative responsibilities. For many, there was just not enough staff time to support the volunteers.

The Process

In the first stage of the CMP, the Coordinator chaired the meetings, set the agenda and wrote the minutes, which she distributed at the next meeting. After the restructuring meeting of September 1993, a volunteer took over the meeting’s administrative tasks. In stage three the chair rotated, although the Coordinator as a key player continued to play a dominant role in the meeting. Meetings always started with a roundtable, when each member gave a short report or debriefed on what she had experienced in regards to the CMP since the last meeting. In each meeting, members reviewed the last meeting’s minutes as well as addressed outstanding issues and administrative tasks.

⁷¹ Questionnaire: May - September 1993

⁷² Questionnaire: April - October 1993

⁷³ Interview: August 1993 - **

The meeting times have changed very little over the her-story of the program. In the beginning, the meetings were at 4:30 PM on Tuesdays. In January 1995, the meeting time changed to 5:00 PM⁷⁴ and the second meeting of the month was held on Wednesday in an attempt to include people who found Tuesday meetings inaccessible.

In theory, meetings were run by 100% consensus. In practice the process did not always achieve consensus. Research participants identified difficulties with process in a number of different ways. One states:

From my first meeting, I found the process of the meetings unsatisfactory and often frustrating. Throughout the training and during the meetings, I felt there was insufficient attention given to process, to developing a sense of community among us.⁷⁵

Another monitor thought it was due to the nature of the program and its work:

I think the interaction between members during meetings could be more spontaneous. I myself have been hesitant to speak up at meetings. I think this may be because the group is not cohesive due to the fact that members don't know each other very well yet and the makeup of the group is constantly changing all the time. It may also be because the nature of the problem being addressed is a complicated one and people might feel at a loss as to just how to most effectively attack the problem.⁷⁶

It was difficult to know if everyone agreed with all decisions. As one monitor pointed out: "it's very laissez faire - couple of voices then that would be it. I don't like consensus, the problem is people are blackmailed into having to agree."⁷⁷ With monitors coming and going, those involved longer or those with "outgoing personalities" had more input and more power. The meetings lacked the attention and sense of community and safety needed for a full consensus process.

There were mixed feelings expressed by the research participants about the process in meetings. Of the 29 offering their perception of the meetings, five gave negative responses about the process (poorly run, collective and consensus got out of hand, need to follow an agenda) while three gave positive responses (consensus, roundtable, rotating chair). There is no correlation between the temporal period and the research respondents' feelings. The differences are likely to reflect the different positioning of research participants and their accompanying perspectives.

Research Participants' Perceptions of the Meetings

There were contradictory impressions of the meetings. For example, two women who attended meetings during the same period stated: "[I] found it interesting that so many women could attend meetings on a regular basis and yet still not communicate,"⁷⁸ and "United with the sisters, fighting and working together for a

⁷⁴ Until December 1994, VSWAG's office was in a building that locked its doors at 6:00 PM. For this reason meetings were generally scheduled to begin before that time.

⁷⁵ Questionnaire: February - July 1994

⁷⁶ Questionnaire: August 1994 - **

⁷⁷ Interview: June 1993 - February 1995

⁷⁸ Questionnaire: January 1994 - January 1995

common goal and agenda.”⁷⁹ Certainly, personal preference or difference plays a major role. For example, four women found the meetings to be supportive while three felt ill at ease or uncomfortable.

Chart 2 - Comments on CMP Meetings

Tone of Comments	Stage 1	Stage 2	Stage 3	Total
Positive	7	3	9	19
Negative	4	7	6	12
Positive and Negative	3	1	2	4
Not Attended	2	2	0	4
Total	16	13	17	45

I charted out the comments according to the time frame the monitor was involved and found an overall “trend” but certainly not definite relationship.⁸⁰ I rated the comments according to their tone: positive, negative, or both. This data indicates that monitors involved in the program during Stage 2 perceived the meetings as negative twice as often as positive (4:8), whereas the relationship was reversed in Stage 1 (10:7) and Stage 3 (11:8). Given the difficulties of the first stage, this is surprising.

All seven research participants who spoke specifically about debriefing made positive comments. As mentioned previously, the administrative process was difficult for some and liked by others: seven women made negative comments and three made positive comments about the process. The meetings at times were chaotic and unorganized. They were never very structured. Women who spoke about change over time indicated that the meetings improved.

Meetings: Summary Notes

Attendance was considered a problem. Several monitors spoke about the importance of women attending the meetings for sharing experiences, working on other aspects of the program and establishing a common knowledge of the program. Meeting times changed in an attempt to increase attendance. However, the times changed little (Tuesday or Wednesday at 5:00 or 4:30 PM). Overall average attendance was 8.2 women.⁸¹ There was little fluctuation among the three stages: stage one, 8.85; stage two, 7.5; stage three 8. Attendance varied between 3 and 13. Members discussed other ways to increase attendance: for example, phoning monitors to remind them of the upcoming meeting; sending out an agenda in advance of the meeting, having refreshments and adding an education component. No one followed up on the suggestions for any length of time, except for the phone-around.

Monitors expressed an interest in having guest speakers on a variety of subjects: for example, homophobia, racism, sexism, government response to the Gender Bias in the Legal System Report. Early in the program, a lawyer attended two meetings to answer questions. Although members consistently expressed a desire to

⁷⁹ Questionnaire: January - October 1994

⁸⁰ If a monitor participated during more than one period her comments were included in all the periods she participated in. Data was collected from 32 of the 36 participants. Four women interviewed did not comment on the meetings. Two of the women did not attend meetings and therefore did not offer their perceptions.

⁸¹ This information is based on minutes of meetings. I have included data only where the information is available. If meeting minutes did not list those present, the meeting was not included in the calculation.

have guests at the meetings to offer relevant information, it did not happen again, even though there were court house players that offered to speak to the program.⁸² Why this did not happen is not surprising. At times, the program did not have the stability to bring outsiders into the contentious meetings and other issues took the attention of the volunteers and the Coordinator. Also, until VSWAG moved in December 1994, the physical space presented problems for having a guest speaker. *I did not ask the research participants about the physical space, although some mentioned it. Personally I found a shift in energy when we moved. The new space is airy and bright. The meetings in turn felt less heavy. It is difficult to express the change. It really was quite profound.*

Other women spoke of the need to get together socially for community building, as well as developing a common knowledge base and direction. The program had a few socials outside the VSWAG office. One member who was very active in the program from June 1993 to February 1995 had three social events at her home. Two were evening events and one was an afternoon luncheon. Attendance was good at all three events, as monitors had a chance to meet in a social environment. One social event was planned to include an educational component. It was scheduled for May 1995 with Alan Wade and Linda Coates attending.⁸³ Although members consistently identified socials as valuable events for maintaining volunteers in the program and increasing the knowledge of the membership, the program had few socials. The time commitment and will to organize them was not available.

The CMP had two organizational planning meetings September 1993 and January 1994. Both of these day-long meetings were very valuable. Suggestions for overcoming some of the administrative and information obstacles included having more planning sessions. One monitor suggested replacing the evening meetings with a monthly day-long meeting.

Although there was a great deal of criticism of the CMP meetings, there also was praise. Over time the meetings improved as the program stabilized and the space brightened. The one consistent aspect of CMP meetings is the positive support it offers monitors to debrief the court room experience.

C.3.4 Coping with the Court Room Experience

I didn't think it was that important. I thought - oh, I can do that on my own. But I know now it makes a difference when I have people to talk to. When the breaks come up. So there is lots of concern about supporting each other and I really like that.

Monitor: October 1994 (interview)

An important aspect of volunteer support is helping monitors cope in the court room. At the organizing meeting of the CMP, a member recommended volunteers attend court in pairs for debriefing and increasing objectivity. Later references to a buddy system in CMP documents focus on decreasing intimidation and feeling overwhelmed in the court house. In this research, monitors cited a number of positive aspects to the buddy system: to debrief, to help fill out forms, to help feel they are

⁸² See Chapter 5 - In Court Relations.

⁸³ This was a very successful event with over 20 women attending, as monitors were encouraged to bring friends. Alan and Linda co-authored two articles on the use of psychologizing in sexual assault trial judgments and Linda co-authored "Anomalous Language in Sexual Assault Trial Judgments."

there for a purpose, to feel more comfortable. The commitment to the buddy system continued in some form, although not always in practice.

The Buddy System

In the beginning, the CMP encouraged women to go to court in pairs or to bring a friend. By May 1993, members established a mentoring system. Three experienced monitors volunteered to accompany new monitors to court until they felt comfortable and had "learned the ropes." In the fall of 1993, with a new influx of monitors, the CMP once again set up a buddy system. Over time, the program continued to fluctuate between these two models: women monitoring in pairs (the buddy system) and experienced monitors mentoring new ones for their first few trips to the court house (the mentoring system). Generally, the approach at any one time reflected the number of monitors available and how feasible it was to pair up. The mentoring system was used in times of monitor shortage. Some monitors preferred to monitor alone, and would continue to do so regardless of the program's approach at the time. The CMP Coordinator encouraged monitors to phone her or another monitor to debrief.

Generally the buddy system was set up so new monitors would be matched with experienced ones. With a new influx of monitors, the old pairs split up and matched with newcomers. This allowed for ongoing training for the new monitors when they entered the courthouse as well as increasing connections between monitors.

All the research participants who referred to the buddy system described it as valuable in a number of ways [9]. One monitor states: "If I didn't have someone to go with at the beginning, I probably would not have kept going."⁸⁴ The pairing offered companionship in an alienating environment, as another monitor notes: "I find the other monitors help me feel that I'm in court for a purpose, therefore the alienation dissipates."⁸⁵ Although monitoring in pairs was valuable, it did not offer intimate support after witnessing a horrendous trial: "It's great to have someone with me, but the person I monitor with now is so different from me and I would not feel I could get support from this person."⁸⁶

Although not without its shortcomings, the buddy system offered the best protection and training for monitors, particularly before the hiring of the designated CMP Coordinator in September 1994. During this first stage, the staff of VSWAG had little time and/or knowledge to support the court monitors. If court monitors called VSWAG, the Coordinator was sometimes unavailable due to her other responsibilities. Also, she was too busy to spend any time in the courts. An important outcome of having a designated CMP Coordinator was monitor support. She attended court every week with new monitors and she was available for debriefing if a monitor called VSWAG. She also phoned monitors regularly, nurturing the volunteer commitment to the CMP.

Communication

Communication between monitors in the courts is another important issue. For cases that span more than half a day, monitors want to communicate with those that will arrive at the next session to tell them what is happening in the case and the

⁸⁴ Interview: August 1993 - **

⁸⁵ Questionnaire: November 1994 - **

⁸⁶ Interview: October 1994 - **

importance of monitoring it. *It felt comforting to read notes from the monitor(s) before me and leave a note for those following. This contact was often all I had when I was in the courts and it was very important to feel some connection and part of a bigger effort.*

In the first month after the CMP entered the courts, a monitor raised the issue of in-court communication. Although this may appear to be a small task, it took a year and a half to accomplish. The Coordinator sent two letters and made numerous calls between February and November 1993 requesting a mail slot in the court house. In December 1993, the CMP received a response that a mail slot was not available. In April 1994, the Coordinator approached Peter Holmes, Manager Court House Services who suggested a binder could be kept in Area 3 inside the Daily List.⁸⁷ A pink folder was put in the Daily List in mid-July 1994. Because this binder is open to the public, monitors must be careful when writing notes; for example, no comments on people, but rather what case they monitored or any changes to the schedules. The monitors used it sporadically because some were not sure what to write. One monitor states:

it's hard to write, because I don't know what people read and what they don't. I find it helpful to read but more helpful coming in here [VSWAG] and talking to people because I'm reluctant to write much.⁸⁸

In February 1995, the members decided to increase the use of the communication binder, requesting that all monitors write at least a short note each time they go to court, noting what case they went to (or didn't). As an organizational log or daybook, it would supply a record of the consistency of monitoring, what cases were covered, problems arising, etc.

Over the her-story of the CMP, members and staff struggled with the never-ending need for trained volunteers to work in the courts on a consistent basis. Beyond the normal organizational pressures of low financial and human resources, the CMP faced uncertainty in the courts, both in numbers of cases and emotional demands. While some monitors felt supported in their work in the courts, others did not.

C.4 Database

Another focus of the CMP is data collection and reporting mechanisms. To accomplish this, the CMP designed data collection forms and guidelines. In addition, the CMP continues to develop a database program for compiling data and producing reports. The CMP began creating a database and data collection forms early in the program with the hiring of a coop student for four months in May 1993. Three complications adversely affected these projects. First, the coop student had little database programming experience and it was difficult to design a complex program without this. Second, the CMP did not have a clear vision of what information they wanted to collect. In the early stage, there were many differing opinions about what should and should not be included. Third, the CMP did not have a basic understanding of the limitations and uses of a database. Originally, members of the CMP thought data could be entered in narrative form without any coding and from this they could generate reports and statistical information.

The database and data inputting continued to be a problem, regardless of the tremendous amount of work done by the coop student and CMP volunteers. The

⁸⁷ The Daily List is a binder that contains a computer output list of current trials and trial information.

⁸⁸ Interview: October 1994 - **

actual inputting was very tedious because there was a great deal of text to type for each case. Unfortunately, much of the data was inaccessible in report form due to the way the data was entered. For example, if a case had more than one charge, it was entered on the same line separated by commas. This did not allow for a report to be generated on cases by charge where multiple charges were listed. Also all fields were text fields and there were inconsistencies in entry format. For example, dates were entered in different numerical order as well as in alpha-numerical form, therefore it was impossible to access information by date. Also the database was set up in a configuration that used a huge amount of memory, making reporting all but impossible.

The coop student accomplished a great deal in a very comprehensive manner; however, considerable work was needed to update the program, establish consistency between records and enhance accessibility. Although the database remained a priority, its revamping was not immediately addressed due to other pressing issues, lack of computer expertise and the ongoing time constraints of an organization with few paid staff and a huge workload. In fact, the impetus for re-configuring the database was funding pressures. The CMP had committed to the development of a database and resulting reports for the project grant from the federal government.

At a planning meeting in January 1995, a Database Committee was formed. The committee brainstormed on what the database was suppose to do and what was needed to achieve it. At that time, the uses and limitations of a database became clear. This led to a rethinking of data collection procedures, the role of the database and the Court Form. The database would be used to capture trends and general information. Details or the narrative of cases would remain part of the permanent paper file. From narratives, court monitors would answer questions on the Court Form that "categorize" the case. The database would contain general information and codes, whereas files would have the details and narratives.

The Database Committee listed priorities and actions: develop a new filing system for case forms; lease a new computer to accommodate the Access database program; hire a data base expert to train interested CMP volunteers in programming; compile a list of questions to be answered (to serve as the basis for the Court Form and the database reports); establish a coding system (for ease of entry and access); and develop a new Court Form. The Database Committee committed to design a new program using the Access computer software and transfer the old database information to the new program. The hope was to produce a comprehensive report by July as part of the final grant report. Although things fell behind schedule, the Database Committee accomplished a great deal. By the end of April the computer was in place, the filing redone, the training complete, the Court Form and the coding system half completed.

C.5 Liaising in the Community

Although inconsistent, liaison with other community agencies, as well as the media, was an important aspect of the CMP's work. Not only did liaising offer the CMP an opportunity to collaborate with other like-minded organizations, it also offered an opportunity to raise awareness and lobby. Organizations and committees that the CMP contacted or liaised with in Victoria include Victoria Women's Sexual Assault Centre (VWSAC), Divorce Lifeline, Aids Vancouver Island Street Outreach/Needle Exchange Program, Family Court Committee, Human Rights Coalition, SAGE, Law Society of BC, Wife Assault Committee, Legal Services Society, Women of Our People, Legal Education and Action Fund (LEAF). For some organizations, contact occurred only

once, for others there was more ongoing contact over a period time. Predominantly the CMP initiated communication the with other organizations.

The greatest amount of collaboration occurred between the CMP and VWSAC. Early in the program (June 1993), steps were set up to improve effectiveness of both programs through mutual support and communication. There was a notable positive outcome for each organization. A VWSAC representative participated in the CMP training program and the CMP supplied VWSAC with a case list.⁸⁹ The VWSAC representative was very effective at training sessions and was often cited as providing the most helpful information.⁹⁰ At CMP training sessions, the counselor outlines the process a woman would goes through from the time the assault was committed until the trial was complete: all the twists and turns, delays and experiences women are likely to encounter. She also presents the choices a complainant has and doesn't have throughout the process.

Members of the CMP were also members of other organizations and as such acted as a liaison in a formal or informal capacity.⁹¹ Most of the liaison activity occurred during the first stage of the program, when the CMP Coordinator was also the Co-Coordinator of VSWAG. Liaising and outreach was a part of her VSWAG work and as Coordinator she was well connected and known in the women's community.

Overall, liaising was characterized by inconsistency and lack of follow through.⁹² Lack of time and women power was not only an ongoing obstacle to the CMP, but also to the other organizations that CMP was often wanting to connect with. At other times, follow up was not done due to lack of programming. For example, the connection with Divorce Lifeline did not develop because the CMP did not expand into family court as originally planned.

The CMP had little contact with the media [9], although this was consistently flagged as important because it addresses the program's third aim as well as offers a method for promoting the CMP. Media outreach is a difficult issue for the CMP: how to present a position to the media that will not be misconstrued or hurtful to complainants and will best represent the position of the program and its members; the difficult question of language when speaking in the area of law; and the fear of media misrepresenting the program's position. Media liaison requires certain skills that were not part of the skill set of CMP members. Also, media contact is one area in which VSWAG wished to be involved, as the CMP public image and voice represented the greater membership of VSWAG.⁹³

⁸⁹ The Crown Counsel and the police have a protocol that they notify VWSAC of any upcoming sexual assault cases in order that VWSAC can support the complainants through the process. This protocol was not being followed. The CMP case list signaled VWSAC of upcoming cases. This allowed them to be of service to more complainants and to challenge those that were not adhering to the protocol.

⁹⁰ Nine women of the 31 who referred to the most helpful information in the training program, specifically mentioned the representative from the Victoria Women's Sexual Assault Centre.

⁹¹ Some organizations that shared common members with the CMP were Women of Our People, Human Rights Coalition, VWSAC, United Nations, Victoria International Development Education Association, Camosun College Women's Centre, University of Victoria Women's Centre, Victoria National Association of Women and the Law.

⁹² The information regarding liaising with the media and community organizations relies on source documents (correspondence files, minutes). This in turn relies on the careful documentation of these activities. I am not confident this was done, however, the documentation available does give a general overview of the communication without the actual numbers of calls and detailed content of the conversations.

⁹³ This led to some of the same concerns discussed in Chapter 5 - The Third Aim: Taking Action.

The critical issues of the button and development of policy, literature and operational documents lost their “critical” flavour with time, whereas, volunteer development and support, database development and liaising in the community have reached their full potential. They remain a challenge for the CMP and VSWAG.

Appendix B

Data Collection Tools

Consent Form

Participant Information Form

Questionnaire Covering Letter: First letter

Questionnaire Covering Letter: Second letter

Questionnaire: Past Monitors

Questionnaire: Current Monitors

Interview Covering Letter

Interview Questions: Monitors

Interview Questions: Herstorical Information

Consent Form

Informed Consent

I have read and understood the preceding information and conditions outlined. I give my consent to participate in this research. My signature indicates only this consent and does not bind me to participate in this or any other research.

I understand that I can refuse to answer any questions or withdraw from this research at any time. I also understand that any personal information I provide will be stored in a manner which makes my personal identification impossible.

Participant's Signature

Date

In accordance with the University of Victoria's Research Regulations Involving Human Subjects, I am committed to protecting this participant's right to privacy and will treat her/him with full respect during every stage of my research.

Susan Albion, Researcher

Date

Participant Information Form

Please supply the following information

NAME _____

ADDRESS _____

TELEPHONE _____

(home) _____

(work) _____

BIRTH DATE _____

ETHNIC BACKGROUND/IDENTITY _____

Please check the most appropriate choice to each section.

CURRENT MARITAL STATUS

☐ never married

☐ married

☐ co-habiting

☐ separated

☐ divorced

☐ widowed

EMPLOYMENT STATUS

☐ paid employment, full time (occupation: _____)

☐ paid employment, part time (occupation: _____)

☐ currently unemployed

☐ homemaker

☐ retired

☐ student: Full time _____ Part time _____

☐ other _____

What has been your primary occupation (paid or unpaid)

FORMAL EDUCATION LEVEL (the highest level of education that you have obtained)

☐ up to 11 years of school

☐ completed high school

☐ one or more years of college

☐ college diploma

☐ one or more years of university

☐ university degree (specify: _____)

☐ other: _____

Do you consider yourself to be a feminist _____

Questionnaire Covering Letter: First Letter

January 14, 1995

Dear _____ :

Thank you for your interest in this research project. This letter is intended to reintroduce myself, the research project and outline your participation in it.

I am a graduate student in the department of Sociology at the University of Victoria and a participant in the Court Monitoring Program initiated by the Victoria Status of Women Action Group (VSWAG). Under the supervision of Dr. Bill McCarthy and Dr. Martha McMahon, I am conducting a research project to explore the Court Monitoring Program as part of my masters of arts (M.A.) degree.

The intention of my research project is to document the process and development of the Court Monitoring Program and to explore the effects. This information will add to the understanding of the program, as well as any possible effects the program has on participants and court personnel.

This information that I am asking you to provide as a participant of the program will add to the understanding of the program as well as any possible effects the program has on participants.

All information that I receive from you will be confidential. Your questionnaire will not include your name but rather an identification number known only to myself. The questionnaires will be stored in a locked cabinet separate from the participant information form. I will not identify you by name or present data in such a way that you are identifiable.

In my report, any questionnaire information will be presented generally and pseudonyms will be used to protect those quoted.

If you have any further questions before or after you have filled out the enclosed information form and questionnaire, please do not hesitate to contact me by phone.

Sincerely,

Susan Albion
388-5591

Questionnaire Covering Letter: Second Letter

February 9, 1995

Dear :

Recently with your permission I sent you a questionnaire package for my research project on the Court Monitoring Program. Time has passed and I have not received your returned questionnaire. This is a follow up package in the event that your first has gone astray and with the hope that you remain interested in participating.

I understand that this requires a certain amount of your valuable time and a certain amount of reflection from times past, but I am asking you to take this time to fill out the questionnaire. The Court Monitoring Program as I am sure you are aware is a very worthwhile program. This research project was initiated by myself with the considerable input by and support of the CMP program and participants. The research has been designed to contribute to the CMP in its future endeavors. Your participation will be an important contribution to the research and the Court Monitoring Program.

Unfortunately to date the return on questionnaires has been quite low. Without a good return rate the information gathered carries less weight. For this reason I am being somewhat assertive by sending this second package with the hope that you will appreciate the importance of your input and participation. Thank you for any contribution you can make to this valuable project and for your understanding of the intent and spirit of this letter.

Yours sincerely,

Susan Albion
388-5591

Questionnaire: Past Monitors

Answer questions only where you feel comfortable doing so. Any additional comments you wish to add are very welcomed. The space allocated does not represent an expected length for any particular question. Please use extra paper if necessary.

1. During what period of time were you involved in the Court Monitoring program?
2. How did you hear about the Court Monitoring Program?
3. Why did you become involved in the Court Monitoring program?
4. What role did you play in the Court Monitoring Program? Briefly describe your role.
5. Describe you experience and feelings as a court monitor in the court house. (and did it change over time?)
6. Describe your experience and feelings in the court monitoring meetings.
7. Did you feel the Court Monitoring Program adequately prepared and support you for your role in the program (monitoring, data base, actions, administrative team)?
 If no, please describe how you feel you were not adequately supported and/or how the Court Monitoring Program did not prepare you.
 If yes, please describe how you feel you were supported and/or how the Court Monitoring Program prepared you.
 (Suggestions for improvement are also welcomed.)
8. Did you feel that your efforts in the program were worthwhile; valuable contributions for the time you spent. Could you please elaborate as to why you feel this.
9. How did people you know react to your participation in the Court Monitoring Program?
10. Do you have any comments about the Court Monitoring Program that you would like to offer this research?
11. Would you consider returning to the program in the future? (Please add comments explaining why you would or would not participate).
12. Would you like to receive a written summary of this research project or the thesis for your review?

Interview Covering Letter

February 9, 1995

Dear _____ :

Thank you for your interest in this research project. This letter is intended to reintroduce myself, the research project and outline your participation in it.

I am a graduate student in the department of Sociology at the University of Victoria and a participant in the Court Monitoring Program initiated by the Victoria Status of Women Action Group (VSWAG). Under the supervision of Dr. Bill McCarthy and Dr. Martha McMahon, I am conducting a research project to explore the Court Monitoring Program as part of my masters of arts (M.A.) degree.

The intention of my research project is to document the process and development of the Court Monitoring Program and to explore the affects. This information will add to the understanding of the program, as well as any possible affects the program has on participants and court personnel.

This information that I am asking you to provide as a participant of the program will add to the understanding of the program as well as any possible effects the program has on participants.

I am asking participants to complete a short information sheet (enclosed) and an interview that will require between sixty and ninety minutes. The content of the interview includes questions about your involvement in the court monitoring program and your perceptions of the court monitoring program and the court system.

To best record your response, I wish to audiotape the interview. The tape will be labeled only by an identification number and will be stored in a secure cabinet. After transcription the tape will be erased. The transcription will be labeled only by an identification number and will be stored in a secured cabinet separate from other documentation. There will be no connection between interviews and the form containing names and other information. All information that I receive from you will be confidential. I will not identify you by name or present data in such a way that you are identifiable. In my report, information will be presented generally and pseudonyms will be used in order that those quoted are not identifiable. (The exception to this would be with permission from the informant and only for specific information for which permission is obtained.)

You are welcome to ask me any questions before, during or after the interview. You may at any time withdraw from the interview or decline from answering particular questions. I also welcome your input regarding what is relevant information and what you would like to contribute to the interview and research.

I will meet you at (place) at (time) on (date). Please bring the information sheet and consent form to our meeting. Thank you and I look forward to the interview.

Sincerely,

Susan Albion
388-5591

Interview Questions: Monitors

Personal Information

1. What brought you to the court monitoring program?
2. Had you any previous experience with other programs involving the law?
women?
sexual assault?

3. How long have you been involved in the court monitoring program?

4. Do you expect to continue? and why?

5. How has the CMP affected you?

6. Do you consider yourself to be a feminist?

In what ways do you see your feminism affecting or directing your actions, your choices or your beliefs.

Court and Legal System

1. Do you perceive any bias in the court room based on a person's social location (i.e. race, gender, class, etc)?

If yes, where is the bias? judges, lawyer, laws etc.

How would you change it?

2. Do you think that courts adequately deal with the problem of sexual assault?

if no; (a) in what way?

(b) how do you think the system could be improved?

3. Has your participation in the Court Monitoring Program changed your perception of the courts and the legal system?

If yes, how?

4. Has your participation changed the way you see yourself?

women and men?

The Court Monitoring Program

1. I would like to hear your perception of the CMP as an organization, its structure and how it runs.
2. How do you feel in the court room?
3. Do you think that the CMP is making a difference to the experience of women complainants in the court room?

to the behaviour of court room participants (judges, lawyers)?

to the outcome of trials?

to women who monitor?
4. Have you had any contact with court personnel (judges, defense lawyers, crown prosecutors)?

Has your contact changed over time?

if yes, could you describe it
5. How do you think the program has succeeded?
6. How do you think it has failed?
7. What would you like to see done differently?
8. In general, how effective do you think the CMP is.
9. How successful do you think other approaches would be? For example, changing laws, training for judges, more services for women.

(if not covered - how do you feel in the meetings, do you feel the structure of the program works and supports you as a monitor, etc.)

That is my last question. Is there anything else you wish to add? Would you like to receive a written summary of this research or the thesis for your review?

Interview Questions: Herstorical Information

The idea for the program - where did it come from - how did it evolve

Process of beginning the program

How many involved in the beginning

Development of the aims, etc.

Relationship with SWAG

Your time (hours) main tasks, etc.

Significant events of the organizations

Obstacles to organizing

Facilitation to organizing

Perception of process to development

Do you feel the volunteers get something out of being in the program?

If you had it to do over again what would you do differently/the same?

Appendix C

Research Participant Information

Birth Date
Ethnic Background/Identity
Current Marital Status
Employment Status
Primary Occupation
Formal Education Level
Do You consider Yourself a Feminist

Participant Information⁹⁴

BIRTH DATE

Year	Total Respondents	Interviewees
1920	2	0
1920's	1	0
1933	1	0
1945	2	2
1946	2	0
1947	1	0
1948	1	1
1950	1	0
1952	1	1
1955	1	1
1957	1	0
1961	1	0
1962	2	1
1966	1	0
1967	1	0
1969	5	1
1970	5	3
1971	3	2
1972	2	0
1974	1	0
No birth Date stated	1	0

Summary of All Respondents

Age	Decade	Number of Respondents
70's	1920's	3
60's	1930's	1
50's	1940's	6
40's	1950's	4
30's	1960's	10
20's	1970's	11

⁹⁴ Information gathered from information sheets completed by all participants (36) in research.

Participant Information

ETHNIC BACKGROUND/IDENTITY

	Total Respondents	Interviewees
no response	6	1
Canadian	5	2
Canadian - white	3	1
White or Caucasian	3	0
Canadian - English/Caucasian	2	1
Canadian - English	2	0
Canadian - English/French	1	0
Canadian - French	1	0
Canadian - Jewish	1	1
Canadian - Ukrainian	1	0
WASP	1	1
Russian	1	1
Scottish	1	0
East Indian	1	1
Metis	1	1
English/Italian	1	0
Irish/Scottish	1	1
French, Indian, Irish, Scot	1	0
Danish/ English/Welsh	1	0
White/Norwegian/Irish	1	1
none	1	0

Summary of All Respondents

Canadian	16
White/Caucasian	10
English	7
No Response	6
French	3
Scottish	3
Irish	2

Listed once: Jewish, Ukrainian, Italian, Indian, Welsh, Norwegian,
Metis, East Indian, Russian, Danish, none

Participant Information

CURRENT MARITAL STATUS

	Total Respondents	Interviewees
never married	16	5
married	7	2
co-habiting	5	3
separated	2	1
divorced	3	1
widowed	1	0
no answer	2	0

EMPLOYMENT STATUS⁹⁵

paid employment, full time	12 ⁹⁶	3
paid employment, part time	9 ⁹⁷	1
currently unemployed	4	2
homemaker	1	0
retired	4	0
student: Full time	9	4
Part time	4	1
other (volunteer, self-employed)	2	1
no answer	1	0

⁹⁵ Some participants responded positively to more than one category.

⁹⁶ Occupation: organizational consultant, writer/researcher, research officer, research associate, administrator, administrative support, cashier (2), Branch secretary, economist, receptionist, waitress.

⁹⁷ Occupation: health care worker, dance instructor, pool hall worker, food services worker, restaurant bussing, hotel service worker, building manager, contractor/counselor, community researcher.

Participant Information

PRIMARY OCCUPATION

health care worker, writer
 homecare, clerical, childcare
 student (5)
 student, receptionist
 journalist, astrologer
 registered nurse
 varied
 educator
 waitress
 retail, restaurant
 food service worker
 administrator
 waitress, mother
 clerical
 cashier
 secretary
 business woman
 writer
 florist (business owner), manager
 student, researcher
 waitress while in school
 human services
 occupational therapist
 volunteer involvement towards social justice
 consultant, small business owner, facilitator, waitress, project coordinator
 no answer (6)

Interviewees:

student (2); journalist, astrologer (1); retail, restaurant (1); administrator (1); human services(1); occupational therapist (1); consultant, small business owner, facilitator, waitress, project coordinator (1); clerical (1); no answer (3)

Participant Information

FORMAL EDUCATION LEVEL⁹⁸

	Total Respondents	Interviewees
up to 11 years of school	2	1
completed high school	0	0
one or more years of college	6	1
college diploma	6 ⁹⁹	2
one or more years of university	9 ¹⁰⁰	5
university degree	13 ¹⁰¹	2
other:	2 ¹⁰²	0
no answer	4	2

DO YOU CONSIDER YOURSELF TO BE A FEMINIST

yes	30 ¹⁰³	10
no	0	0
?	1	0
no answer	5 ¹⁰⁴	2

⁹⁸ Some participants responded positively to more than one category.

⁹⁹ Specify: criminology, theatre arts, business skills, human services.

¹⁰⁰ all but 1 are still in university.

¹⁰¹ Specify: political science/economics, B. Ed, Fine Arts, French, BA/ BSW, English, Sociology/psychology, BA (2), Biology, Political Science/Environmental Studies, Social Sciences/Criminology; MA/BA.

¹⁰² Certificate in Volunteer Management, Social Service Worker.

¹⁰³ Comments: "with pride"; "moderate one - yes"; "yeah sure"; "yes, but I'm not in favour of abortion on demand"; "yah, I guess".

¹⁰⁴ Comments: "I consider myself a wife, mother, and grandmother, a member of a large extended family which celebrates reunions every 5 years with 80 or more people attending, half of whom are men whom I love dearly. I never think of myself as a feminist but I champion 'equal pay for equal work'".

Appendix D

CMP Information

CMP Training Manual - list of contents

Court Monitoring Identification and Clayoquot protest Buttons

■

COURT MONITORING PROGRAM MANUAL

TABLE OF CONTENTS

MISSOULA RAPE POEM, BY MARGE PIERCY

INTRODUCTION TO VSWAG'S COURT MONITORING PROGRAM

A <i>Herstory</i> of the Court Monitoring Program	.....
Statement of Aims	.....
Guidelines for the Court Monitoring Program	.....

THE LEGAL SYSTEM AND VIOLENCE AGAINST WOMEN

Some Facts on Violence Against Women and the Legal System	.....
The Legal Process - <i>Flowchart</i>	.....
The Criminal Justice System	.....
Verdict	.....
Sentencing	.....
The New Sexual Assault Laws	.....
Stalking	.....

GENDER BIAS AND VIOLENCE AGAINST WOMEN

Some Facts and Issues on Violence Against Women	.....
Gender Bias	.....
Psychologizing	.....
Language in Sexual Assault Judgments	.....
Socio-Cultural Factors Contributing to Wife Assault	.....
Possible Long Term Consequences of Sexual Abuse	.....
Internalized Oppression	.....

COURT MONITORING WORKING DOCUMENTS

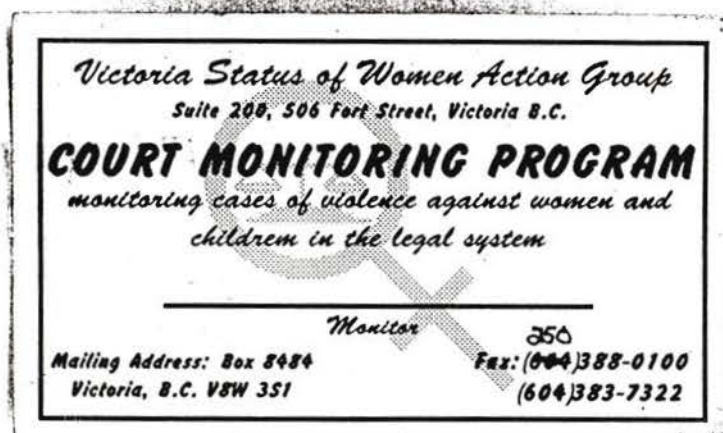
Guidelines for the Court Form	.....
Group Identification List	.....
Court Monitoring Priorities/Preferences	.....
Criminal Code Listings	.....
Form 1 - Court Form	.....
Form 2 - Witness Sheet	.....

More Food for Thought

Court Monitoring Identification Buttons



January 1993 - April 1995
(Hot pink with black lettering)



April 1995 ---
(Light mauve with dark mauve lettering)



(Hot pink with black lettering)

VITA

Surname: Albion

Given Names: Susan Emily

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1988 - 1997

Degrees Awarded:

B.A. (Honours)

1992

Honours and Awards:

University of Victoria Dean' Scholarship

1992 - 1994

Sara Spencer Foundation Research Award

1994

Publication:

Co-authored with Janetta Ozard, "Court Monitoring Program of Victoria Status of Women Action Group" Altantis 21 (1996) 85 -88.

Book Review "Precarious Dependencies: Gender, Class and Domestic Service in Bolivia" Women's Studies International Forum 19.3 (1996) 351-352.

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Title of Thesis:

A Case Study: VSWAG Court Monitoring Program

Author


Susan Emily Albion

September 30, 1997