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BEYOND LEGISLATION: GENUINE CHANGE IN THE INTERACTION BETWEEN VICTIMS OF SEXUAL CRIMES AND THE CRIMINAL LAW SYSTEM

Tzili Paz Wolk

This article examines the changes in the encounter between sexual assault victims and representatives of the law enforcement and judicial systems in Israel as perceived by workers and volunteers of the sexual assault crisis centres. After more than four decades of action in legal contexts – from spurring legislation changes, through the training of professionals within the legal system, up to escorting victims – it is still hard to find studies describing any change beyond legislation and procedures in the forms that this encounter assumes in Israel and in the world.

For the purpose of the study, this interaction was separated from the other aspects of the procedure, observed in depth and, with the interviewees' help, broken down into its relevant components. Data gathered and processed using quantitative and qualitative methods show that, according to the impression of the critical and experienced interviewees, representatives of the legal system truly did endeavour during the first decade of the second millennium to provide the victims better conditions than in the past, encouraging them to speak out in the criminal proceedings.

As a possible background for the changes in the interpersonal encounter, the article suggests focusing on two mutually related processes, historical but also ongoing. The first is a change in the modes of thought and action in the crises centres that dealt with this matter and promoted specific changes in the interpersonal encounter. The second process is reflected in the way that legislators chose to intervene in the interpersonal encounters through four sections in the Rights of Victims of Crime Law. These processes influenced one another and still largely accompany the developments in this sphere, teaching important lessons about change in systems not easily amenable to it.

1. INTRODUCTION

Sexual assault victims are a special group among crime victims. By law, they are meant to receive special treatment when in contact with the legal system. They are endlessly mentioned apart from all other crime victims as deserving special consideration and unusual sensitivity.¹ The literature relates extensively to the fact that sexual assault and the recovery from it differ from other offences tackled by criminal law, and the encounter between these two worlds is often accompanied by discord and further injury to the victim.²

In addition to this progressive legislation, the professionals in the legal system seek, and receive, training specifically designed to help them deal with sexual assault cases.³ This action rests on the same assumption – the tools that are available to the legal system's representatives are not effective for coping with these victims and, when applied, may easily lead them to relive or aggravate the trauma.

¹ The most specific reference is found in the Rights of Victims of Crime Law (2001), and clearly attests to a special attitude that, 'justifiably' or 'unjustifiably,' discriminates in the victim's favour. See Emanuel Gross, 'The Victim's Constitutional Rights: A Comparative Study' (2002) 17 *Bar-Ilan Law Studies* 419 (in Hebrew); Danah Pugach, 'The Victims' Revolution – The Day After: Towards a Model that Recognizes Personal Punishment Considerations?' (2004) 4 *Kiryat ha-Mishpat* 229 (in Hebrew). A special attitude is also conveyed in the exclusion of these victims from criminal law as, for example, in some of the non-criminal contexts of the Sexual Harassment Law – Orit Kamir, 'Israel's Sexual Harassment Law after Its First Decade: An Assessment of Its Achievements and Failings' (2008) 9 *Law and Business* 9 (in Hebrew) – as well as in the Civil Service Ordinances that copied verbatim some of the new norms that the law had anchored. David Bar-Ophir, 'The Rights of Victims of Crime Law in the Case Law' (Perlstein-Ginosar 2007).

² Susan Brownmiller, *Against Our Will* (Bantam Books 1975); Catherine A MacKinnon, 'Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence' (1983) 8 *Signs: Journal of Women in Culture and Society* 635; Hadar Dancig-Rosenberg, 'Sexual Assault Victims: Empowerment or Re-Victimization? The Need for a Therapeutic Jurisprudence Model' in Natti Ronel, K Jaishankar, and Moshe Bensimon (eds), *Trends and Issues in Victimology* (Cambridge Scholars Publishing 2008) 150, 159; Andrew E Taslitz, *Rape and the Culture of the Courtroom* (NYU Press 1999) 99.

³ This information relies on the interviews conducted for the purpose of this study, to be presented below, where all the units' directors at the Sexual Assault Crisis Centres attested that they receive many requests for training courses and also initiate some themselves.

Sexual assault victims include an additional sub-group – women who choose to implement their right to the presence of an escort during proceedings involving investigations by the police or by the court.⁴ The presence of an escort is accepted today at meetings with the prosecution as well, despite the absence of a legal obligation in this regard. Escorts who have received broad (legal and psychological) training at the sexual assault crisis centres are usually the ones who accompany victims.⁵ Beyond the information and the psychological support they give to victims, their presence may affect the course of these encounters in their function as another pair of eyes in the room.⁶ Unlike untrained escorts, those trained at the crisis centres have the organizational backing of respected, longstanding settings that are in close contact with the system and enjoy its trust.

The combination of special legislation that singles out these victims, together with the presence of a professional escort, leads to the assumption that these victims enjoy the best service the legal system can provide to crime victims generally.

A focus on this specific population of crime victims may point to many steps that the current system could take for the benefit of crime victims in general, and even for additional populations craving for better conditions, such as suspects and defendants.

Moves designed to make victims of sexual assault a special case have been adopted in Israel and in the world since the 1970s.⁷ Legal systems

⁴ The Rights of Victims of Crime Law, 2001 (Israel), s 14.

⁵ Some of the escorts may be lawyers, but being a lawyer is neither a condition nor an advantage ensuring participation at the training courses offered by the crisis centres.

⁶ Rebecca Campbell, 'Rape Survivors' Experiences With the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?' (2006) 12 *Violence against Women* 30. Most interviewees thought that the escort's presence encourages the parties to abide by the formal and informal rules of the encounter, because the information may reach further agencies – from the escort, to the unit's director at the crisis centre, and back to the care of a more senior level within the law enforcement and judicial systems. This is a frequent event – the escort returns to the crisis centre and objects to behaviour that is insensitive or against the rules.

⁷ Martha R Burt, 'Rape Myths and Acquaintance Rape' in Andrea Parrot and Laurie Bechhofer (eds), *Acquaintance Rape* (John Wiley 1991) 26; Carol Smart, *Feminism and*

everywhere, and particularly in the context of sexual violence, are perceived as bodies that systematically silence the female narrative through various means—from legislation that reflects male attitudes on a matter perceived as fundamentally female,⁸ through the structure and constraints of proceedings that can hardly contend with these complex issues,⁹ and up to the staff that deals with these cases, which includes many men and women without suitable training.¹⁰ Behind the demand to enable women to speak out in criminal proceedings is the expectation that, regarding experiences unique to women, social institutions will adapt themselves to the absorption and processing of this experience without trying to subject it to the way that men might live through it.¹¹

Although many years have elapsed, there are no studies reporting actual change in the conduct of legal proceedings in Israel. From a review of the available research, we might conclude that extensive changes are confined to laws and ordinances or are meaningless to the victims.

the Power of Law (Routledge 1989); Kim Lane Scheppele, 'Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth' (1992) 37 *New York Law School Law Review* 123; Noya Rimalt, 'Stereotyping Women, Individualizing Harassment: The Dignitary Paradigm of Sexual Harassment Law Between the Limits of Feminism' (2008) 19 *Yale Journal of Law and Feminism* 391.

⁸ Charlene L Muehlenhard and Leigh Ann Kimes, 'The Social Construction of Violence: The Case of Sexual and Domestic Violence' (1999) 3 *Personality and Social Psychology Review* 234; Katharine K Baker, 'Gender and Emotion in Criminal Law' (2005) 28 *Harvard Journal of Law and Gender* 447.

⁹ Rosemarie Tong, *Women, Sex and the Law* (Rowman and Littlefield 1984); Susan Estrich, *Real Rape* (Harvard University Press 1987); Fiona E Raitt, 'Gender Bias in the Hearsay Rule' in Marry Childs and Louise Ellison (eds), *Feminist Perspectives on Evidence* (Cavendish 2000) 59.

¹⁰ Janice Du Mont and Terri L Myhr 'So Few Convictions: The Role of Client-Related Characteristics in the Legal Processing of Sexual Assaults' (2000) 6 *Violence against Women* 1109; Jan Jordan, '(2002) 25 *Policing: An International Journal of Police Strategies & Management* 319.

¹¹ Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press 1993); Morrison Torrey, 'When Will We be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions' (1991) 24 *University of California Davis Law Review* 1013; Kathy Mack, 'Continuing Barriers to Women's Credibility: A Feminist Perspective on the Proof Process' (1993) 4(2) *Criminal Law Forum* 327.

Systemic action in Israel is described at length in the book by Esther Eillam,¹² which relates mainly to developments until the mid-1990s. Most of the later studies, however, have hardly reported any changes in this approach since then.¹³ Eillam's findings present an alarming picture, which is validated by the many testimonies of victims interviewed over the years. Eillam's study points to stereotypical attitudes towards sexual offences in general and their victims in particular, as well as blatant expressions of contempt for and humiliation of victims who approach the legal system.

But is it indeed possible that, after forty years of wide-ranging legal, educational, and media activities conducted by state institutions and NGOs in formal and informal channels, nothing has changed in the encounter between victims of sexual offences and the criminal legal system except for the legislation that regulates it?¹⁴

This is the question that led to the current study. During the 2010s, I served as an escort in criminal proceedings on behalf of the Sexual Assault

¹² Esther Eillam, *Rape Survivors, Rape Crimes and the Authorities* (The Jerusalem Institute for Israel Studies Research Series No. 58, 1994) (in Hebrew).

¹³ Irit Negbi and Tamar Berenblum, 'A Critical Feminist View of the Impact of Legislative Reforms in Rape Law' (2011) 16 *HaMishpat Law Review* 209 (in Hebrew); Mimi Ajzenstadt and Odeda Steinberg, 'Never Mind the Law: Legal Discourse and Rape Reform in Israel (2001) 16 *Affilia* 337. One exception was an M. A. Thesis describing, possibly for the first time, satisfaction with the professionals' conduct. Na'ama Tamari Lapid, 'A Lesson in Voice Development: Experiences of Sexual Assault Survivors in the Legal Process' M. A. Thesis, Hebrew University of Jerusalem, 2008 (in Hebrew). Although her sample was small, ten out of eleven of the victims that were interviewed supported her conclusion about the therapeutic value of the proceedings, which rises with the rise in the opportunity to speak out. Only one victim described her participation in the criminal proceedings in terms of a "second assault."

¹⁴ Almost all the studies following up legal reforms throughout the world focus on quantitative variables, and they are the source of the conclusion stating that these reforms fail. Quantitative variables, however, can reflect only part of the reforms' goals, such as the percentages of reported crimes and the number of convictions. See Carole Goldberg-Ambrose, 'Unfinished Business in Rape Law Reform' (1992) 48 *Journal of Social Issues* 173; Scott Clark and Dorothy Hepworth, 'Effects of Reform Legislation on the Processing of Sexual Assault Cases' in Julian V Roberts and Renate M Mohr (eds), *Confronting Sexual Assault: A Decade of Legal and Social Changes* (University of Toronto Press 1994) 113; Jody Clay-Warner and Callie Harbin Burt, 'Rape Reporting after Reforms: Have Times Really Changed?' (2005) 11 *Violence against Women* 150.

Crisis Centre in Tel Aviv. At the time, I was also writing a dissertation on the subject and found a serious gap between the reality presented in (and missing from) the research, and the one that was revealed to me and my escort colleagues in our encounters with representatives of the law enforcement and judicial systems. Many phenomena that Eillam described in her book either never occurred in the many cases I was involved in or were entirely negligible.

As an experienced escort who also facilitated workshops and taught courses on this topic, I had access to all the coordinators in the field and also to other experienced escorts in crisis centres throughout the country. These contacts enabled me to examine whether my personal feelings about this perceived gap reflected the reality and prevailed in other centres as well.

In this article, I will show that one element in the proceedings did indeed change significantly for the better – the interpersonal encounter of the victims with representatives of the law enforcement and judicial systems. The term “interpersonal encounter” refers here to a meeting between people, mostly for the purpose of submitting and processing a complaint. I favoured this term over “encounter” or “conversation” in order to emphasize the human and informal aspects that characterize these meetings.

Interpersonal encounters take place at the police station, when the victim arrives to submit a complaint and to be interrogated about it. They also take place at the prosecutor’s office, when the victim comes for an encounter to decide on the continuation of the proceedings. Interpersonal encounters also take place when the victim is questioned on the witness stand and faces the judges, despite the spectators.

The key test touches on the victim’s ability to speak out in an authentic voice and tell the full story of the offence in the course of the interpersonal encounter. In most cases, the system urges the victim to speak out in a legal, evidentiary voice, which serves the needs of the system as they are perceived at that moment by its representatives. Feelings, intuition, the broader context of the event, tortuous explanations and other complicated elements – all are

asked to remain outside even though, without them, the full story can hardly be understood and remains thin and insipid.¹⁵ Careful listening and full permission to tell the whole story may serve to explain the crime, give the victim a good feeling, and allow the professionals to proceed with cases that appear hard to understand without these various contextual details.

A positive interpersonal encounter, then, is one that encourages the victim to speak out and present a rich, multi-layered story, contrary to the filtering and the silencing known from the past treatment of sexual crimes.

For many years, interpersonal encounters were studied in the general context of dealing with the offence rather than as an independent event subject to rules of its own. The impression from them is always part of a broader framework that includes, for example, relevant legislation, judicial rulings, sentencing, and professional decisions taken along the way (closing a case, proceeding with it on the basis of suspicions far narrower than those raised by the victim, or attempts to reach a plea bargain). All of these together have supported, over the years, the widespread view that the systemic treatment of victims is generally offensive.¹⁶ As a result, some of the subtle processes of change unfolding in the system are consistently missed,

¹⁵ Liora Bilsky, 'The Violence of Silence: The Legal Procedure between Allocation and Voice' (2000) 23 *Tel Aviv University Law Review* 421 (in Hebrew).

¹⁶ Lynda Lytle Holmstrom and Ann Wolbert Burgess, *The Victim of Rape: Institutional Reactions* (John Wiley & Sons 1978); Warren Young, *Rape Study: A Discussion of Law and Practice* (Department of Justice and Institute of Criminology, vol. 1, 1983); Kate J Gilmore, June Maree Baker, Lise V Pittman, *To Report or Not to Report: A Study of Victim/Survivors of Sexual Assault and Their Experience of Making an Initial Report to the Police* (Centre against Sexual Assault 1993); Patricia Yancey Martin and Marlene R Powell, 'Accounting for the "Second Assault": Legal Organizations' Framing of Rape Victims' (1994) 19 *Law and Society Inquiry* 853. A deep analysis of the organizational routine in the law enforcement system showed that professionals resort to offensive practices even when they do not mean to and that they view these practices as a professional need, and at times even as imperative, even though this is not how these practices are described in the rules or the laws regulating the organization's activity. See Patricia Yancey Martin, *Rape Work: Victims, Gender and Emotions in Organization and Community Context* (Routledge 2005)

precluding the possibility of detecting them as well as strengthening them as a leverage for additional changes.¹⁷

Interpersonal encounters are located at the lowest level, the one that creates the “story,” the raw material spinning from the police to the prosecution, and finally – to the courtroom. These encounters, where the story is told, represent the least tidy part of the proceedings, the part that has almost no anchor in the legislation and relies mostly on the professionals’ discretion. As such, it entails the greatest potential for harm, but also the greatest potential for change.¹⁸

Before presenting the actual change, I dwell on two important processes that made a significant contribution to its occurrence since they are the ones that dealt with the interpersonal encounter. Obviously, many factors contributed to this change, from legislative amendments and up to the expansion of media coverage. What seems important, however, is to direct attention to the crossroads, when processes focus specifically on the interpersonal encounter that, as noted, is never studied as an independent topic. The first of these processes is the “Escorts Project,” established at the sexual assault crisis centres. The second is the enactment of the Rights of Victims of Crime Law, now including four sections reflecting unusual legislative intervention into the conduct of interpersonal encounters in the legal system, when adults rather than minors are involved.

The criminal legal system in Israel is a particularly interesting case study in these contexts because, given its ongoing interaction with various feminist trends, it reflects well (even though with a slight delay) the changing voices in local and global feminist thought. This situation is conveyed in changes in

¹⁷ Endorsement of this approach might prevent the location of positive processes of change, leading to studies that recurrently describe failures and risk missing successes. See Neil Gilbert, ‘Advocacy Research and Social Policy’ (1997) 22 *Crime and Justice* 101.

¹⁸ Rebecca Campbell, ‘What Really Happened? A Validation Study of Rape Survivors’ Help-Seeking Experiences with the Legal and Medical Systems’ (2005) 20 *Violence and Victims* 55; Gregory M Matoesian, ‘Language Law and Society: Policy Implications of the Kennedy Smith Rape Trial’ (1995) 29 *Law and Society Review* 669.

primary legislation touching on sexual offences,¹⁹ and also in the enactment of the Law for the Prevention of Sexual Harassment²⁰ and the Rights of Victims of Crime Law. Many organizations with a distinct feminist agenda participated in the drafting of these laws.²¹

Ties between the establishment organizations and the crisis centres have significantly deepened since the enactment of the Rights of Victims of Crime Law. The institutionalization of these ties is evident in the escorts' increasing involvement in criminal proceedings in all the sexual assault crisis centres in the country.²² This is a development that simultaneously shapes and reflects the changes, and has evoked great interest in the study of the Israeli reality.

The next section describes the methodology of the study and delves at length into the reasons for choosing the specific interviewees, followed by a detailed discussion of the contribution of the Escorts Project and the Rights of Victims of Crime Law to the actual change.

The change itself will be presented through the five core themes that were identified in this study as significant in encouraging victims to speak out. The current situation, which differs from the one known from earlier studies, is

¹⁹ Zipora Hauptman 'Rape: The Consent Concept and the Law of Evidence' in Frances Raday, Carmel Shalev and Michal Liban-Kooby (eds) *Women's Status in Israeli Law and Society* (Schocken 1995) 189 (in Hebrew).

²⁰ Kamir (n 1).

²¹ Uri Yanay and Tali Gal, 'Lobbying for Rights' in Shlomo Giora Shoham, Paul Knepper and Martin Kett (eds), *International handbook of Victimology* (CRC Press 2010) 373, 382-84.

²² All crisis centres in Israel have a coordinator in charge of dealing with criminal proceedings, at times as part of a broader role and mostly as an independent position. In two of the centres, two people are in charge of this area and they split between them the contact with the various organizations in the system. The expansion of this trend is clearly gaining momentum.

On the understanding of these coordinators' role, Ajzenstadt and Mundlak claim that all change process that come "from above," through legislation, require for their success the action of mediating agents between the system and the individuals or the groups meant to enjoy the change. This mediation, between different languages, regulations, values, world views and so forth, is an important part of the coordinators' work and is discussed below in greater detail. Mimi Ajzenstadt and Guy Mundlak, 'Empowerment on Trial', in Mimi Ajzenstadt and Guy Mundlak (eds), *Empowerment on Trial* (Nevo 2008) 9.

then described using these themes. The summary will suggest research and practical implications of the study's conclusions.

2. METHODOLOGY

The central instrument used in the study is the in-depth interview that provides primary information, meaning information that is received directly from the participants and focuses on rich descriptions of their experience, on the way they perceive it, and on its meaning.²³ Note that the study deals with an experience that is methodologically complex, since it involves observation as well as limited participation in the field that is the object of the study. The leading participants are the system's representatives and the victims of sexual assaults. The interviewees, who represent the crisis centres, are only secondary participants observing an interaction wherein they have a limited and restricted share. On the one hand, it could be claimed that their experience does not necessarily describe the phenomenon at the focus of the study – an interpersonal interaction between two parties. On the other hand, their role in the field provides them with a unique perspective of highly significant value.²⁴

The decision not to interview the victims also left outside the "subjects" population the representatives of the system, whose impressions are equal in value to those of the victims. A study that focused on both these groups found that, despite relatively broad agreement on the facts, serious disputes emerged concerning their interpretation. In other words, the parties to the

²³ Irving E Seidman, *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences* (Teachers College Press 1991); Steinar Kvale, *InterViews: An Introduction to Qualitative Research Interviewing* (Sage 1996).

²⁴ Landau notes that a victimized identity leads to the restriction of other identities. Victims tend to overestimate or underestimate their injury and their suffering and, therefore, are not necessarily the best source for judging the treatment they have received. Simcha F. Landau, 'The Social Perception of Victimization: An Outline for the Definition of the Dimensions of Victimology' in Meir Hovav, Leslie Sebba, and Menachem Amir (eds.) *Trends in Criminology: Theory, Policy and Practice – Essays in Honor of Menachem Horowitz for his 80th Birthday* (The Sacher Institute for Legislative Research and Comparative Law and The Institute of Criminology, Faculty of Law, The Hebrew University 2003) 797 (in Hebrew).

encounter experienced the same events differently.²⁵ In the future, it may be desirable to plan a similar study in Israel as well, to complete the information provided by the crisis centres' representatives in the current study.

The participants in this study are not interviewed frequently and they were chosen for several reasons, beyond their being the only organized group allowed to take part in encounters of an investigative character. First, the size of the population made it possible to design a study without a sample. All the women who had specialized in this area in the 2010s were interviewed, significantly strengthening the validity of the study's conclusions. Second, the spread of the crisis centres in Israel means that every single police station, prosecutor's office, and court receives a response from some centre. The study's population is thus a good representation of the national spread of the care for sexual assault victims, both in geographical terms and in its coverage of the country's various population groups. Third, the interviewees have an extremely broad perspective of the activity in the field, given that their impression is based on the hundreds of victims that they themselves escort every year, as well as on thousands of additional cases where escorts that they have trained are involved. Fourth, an important balance prevails in this population between a critical approach, which leads them to discern the system's flaws, and a desire to succeed, which leads them to discern positive processes of change as well.

Analysing the Data

The raw data were about a hundred hours of recorded interviews. The first processing step was a content analysis,²⁶ in an attempt to identify the central elements affecting the conduct of the encounter in general as well as the

²⁵ Campbell (n 17).

²⁶ The analysis in this study relied on a combination of two central approaches in qualitative research: Asher Shkedi, 'Narratives-Based Theory: Structuring Theory in Qualitative Research' in Lea Kacen and Michal Krumer-Nevo (eds.) *Qualitative Data Analysis* (Ben-Gurion University Press 2010) (in Hebrew); Joseph A Maxwell, *Qualitative Research Design: An Interactive Approach* (2nd edn, Sage 2005).

victim's ability to tell a full story, rich in details. Five key elements (core themes) were identified at this stage:²⁷

Escorting: Enabling the option of an escort (and the attitude to the escort).

Disruptions: Preserving quiet and privacy.

Sensitivity: Sensitive coping with questions that evoke guilt or shame.

Trauma: Effective coping with post-traumatic symptoms hindering the ability to tell the story.

Representative's sex: Enabling an encounter with a system representative from a specific sex.

After identifying the core themes, the material underwent further processing within each theme. Each of the quotations representing the reference of a specific interviewee to a given theme was placed in a table in one of the three following categories: *positive* reference (describing basically positive experiences regarding the issue), *negative* reference (describing basically negative experiences regarding the issue), *mixed* reference (positive and negative descriptions without characterizing the prevalent situation).

This classification enabled a quantitative presentation of the qualitative findings,²⁸ after counting all the references (positive, negative or mixed) to each theme in each organization (police/ prosecution/ court).

Expressions and phrases in the interviewees' accounts attesting to a time perception—once, today, now, before ..., long ago, after, and so forth—were

²⁷ Similar, though different, themes emerged in studies all over the world. See, for example, Marsha E Wolf and others, 'Barriers to Seeking Police Help for Intimate Partner Violence' (2003) 18 *Journal of Family Violence* 121; Jan Jordan, 'Worlds Apart? Women, Rape and the Police Reporting Process' (2001) 41 *British Journal of Criminology* 679; Rebecca Campbell and Sheela Raja, 'The Sexual Assault and Secondary Victimization of Female Veterans: Help-Seeking Experiences with Military and Civilian Social Systems' (2005) 29 *Psychology of Women Quarterly* 97.

²⁸ An approach combining quantitative and qualitative methodologies has become dominant in the last two decades, which overcomes their respective weaknesses and increases the credibility of the study. On this matter, see David L Morgan, 'Paradigms Lost and Pragmatism Regained: Methodological Implications of Combining Qualitative and Quantitative Methods' (2007) 1 *Journal of Mixed Methods Research* 48; Bracha Alpert, 'Integrating Quantitative Analyses in Qualitative Studies,' in Kacen and Krumer-Nevo (n 26) 333.

located along a timeline in order to examine perceptions of changes in all the themes in the three organizations.

3. THE INTERPERSONAL ENCOUNTER: THE CRISIS CENTRES AND THE RIGHTS OF VICTIMS OF CRIME LAW

As I noted at the opening, two parallel and intertwining processes simultaneously reflected and created a spirit of change. Although these processes are over twenty years old and are now perceived almost as history, they are in truth very dynamic and continue to influence the interpersonal encounter.

The older of the two was initiated by the crisis centres, which sought to cope with the challenges facing victims who choose to start criminal proceedings. It is known as the "Escorts Project," and some of its actions focused on the distress caused by the interpersonal encounter. The second project, which took shape in 2001, concerns three interesting sections in the Rights of Victims of Crime Law that touch directly on the conduct of the interpersonal encounter. A new section, in a similar spirit, was added at the end of 2014.

3. 1. The Escorts Project in Criminal Proceedings

The project was launched in 1996. Implemented first in the Tel Aviv area and then extended (first in the centre of the country and from there to the periphery), this project reflects the insights of the crisis centres concerning their available options for change. The most significant insight was that the two forms of discourse – the therapeutic and the legal – could not operate simultaneously without ongoing mediation.²⁹

The need for bridging the various types of discourse led to cooperation between the Israel Women's Network and the Association of Rape Crisis Centres in Israel. The cooperation was based on a survey that examined the

²⁹ Merav Dadya and Ido Darviyan, 'The Victim in the Legal Proceedings' in Zviya Seligman and Zahava Solomon (eds), *Critical and Clinical Perspective on Incest* (2004) 498 (in Hebrew)

needs of victims facing the law enforcement system.³⁰ The survey sampled a broad range of victims (including some who had chosen not to complain to the police) and also members of the caring professions. The victims' reports matched the descriptions in the research literature of the time: alienation, disappointment, humiliation, and helplessness. By contrast, victims who had encountered a serious and caring response emphasized the strengthening effect of the proceedings even when they were unhappy with the results.³¹

In light of these findings, the Escorts Project's tasks were defined as follows: provide the victims information, give them emotional support, coordinate their expectations with the reality, improve their physical conditions during the criminal proceedings, train the professionals, collect data and represent victims vis-à-vis the system, strengthen communication channels between various involved bodies.³² The first five goals touch directly on the interpersonal encounter and are sometimes implemented in its course.

As for the contact of the crisis centres' representatives with the professionals working within the system, great emphasis was placed on clarifying the uniqueness of sexual assault victims and on sharpening sensitivity to their special needs. One interviewee reported:

There's a file ready, with articles arranged by topic. Every single topic that prosecutors might raise. One judge asked the plaintiff: 'But you'd already been raped once, didn't you see it coming?' And I immediately made a note to myself to give the prosecutor the article dealing with repeated victimization so that he could give it to the judge, and she would truly understand how it is that this woman didn't see it coming.

The delivery of this message relied on the professionals in the field, on the collection of relevant literature, and on the professionalization of the women

³⁰ *ibid*, 508, 510.

³¹ This finding has also emerged in previous studies. See, for example, Uri Yanay 'The Introduction of the "Victim Impact Statement" in the Israeli Courts of Law' in Hovav, Sebba and Amir (n 24) 235.

³² Dadya and Darvian (n 29), 508.

working in the crisis centres in ongoing contact with the system. Another interviewee reported:

I give a lecture about sexual assault victims at the prosecutor's regional office. Almost the entire office, except perhaps for two who are on duty, sit in and listen to me. They listen very attentively and participate and speak and raise problems and call me up afterwards to consult.

The shared learning of new practices, when sponsored and encouraged by the system, further legitimizes the body of knowledge supplied by the crises centres and the tools that derive from it.

Training settings open up an additional channel of communication between the professionals and the crises centres, not necessarily focused on the victims' needs. Participating professionals can discuss their fears and the trauma they themselves experience while regularly exposed to matters so charged and so hard to digest. One interviewee claimed: 'A prosecutor who can see her own secondary trauma can also see the trauma of the victim.'

This project, then, signalled not only the new insights gained at the crisis centres but also an ability to forsake the desire for a specific type of change and make adaptations that would promote another type. In this case, it meant forsaking the desire for drastic revolutionary change and shifting to other paths of action and other types of relationships with the system's representatives.³³ Many interviewees offered variations of the following insight (reported by one of them):

I feel I have abandoned the accuser's stance, that of the representative confronting evil, aggressive, and ignorant enemies, and see them

³³ A familiar problem emerges when the declared sought changes are too extreme for the system to contain, and the coalition supporting them is not sufficiently broad to *implement* them within the context of the legal activity. See Ronald J. Berger, Patricia Searles, and Lawrence W. Neuman, 'The Dimensions of Rape Reform Legislation' (1988) 22 *Law and Society Review* 329. Of the thousands of crisis centres established in recent decades, only those that showed flexibility and adaptability appear to have survived. See Rebecca Campbell and Patricia Yancey Martin, 'Services for Sexual Assault Survivors: The Role of Rape Crisis Centres' in Claire M Renzetti, Jeffrey L Edelson and Raquel Kennedy Bergen (eds), *Sourcebook on Violence Against Women* (Sage 2001) 227.

instead as professionals. I give them credit because I think I really don't know how to do what they do. In other words, I can't replace them.

The crisis centres began to work *with* the system. They chose ways of action that would not require the system's representatives to breach unwritten rules solely in order to improve their service to the victims when conducting investigations. Instead of demanding behavioural changes, the centres directed attention to a broad area where no compelling rules prevailed, and promoted setting up appointments for submitting complaints, using words that do not evoke feelings of humiliation and mistrust, and preventing disruptions during the encounter. None of these arrangements contradicts procedures or laws or denies the rights of suspects or defendants, and all convey humaneness, sensitivity, and goodwill.

Crises centres did not confine themselves to directing attention to this range of options and went on supplying ideas and concrete tools as well as supporting new choices:

We didn't come and say, 'you must realize that they're a mess and it's hard for them to talk.' Instead, we said, 'if you want to get better cooperation in the investigation, you should know one, two, three, four – that's the way. Because you're trying to get information by putting pressure and that might be appropriate for other things, other people, and other offences, but it's really inappropriate in the present situation.

The hope of the centres was that, with time, the victim's wellbeing would shift from being an instrument chosen only so long as it did not exact too high a price or when it was useful to the system's representatives, to become an aim in itself. Their endeavour was to bring about changes in the interpersonal encounter and, for this purpose, they engaged in varied and extensive activities meant to highlight the uniqueness of sexual assault victims and their special needs.

The interviewees noted that the emphasis on promoting the victims' cooperation with the system's representatives was meant to prevent a sense of threat to the professionals' authority, evoked by the creation of the centres. Instead, the centres sought to stress the common interests of all parties rather than interests that had not yet been perceived as such:

The crisis centres today are less involved in these colossal wars.

Rather than waging wars against them we try to bring them closer, to fight together against a common enemy. Put on the table that each one of us has interests--interests is not a bad word and we can really help one another a lot.

What the centres actually offered was help, based on their long experience in coping with the victims. The big challenge posed by the day-to-day need to cope with the victims led the system to agree to a kind of deal – the centres would contribute their experience, their time, and their resources, while the system, in exchange, would allow them to be part of the institutional setting, caring for the victims during the criminal proceedings.

3. 2 The Rights of Victims of Crime Law and the

Interpersonal Encounter in the Criminal Proceedings

The Rights of Victims of Crime Law 2001 is a milestone in the way the law enforcement system deals with crime victims in general and with sexual assault victims in particular. Its goals are stated in its aims section: 'The aim of this law is to determine the rights of crime victims and to protect their dignity as human beings.'³⁴ The section on the principles of the law contains a clear reference to the crime victim as a subject: 'Rights will be granted to a victim of crime taking into account his needs, the defence of his dignity, the protection of his privacy, and within a reasonable time.'³⁵

This law deals with the regulation of rights and, in its concrete sections, promotes the implementation of these declarations to ensure that they become

³⁴ The Rights of Victims of Crimes Law, 2001 (Israel), s 1.

³⁵ *ibid*, s 3.

a prevalent reality and no longer solely dependent on the goodwill of the system's representatives. One interviewee reports:

It was not easy before the law. Escorting was a matter of luck and of a kind officer allowing it. Entering the investigation depended on the officer's kindness. Sometimes an escort went in but at some stage was taken out, or they only let her in if the police needed her.

Regarding interpersonal encounters, the law validates the right to an escort in investigative proceedings, both at the police and in the court,³⁶ encourages the police to provide victims a female officer if they ask for one,³⁷ and forbids, already during the police investigation, asking questions about the victim's sexual history.³⁸ Support for these principles is designed to promote the victim's wellbeing as an end in itself rather than only as a means for the system's benefit.³⁹

The relevant sections of the law attest to a genuine effort to highlight important concepts such as dignity, privacy, and choice. Beside them, however, are reservations stating that the right may not be granted should the agencies responsible find that the needs of the system are more urgent. This approach may point to the hierarchy envisaged by the legislator – the victim's needs are important and worthy of attention, but the needs of the system come first. Even if the crisis centres' representatives may not be happy with this approach, it still constitutes a definite improvement over the previous

³⁶ *ibid*, ss 14, 15.

³⁷ *ibid*, s 14a.

³⁸ *ibid*, s 13.

³⁹ In all the reforms dealing with the rights of victims of crimes, legislators were--rightfully – concerned with the rights of suspects and defendants in criminal proceedings. All reforms point to attempts to refrain from violating these rights and from granting crime victims any rights that could do so. See Simha F Landau and Robert E Freeman-Longo, 'Classifying Victims: A Proposed Multidimensional Victimological Typology' (1990) 1 *International Review of Victimology* 267. Given the diverse interests present at the time of instituting reforms as well as the sincere concern for the rights of suspects and defendants, speaking out in the sense presented in this work was often less significant a goal to legislators, even though it played a part at the declarative level. See Yanay and Gal (n 21); Leslie Sebba, 'Victims' Rights and Legal Strategies: Israel as a Case Study' (2000) 11 *Criminal Law Forum* 47.

one. The victim's needs were granted independent standing and their violation now has to be justified, as opposed to the past described by the interviewees, where the victims' needs were attended to only if they served the needs of the system.

In 1988, any inquiry into the victim's sexual past when examined in court as a witness was forbidden,⁴⁰ while the police and the prosecutor were allowed to conduct such inquiries without any need for explanation or justification. Only in court, after these materials had been exposed at the early stages of the proceedings to the suspect's or the defendant's lawyers, were the judges supposed to prevent any further discussion. The relevant section includes a caveat stating that the judge will be allowed to approve such an inquiry if special reasons were to be found for it, among them, that refraining from it would hinder the case for the defence. The plausible assumption, however, is that raising such questions critically hinders the victim's ability to tell her story and evokes in her mainly guilt and shame. We may also assume that, in the absence of other good claims, the defendant's lawyers will find ways of making this information relevant and present it as central to the case, requiring renewed discussion of the prohibition.

In the Rights of Victims of Crime Law, the prohibition was expanded to include the investigating body – the police – in order to prevent repeated mentions of this issue at later stages of the proceedings.⁴¹ In this version, the prohibition relates to the system's representatives and limits the range of their questions. Through this section, legislators perhaps sought to hint to the system's representatives the potential scope of legislative intervention into the regulation of the interpersonal encounter, including even the topics that could be discussed in it:

Today, with the law, the woman knows beforehand it is forbidden to ask her, and then only if it is truly relevant. She no longer needs me in order to insist on her rights and I don't need to complain to anyone

⁴⁰ Criminal Procedure Revision (Examination of Witnesses) Law, 1957, s 2.

⁴¹ The Rights of Victims of Crimes Law, 2001 (Israel), s 13.

after the investigation. The woman is ready and knows, and she can say that those questions are not pertinent and ask to understand why they are raised.

Another significant intervention is evident in the sections that establish the victims' right to an escort in encounters where investigations take place--at the police and in court.⁴² Although not its main or declared intention, escorting, by its very nature, creates a certain measure of supervision.

The law does not explicitly state who will escort the victim and allows her to choose an escort as she wishes. According to the interviewees, this arrangement anchored an existing situation whereby professionals had agreed to allow the presence of crisis centres' escorts who had been properly trained long before the enactment of the Rights of Victims of Crime Law. The right to an escort is reserved for the victim but, by exercising it, she enables the legislator to compel the system's representatives to accept the presence of a strange woman with a distinct agenda and easy access to authority figures:

We're not props. If the victim's rights are breached, we intervene. If the breach is flagrant, we intervene during the event, and if it can be postponed so as not to disturb – then afterwards. But it is inconceivable that their rights will be flagrantly breached and we'll ignore that. We're there for that too.

Through this section, legislators intervened in the encounters even further and, in one sweep, turned what had been a goodwill gesture into an obligation: 'In the past, I had to smile sweetly and be nice and polite to go in with the victim. Now there's a law.'

At the end of 2014, a further amendment in the shape of Section 14a was added to the Rights of Victims of Crime Law, instructing the police to have a male or female officer at the investigation according to the victims' request. As in the two previous sections, this one too included caveats allowing the authorities to refrain from its implementation under certain conditions. And yet, the detailed conditions lead the system's representatives to consider

⁴² The Rights of Victims of Crimes Law, 2001 (Israel), ss 14, 15.

requests regarding the person investigating the victim and to pay attention to her needs. As in the section that establishes the right to an escort, in this case too, the section legally anchors a situation that had prevailed for many years:

She wanted a female officer, it was important to her, and no one was available. I asked the officer to at least explain to her what would be the price of waiting for a woman that would have to come especially from home and to let her choose. They explained, she chose to wait, and they brought a woman.

The women from the crises centres often set up appointments for the police investigations and therefore ask, if necessary, for a male or female officer according to the victim's request:

A lot depends on the arrangements. If the meeting is set up beforehand and if it is important to the victim, there will probably be a female officer if the woman has asked. If it's not arranged, we mostly make do with whoever is there. Sometimes, the woman who is available is someone without any training in the investigation of sex offenses and that also has a price.

As is also true of the inquiry into the victim's sexual past, the choice of the officer's sex is not meant to serve the system's needs but rather to address the needs of the victim and help her exhaust the potential of the criminal proceedings. In other words, these sections clearly recognize that the interpersonal encounter could inflict further damage and the need to prevent that as far as possible. Unlike the situation in the past, when all had been left to the goodwill of the system's representatives (with the support of the crisis centres' representatives and the escorts), these sections of the law strongly limit their discretion and demand explanations for every situation where its application departs from the letter of the law.

The enactment of a law that itself promotes the victims' wellbeing greatly facilitated the centres' attempt to deepen this process. The interviewees, however, attested that they viewed the law as the starting point rather than

the culmination of their pursuit and the law traced the course worth taking but not its ending. One interviewee stated:

Now there are things she is entitled to by law and no longer need to be fought over, or begged for, and be terribly nice in order to get. This leaves the arguments for what the law does not give but should have given because it all leads to the same thing – it leads to her talking and truly being heard.

The Rights of Victims of Crime Law changed the actual conduct of interpersonal encounters only slightly, given that the guidelines leading to its enactment had been part of a long ongoing dialogue between the crisis centres and the system. When the law was enacted, the significant change was declarative. For the first time in decades, the legislator intervenes in the conduct of the encounter between the system's representatives and the victims, compels the presence of an outside escort, subjects the system's staff to the victim's will, and restricts the questions that can be asked in its context. The very act of anchoring in law the long-established practices of the crisis centres created open support for them and sent a clear message from the legislator, limiting the scope of discretion and the need for reliance on goodwill and replacing them with a compelling law that draws attention to the needs of the victims beside those of the system.

Representatives of the crisis centres could now continue on their course in the spirit of the law, strengthening additional elements beyond those stated in the law and suggesting new ones. The action of the crisis centres, together with the Rights of Victims of Crime Law (which is a dynamic construct), create a feedback circle – the special attention devoted to interpersonal encounters over time increases the chances of actual change in them, possibly through legislation as well.

4. THE FIVE CORE THEMES: FACTORS THAT AFFECT SPEAKING OUT IN THE ENCOUNTER

The core themes organize in behavioural categories how the system's representatives can encourage victims to speak out, thereby recognizing their special needs. Speaking out, the choice to tell a full, rich, authentic, and multi-layered story, requires basic conditions. The system's representatives can easily provide – or prevent – some of these conditions, from their attitude to the escort chosen by the victim, through their choice of words and their ability to create a safe space respectful of the victim's dignity, and up to their way of coping with post-traumatic symptoms.

This section presents the conditions that promote speaking out, as they are perceived by the escorts and as reflected in the broader activity of the crisis centres and in the sections of the law presented above. The importance of the themes is presented through quotations from the interviewees. Beside them are examples of positive situations that provided favourable conditions for speaking out, examples of negative situations where speaking out was prevented, and situations illustrating a mixed attitude towards speaking out.

4. 1. First Theme: Escorting

This theme deals with the possibility of offering the victim to have an escort during her encounter with the system's representatives. The importance of the escort is conveyed in the Rights of Victims of Crime Law (2001), which states in Sections 14 and 15 that victims of sex or violence offences can choose to be escorted during the police investigation and at court sessions held in chambers.

As for encounters with the prosecutor, the law does not regulate this arrangement and the organization's varying records are therefore extremely interesting.⁴³ The victim's first meeting with the representatives of the

⁴³ Since 1988, the State Attorney has been publishing directives that are periodically updated concerning assistance to crime victims and to prosecution witnesses in criminal proceedings (directive 14.7) as well as concerning the management of the criminal proceedings in a sexual abuse offence or in another offence against a minor within the family (directive 14.1). These directives do not deal at all with the proper way of conducting the interpersonal encounters between the State Attorney's representatives and the victims. The only directives relevant to the current discussion

prosecution is referred to as an 'impression meeting.' Its aim is to assist in coming to a decision on whether to press charges (and for what offences) or close the case.⁴⁴ Although it is not defined as such, this meeting constitutes a kind of investigation where the story of the crime emerges, and particularly those points in it that are legally challenging.⁴⁵ Precisely for this reason, I have focused on this meeting rather than on other meetings of the prosecution with the victim, such as those considering plea bargains or closing cases.⁴⁶

As the interviewees excelled at describing:

Not only the police officer hears her. Someone else hears and is exposed to the story. There is someone else there that contains it at that moment, someone on her side, not only the police officer. This also validates for her that she really experienced what she experienced because the question is always there, especially in incest cases – did it happen?

Another explanation points to the active aspects of escorting, beyond the escort's very presence:

deal with the prosecutor's obligation to intervene when the privacy or dignity of victims serving as witnesses is at risk.

⁴⁴ The victim's characteristics and the degree of trust that she evokes have always been a central consideration in the decision on whether to press charges against the suspect, not only in cases where legal evidence is lacking but in legally strong cases as well. See Jeffrey W Spears and Cassia C Spohn, 'The Effect of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases' (1997) 14 *Justice Quarterly* 501.

⁴⁵ Progress in the proceedings entails further focusing on their legal aspect at the expense of others, such as the victim's feelings or the broader context of the relationship, which is sometimes extremely relevant to her but legally redundant. Whereas general legal and other questions are raised at the police station and the story opens up, the questions at the prosecutor's office focus mainly on matters touching on the charges, if submitted, while other issues melt away. Amanda Konradi and Tina Burger, 'Having the Last Word: An Examination of Rape Survivors' Participation in Sentencing' (2000) 6 *Violence Against Women* 353.

⁴⁶ It may be appropriate to note at this point that the escort's role does not include any involvement in the investigation proceeding or in legal aspects of the encounter. Her role is limited to providing the victim general information before and after the encounter, giving psychological support along the entire process, and creating a bridge between her and the professionals when any misunderstandings emerge. For extensive details, see Dadya and Darviyan, n 29, 509.

In many senses, the discourse takes place above the victim's head. She doesn't really understand and sometimes my role is to explain to her. A bit like translation. She feels she is being hosted. A guest in a foreign country. It has happened that the victim didn't understand why she should answer those questions. She adopted a hostile attitude towards the officer and it was then necessary to translate the police conduct in a way that would clarify this to her and enable her to carry on starting from another position.

The findings on escorting describe the attitude of the system's representatives towards the victim's desire for an escort and towards the one she chose.

A positive attitude will come forth, for example, in the way the escort is addressed: 'At the police, the officer can approach me and shake my hand in front of the victim and give her a feeling that she is in good hands.'

One judge would say whenever I'd go in, 'O! Hello to the escort' and ask 'How are you there at the centre?' And I think that, in this way, he also tried to make things easier for the plaintiff who came to testify.

A negative attitude will be seen in attempts to force the escort out and hint to the victim that opting for escorting is not a good choice:

At the police, the officer speaks with her – who are you, what are you, where do you live – and all very nicely as it were, and then she says to her – do you feel OK with me already? So no problem for you if the volunteer waits outside, right?

The message of the prosecution is that there is no right to an escort and there's no need for one either. One simply said to her, 'What is this nonsense, what do you need an escort for, do me a favour ...'

A mixed attitude will be evident, for example, in letting the escort in under protest or due to a clear need of the system: 'At the police they let us in easily but, sometimes, it's because they've learned that when a woman sits

next to her, it's easier to put pressure because there's someone who comforts'; 'There was a judge that, if the defence lawyer insisted that I should leave, she'd say, "I don't like it either but she can sit here."'"

4. 2. Second Theme: Disruptions

Telling a story, and certainly in the context of an encounter with an investigating body, is obviously easier when quiet and privacy are protected. Such conditions enable the narrator to expand on the details, to tell the story chronologically, and to keep up a logical sequence of events. In cases of sexual assault, such conditions can at times determine the difference between the ability to tell any story at all and silence: 'She won't talk if someone comes in. As it is, she finds it hard to say this aloud, and suddenly a man walks in and starts mulling around and taking things – she just won't go on.'

In the investigation, they encourage chronological accounts and the preservation of a logical sequence, with an emphasis on details that is relatively greater than in other cases:

There were cases when, in the course of the investigation, the woman began a sentence, and she needs great emotional resources in order to say this, and she's precisely there and the door opens and we all turn around to see who's there. And even if he goes out immediately and says, 'OK, bye,' and the officer says, 'Yes, go on,' – well, what do you mean go on? Whatever was about to come out a second ago, no longer will – something else will.

The scientific explanation of this phenomenon lies in the well known symptoms of post-trauma, which include memory impairment, difficulties in retrieving details, and problems organizing information chronologically.⁴⁷ Sexual injuries are also characterized by over-awareness of surrounding events as well as a loss of trust in people.⁴⁸ The interviewees' cumulative experience showed that protecting privacy at the time of listening to the story

⁴⁷ Dadya and Darvian, n 29, 499.

⁴⁸ Judith Lewis Herman, *Trauma and Recovery* (Basic Books 1992)

is critical, since disturbing it could lead the victim to relive the injury.⁴⁹ Preventing disruptions sends a message of importance and attention. Given that the victims' most common experience is suppression (together with the contradictory desire to expose the secret),⁵⁰ disruptions that delay attention could lead her to relive the hard part of coping with the injury.

Topics raised in the context of this theme include the degree of privacy, the number of disruptions, how the system's representatives cope with disruptions, and their provisions for lessening their number.

Positive descriptions focused on a respectful attitude to time and space: 'Mostly, the prosecutor sits in a room of her own, and there's no such thing as someone just walking in to take a fax'; 'some judges are very strict. If someone enters in the midst of a session they immediately stop and don't allow another word to be said before clarifying who it is and whether he really needs to sit in.'

Negative descriptions focused on the surroundings' invasiveness of the encounter without eliciting reactions on the carer's part:

We were at the police, the woman is in the middle of the story, and not once or twice, all the time, these disruptions of opening and closing doors are going on. Or there are two people sitting in the same room, one here one there, and one is talking on the phone while the woman's investigation is going on just next to him.

People entered the room in the middle of our conversation with the prosecutor and she didn't ask them to leave. She didn't say, 'Just a moment, we're in the middle of something.' It was simply that it really really didn't bother her.

⁴⁹ An example of a reliving experience may be the officer's insistence on leaving the door open during the encounter, in a way that fails to respect borders and privacy and resembles the circumstances of the crime. Another example is that of exposing the victim to the public spread of private information, so that allowing other professionals to enter the room leads her to relive the experience.

⁵⁰ Lewis Herman (n 48).

Mixed descriptions pointed to a late or minor reaction to breaches of privacy: 'Often, at the police, other people were in the room at the beginning and I asked them to leave and they did. This is a beginning, not great, but it does create a sense of respect for the victim.'; 'Some defence lawyers, when the defendants are afraid of exposure, insist on strict privacy. So it's in chambers, but it's not because of the court but rather because of the other side.'

4. 3. Third Theme: Sensitivity

An investigation is a fundamentally uncomfortable situation, even when the person under investigation is a plaintiff really interested in pursuing it. Moreover, when sexual assaults are concerned, some questions can be expected to evoke significant discomfort,⁵¹ and three specific kinds in particular:

1) Questions conveying mistrust in the victim's story:

They ask her the same question many times in different ways.

Someone who doesn't understand these techniques at some point begins to ask herself whether what she's telling actually happened. In other words, she begins to doubt even what she said and what she went through and she herself grows weaker.

2) Questions hinting at flaws in the victim's behaviour before, during, or after the assault:

And she asks--so why did you go back? Why did you go there again?

What were you looking for there? And so forth. Faced with questions like this, the victim generally remains silent. Simply remains silent.

This is a question with so much guilt that it's really hard to answer,

⁵¹ The focus on questions and on ways of asking them is a recurring issue in many studies. See, for example, Laura Finkelson and Robert Oswald, 'College Date Rape: Incidence and Reporting' (1995) 77 *Psychological Reports* 526; Vernon R Wiehe and Ann L Richards, *Intimate Betrayal: Understanding and Responding to the Trauma of Acquaintance Rape* (Sage 1995); Bonnie S Fisher and others, 'Reporting Sexual Victimization to the Police and Others: Results from a National-Level Study of College Women' (2003) 30 *Criminal Justice and Behavior* 6.

because she too knows that she shouldn't have gone back. But she only knows this after the fact.

3) Questions dealing with the body and deriving from the need to describe the assault in great detail: 'When they ask about the physical details of the assault, you see how the victim's body language changes. This is the body language of a frightened person, a terrified person--they close up and sit in this deep silence.'

A positive attitude emerges mainly in awareness of the discomfort evoked by the questions or in the relinquishment of investigation techniques that make the victim uncomfortable:

I've seen prosecutors who knew how to pose questions showing mistrust but in inoffensive ways. For example: 'Look, I need to check this up with you. There are questions here that I don't know how to answer and only you can answer.' It's even empowering.

'Generally, at the court, questions on the same issue are endlessly repeated from every possible angle time and again. The defence lawyer tried to ask the same question a third time and the court wouldn't allow it.'

A negative attitude will come forth in the absence of such awareness. The words may sound similar, but it is the way they are presented that makes the difference: 'There were times when there was no apology for blaming questions, and all the questions were why why why why. Without explaining anything at all.'

There are the prosecutors who say: 'Listen, I know this is hard for you but you must.' What does it mean to say it's hard but you must? It means that I have absolutely no respect for the fact that it's hard for you and I actually don't intend to make room for this difficulty.'

A mixed attitude lets the hard questions surface without tenderness but also without aggression:

She thinks that the prosecutor protects her, but what is this protection? She asks difficult questions. She asks the same questions

that they had asked at the police. If no one explains to her what is behind this, she comes out all confused.

The defence lawyer did not ask questions about the victim's sexual past but hinted at it instead, and she actually treaded a very thin line. Usually, the judges told her that was irrelevant, but the questions had already been asked.

4. 4. Fourth Theme: Trauma

The return to the event, particularly given the degree of detail required, can evoke great distress. Distress can be expressed in crying, in difficulty speaking, or in problems focusing on the details of the event that are considered legally relevant. Greater distress, attesting at times to post-traumatic stress, can be manifest in memory loss, in problems arranging the details chronologically, in very long silences (detachment from the conversation and from the surroundings), and so forth.⁵² From the experience of the interviewees, these situations hinder the conversation with the victim, but coping with them incorrectly may bring the entire investigation to an end. According to the interviewees, coping well with situations of this kind may only require a display of basic empathy, whereas refraining from empathy and showing rigidity or inflexibility could aggravate the situation and widen the rift between the victim and the professionals.

A positive attitude to post-traumatic symptoms will be manifest in displays of kindness and humaneness: 'Faced with her hardship, the officer began looking at the woman, to smile at her or shake his head, "Yes, I'm with you," meaning that he reacted more emotionally'; 'I had a case where the judges, a man and a woman, sat and cried with the victim. Yes, yes. They are human beings and yes, I'm telling you that I saw a judge cry.'

A negative attitude comes forth in expressions of anger or rigidity: 'I've seen female officers who are angry at the victim, saying to her OK, but I didn't

⁵² Dancig-Rosenberg (n 2) 162.

ask you that. OK, you've already talked about that. OK, but that's irrelevant, why do you keep going back to it?'

A mixed attitude acknowledges the need for empathy but has difficulty displaying it: 'You explain to them what dissociative situations are and they'll still be annoyed with victims who seem to contradict themselves.'; 'The other way is simply to sit and remain silent in the courtroom for a few minutes until she feels better. To let her cry without offering her tissues and water and a recess—just cry and cry.'"

4. 5. Fifth Theme: The Officer's Sex

The commonly held assumption is that a female officer is preferable for a victim of a sexual assault. This assumption relies on familiar reasons—a woman will be able to understand a female victim better, and will therefore be able to give her better care:⁵³

I have absolutely no doubt that an investigation with a female officer is different. I remember the experience of going in with a victim for an investigation with a male as opposed to a female officer. The anxiety and the tension are entirely different because even before the investigation begins there's already something to deal with. And even if the male officer is excellent and sensitive, you still need to overcome this hurdle to discover that.'

A study in New Zealand found this assumption to be both mistaken and problematic. Its findings showed that, generally, the training of investigating officers is more important than their sex, and that there are many women without the appropriate training (or qualities) whose suitability to the task is questionable.⁵⁴ Some of the interviewees conveyed a similar view:

⁵³ Lynne Goodstein and Faith Lutze, 'Rape and Criminal Justice System Responses' in Imogene L Moyer (ed.), *The Changing Roles of Women in the Criminal Justice System: Offenders, Victims, and Professionals* (2nd edn) (Waveland Press 1992) 153; Joycelyn M Pollock, 'Gender, Justice, and Social Control: A Historical Perspective' in Alida V Merlo and Joycelyn M Pollock (eds.), *Women, Law, and Social Control* (Allyn and Bacon 1995) 3.

⁵⁴ Jordan (n 10).

The most important variable is the training. You can immediately feel who's been properly trained to investigate sexual offences and who hasn't. You can also feel who has received proper training at the crisis centres and who hasn't. And this determines the quality of the investigation and the victim's feeling far more than the sex of the professional.

Nevertheless, note that a group of women in the mentioned study claimed they would never have told the story of the case to a man and, seeing a man, they would have closed up or left. The interviewees pointed out that they too know such victims: 'Often, some women will indeed say: under no circumstances, under no circumstances could I tell this to a man. I'm not prepared to do that'. Or: 'When she stands before a man, she might not tell half of the truth.'

Optimally, an appropriate pool of properly trained female officers should be available, so that women who ask for a female officer can receive an appropriate response. The objective is for the system to recognize the need to have a woman conduct the investigation, and for this need to find some expression even in the absence of suitable staff. Recognizing this need means that, when a male officer meets a victim, he will be aware that she may wish for a female officer and will understand the victim's problem in exposing the story to him simply because he is a man: 'Being a man in this encounter is very very hard, that's it. The assailant is a man. I think they have to work very hard to escape this ascription and evoke the victim's trust.'

This theme elicited hardly any reactions from the interviewees in regard to the courtroom experience. The reasons could be varied – from the fact that encounters at the court usually involve system's representatives of both sexes, through the lack of expectation to influence in any way the sex of the representatives in encounters at the court (unlike the options available at the police and at the prosecutor's office), and up to the most technical layer – the

limited scope of escorting to the courts, since most cases never reach the stage of evidence because they are dropped midway or end in a plea bargain.⁵⁵

A positive attitude comes forth in efforts to consent to the victim's wish to have a female officer or in displays of special sensitivity by male officers: 'In most cases, the investigating officers were women. And if no female officers are available and the woman insists, you wait and they bring one from somewhere else. It helps to set it up beforehand.' Another interviewee compared the male and female officers she had met:

I've worked with sensitive male officers who were really really patient. Male officers are much better for the victim. I mean, they've learned our language. They're much kinder and gentler, they use a rich language that is less piercing, domineering, and invasive. It really has a different music.

A negative attitude came forth in pressure to give up the request for a female officer or in setting up a meeting with an untrained, aggressive female officer 'She says she wants a female officer but they don't have one. So they convince her that the male officer is OK. They try nicely until she ends up agreeing.' 'There are some female officers that, after she goes in, happy that the officer is a woman, she finds that she's being investigated as by the least understanding of men.'

A mixed attitude is expressed in the fact that the sex of the officer was not a significant element in the encounter or functioned contrary to expectations: 'I've seen all kinds of men. Some are supersensitive and you see they are cautious, and some show absolutely no awareness that they are sitting across a woman in such a situation.'

The sex is a shared basis but not every female prosecutor wants a shared basis with the victim of a sexual assault. So sometimes this

⁵⁵ For further discussion of the problems involved in gaining a sense of sex aspects in the court, see Tzili Paz Wolk, 'Voices from the Black Box: Changes in the Interpersonal Encounter between Sexual Assault Victims and Representatives of the Criminal Justice System,' Ph.D. dissertation, Hebrew University of Jerusalem, 2012 (in Hebrew).

leads to a great deal of empathy and sometimes it leads to a very judgmental attitude.

4. 6. A Quantitative Perspective: The Themes in Numbers

The different attitudes to the core themes can be counted and quantified. This section presents a basic descriptive statistic of the interviewees' reports, according to their references to each theme in each organization. For each theme and for each organization, each interviewee was counted only once. An interviewee who related positively to the theme in a specific organization was counted as a positive reaction. An interviewee who related negatively to the theme in a specific organization was counted as a negative reaction. An interviewee who related in a mixed way to the theme in a specific organization was counted as a mixed reaction.

The figures represent the percentages who referred to the theme in the organization out of all interviewees (in all cases, at least 75%).

Table 1
Responses on Each Theme in Each of the Three Organizations (Percentages)

	Police			Prosecution			Court		
	Positive	Negative	Mixed	Positive	Negative	Mixed	Positive	Negative	Mixed
Escorting	82	4	14	83	4	13	76	10	14
Disruptions	50	7	43	91	4.5	4.5	40	40	20
Sensitivity	63	18.5	18.5	57	19	24	63	10	27
Trauma	71	4	25	76	5	19	63	6	31
Representative's Sex	61	18	21	70	10	20	X	X	X

Cells where responses exceeded fifty percent are shaded. Clearly, then, in none of the organizations do we find such a cell in the columns of mixed or negative responses, and in all three organization a decisive majority had positive reactions on all themes except one.

Table 2
Average of Responses on the Five Themes in All Three Organizations
(Percentages)

Theme	Positive Attitude	Negative Attitude	Mixed Attitude
Escorting	80.3	6	13.7
Disruptions	60.3	17.2	22.5
Sensitivity	61	15.8	23.2
Trauma	70	5	25
Representative's Sex	65.5	14	20.5

All the core themes receive an average of 60% or more positive reactions. Two of them, receive an average of 70% or more positive reactions. For all the core themes, the average of negative answers is less than 20% and for two of them, even less than 10%.

The quantitative presentation of the findings reveals that the interviewees have a very positive impression of the efforts that the system's representatives have invested in enabling victims to speak out. Despite prominent systemic vulnerabilities, these weaknesses are not the norm. In most cases, the interviewees attest that the system copes well with the victims' need to speak out, together with a minority of cases that illustrate mixed or negative forms of coping.

4. 7. Winds of Change

The raw data gathered in this study easily showed that the interviewees perceive the reality in terms different from those used to describe it before the 2000s.⁵⁶ All interviewees dealt with the sense of change. Some made general statements about it and some included time references in their descriptions of specific behaviours. When I highlighted these statements and these time references, I found that there were hundreds of them. All the themes that surfaced in the raw data are perceived by the interviewees as changing in a positive direction, and they hardly ever referred to the deliberate humiliation, contempt, and abuse that appeared in the testimonies presented in Eillam's book. Negative events from the 2010s that the interviewees did mention are seldom as serious as those from the more distant past.

Citing many examples would exceed the scope of this article and I will confine myself to a few salient ones for illustration purposes. The examples are presented chronologically. They open with those describing the interviewees' most distant memories of the way victims were treated and end with examples touching on the change in the 2000s:

Once, the dynamic in police stations was like this: a woman walks in and says 'rape.' Then all the men choose the biggest room at the station and sit around the table, and this is how they obtain evidence from her. And I'm not exaggerating. And all the questions that today are absolutely forbidden, such as 'did you come?' or 'did you enjoy it?' would be thrown at the victim without any problem. There was no closed room, no obligation to make a female officer available, not one officer – all the officers who wanted could participate. They could ask any question in the world. The police today is light years away from that. Everything is different now.

⁵⁶ Eillam (n 12). Throughout Eillam's book, the description emphasises the contempt shown to the victims and the many ways of expressing mistrust in their story.

Once, officers thought they ran the world. Twenty years ago, an officer said to a victim, 'if you can't remember the colour of his underpants, you weren't raped.' That is, if you don't remember a specific item that the policeman has now decided is the important one, it couldn't have happened. They used to talk like that once, a lot. He would try to be the investigating officer as well as the judge. We're living in another time, when such things are inconceivable.

Once, if it happened that you sat at an investigation or escorted someone, it was because you were lucky and because there was a very nice guy there who agreed, and it was very very unusual. Then there were times you sat in, but at some stage he decided that now you have to leave. Without any reason, now you have to leave. Today we are in a different situation. These things hardly happen and, if they do, someone is asked to answer for it, both because things have changed and because there's a law.

The perception today is that she's a victim and not a suspect. Once I would sit and ask myself, just a minute, who am I escorting here? They would relate to her as if *she* had perpetrated the crime, she's not OK, she's the suspect. Today you already feel that much less and there's also a greater ability to show empathy and ask questions that are neutral and not judgmental.

In 1999, 2000, when I'd escort someone they'd look at her like, what are you escorting, why does she need an escort? What are you, her translator? Today it couldn't happen. Things are also more deeply engraved in them. Sensitivity and empathy come far more naturally than when we started.

The last five years have been much better, more humane. The modes of expression, the asking of the questions, the atmosphere in the room ... Everything is completely different today, there's no comparison, and I think these are the main things that make the difference. My gut feeling is that even when the victim is alone with the officer they do not do things they used to do ten years ago.

Today, you hear less and less questions beginning with 'why,' kind of accusatory. It's true there's still a lot to do, I'm not saying there isn't, or that it's disappeared, but I see they think twice. Sometimes they look for another word and sometimes they really come out with a different formulation because of the courses and the workshops where we never stopped telling them that.

I think that they've come a long way in the last few years and that today there are more positive than negative experiences. The female officers are generally much more sensitive today, they give a lot more room to the victims, and are more aware of the offence.

Every time, after a period of work with a police station, the investigations get better—more respectful, gentler regarding the language, and also the behaviour. And so, every now and then I go in and tell myself—wow, it was hard, but they obtained evidence from the victim and I can't say anything bad about it.

4. 8. Summary: Change through the Core Themes

This article presents five central themes that the interviewees perceived as most strongly affecting the ability of sexual assault victims to speak out authentically in criminal proceedings and tell the full story of the offence.

Each theme was examined as it plays out in the systemic care arrangements as a whole, and also separately in each of the three central

organizations coping with the victims. The findings point to a very positive picture of the attitude to victims who chose to be escorted in all that concerns encouraging them to speak out in interpersonal encounters, which is unquestionably a significant result. As I showed at the opening of the article, studies in this field tend to highlight negative aspects of the victims' encounter with the system, and to sum up their findings critically and with calls for broad changes meant to percolate down to the interpersonal encounter as well. Previous studies have hardly ever described a positive or changing picture of these encounters.

Contrary to most of the studies in the field, the current findings suggest that, despite the system's harmful potential, in *most* of the encounters between victims and representatives of the system conducted in the presence of an escort, efforts were made to enable victims, at the very least, to speak out.⁵⁷

The focus on the prevalent experience, together with a full account of less frequent ones, trace a complex picture. Instead of sweeping claims about the professionals' responsibility for the victims' distress during the criminal proceedings, the current findings are that professionals can certainly create good conditions for victims to speak out at the interpersonal encounters they are in charge of. And they indeed do, at least in most of the cases where an escort was present.

In most studies, as noted, the interpersonal encounter is examined as one of several tested variables rather than by itself. When most variables lead to the conclusion that care arrangements are offensive, the encounter is coloured in the hues of the general conclusions and it is hard to see that it has actually changed and, on its own, has painted another picture. In my dissertation, which provided a broad review of the other variables as well, it became

⁵⁷ Note that 'the right to speak out is not equivalent to the right to be heard.' In other words, moves that promote speaking out do not necessarily promote the power to be heard so that, barring an efficient enforcement mechanism, not too many hopes should be pinned on them. Legal moves of this kind, which accord rights to weakened groups, sometimes freeze power structures and hierarchical relationships, perpetuating the status quo. Ajzenstadt and Mundlak (n 22) 23.

clearly visible how, when the interpersonal encounter is considered on its own, its evaluation differs from that of the systemic treatment as a whole.⁵⁸

Despite the winds of change, many flaws should still be pointed out as part of a general call for changes in the criminal law system. They are clearly and prominently presented in this article through the interviewees' negative and mixed quotations and through the quantitative summary that exposes the vulnerabilities of the system.

Another topic exposed through the analysis of the data is the strength of the sense of change. Beyond the positive impression that the interviewees reported on each theme in all the organizations, this impression is clearly part of a general sense of positive change in the interpersonal encounter. They presented their position in comparative terms and showed specific changes in the interpersonal encounter itself over the last twenty years.

5. Summary

The findings presented in this study leave no room for doubt: in the early 2000s in Israel, at least from the crisis centres' perspective, the representatives of the criminal law system cope in fundamentally positive ways with sexual assault victims who choose to be escorted. This finding represents a real change from the situation in the past.

Two important caveats must be added to this sweeping conclusion: first, it relates to interpersonal encounters between the system's representatives and the victims and does not necessarily cover the victims' treatment in general. Second, it relates to victims who chose to be escorted by crisis centres' representatives.

Ostensibly, these two caveats significantly limit the effect of the conclusions given that they are relevant to a limited segment of the system's activity, meant for a small sector in its charge. In fact, it is precisely this focus that enables to make a significant statement about the findings because it

⁵⁸ Paz Wolk (n 55) 146-49.

represents a kind of “nature reserve” within the systemic treatment of crime victims.

This article tried to tease out various layers of systemic activity. The first is fundamentally public and formal (legislation and procedures), whereas the other occurs between two individuals, away from the public gaze and almost without formal rules. The second layer, which is represented by the interpersonal encounter, relies on people’s beliefs, their attitudes, their goodwill, their interpretation of the rules, their training, and even their mood. This activity, which is so exposed to the influence of whims and personal baggage, is extremely limited on the one hand, but decisive on the other. In the area of sexual assault, where obtaining legal evidence is truly difficult, almost every decision is based on this interpersonal communication where the victim is given a chance to tell her story, to persuade, to evoke trust, to give evidence to the best of her ability, and to pledge she is sufficiently resilient to conclude the proceedings. A significant positive change in the communication between the parties to the encounter is therefore the cornerstone of a deeper change in the system’s overall coping with sexual offences as a social phenomenon.

The positive aspects of the system, as revealed in this study, should not be taken lightly. Besides the final result and its benefit to victims who turn to criminal proceedings, this is a process of change. In other words, a conservative, bureaucratic, hierarchical, and risk-adverse system embarked in a positive change with clear-cut results that are recognized by representatives of the organization most critical of the system.

Contrary to changes in legislation and in proceedings imposed on practitioners by outsiders who are not directly involved in their work, the change discussed here is different. It occurs at a deep level and relies on the goodwill of people within the system who seek a better understanding of the phenomenon they cope with, and wish to limit potential damages as far as possible. To ensure that goodwill would not be the decisive factor, the legislator joined in the spirit characterizing the activity of the crisis centres

(that, as noted, were among the bill's proponents) by means of several innovative sections in the Rights of Victims of Crime Law. Beyond the general messages of the law and the rights it awards at the conclusion or after the proceedings, its prominent feature is a direct and unequivocal involvement in the conduct of these encounters (the right to an escort and the right to choose the sex of the investigating officer) as well as in their smallest details (prohibiting questions about the victim's sexual past).

In this article, I could only deal with victims who chose the escorting of a crisis centre and these encouraging conclusions thus ostensibly apply only to them. But the plausible assumption is that a broader examination will reveal that changes, though very possibly less pronounced, have also occurred in the treatment of unescorted victims. This hypothesis relies on the character of the communication between the system's representatives and those providing them with the tools to create the change.

The creation of the Escorts Project significantly expanded the communication between the system's representatives and the crisis centres. According to the interviewees, the crisis centres are vital to the training of police officers who deal with sexual assault victims, and they arrange workshops, courses, and in-service training on this topic. Prosecutors throughout the country participate in courses and in-service training arranged by the crisis centres, and even the judicial system has recently begun to deal with these topics more systematically, aided by crisis centres professionals.

The crisis centres, besides focused professional encounters, maintain contacts with the professionals within the system to follow up on cases (if requested to do so by the victims) and to counsel and support the various agencies dealing with these difficult issues. These contacts, ongoing for over a decade, will probably lead to a deeper change than that affecting only the victims who opt for escorting.

Escorted victims represent the system's potential for change at a given moment because they come to the encounters with the system's representatives together with a woman who has been properly trained, is well

acquainted with the law and with the victim's rights, and will presumably report on the encounter to the professional coordinator at the crisis centre. Professionals at the centres frequently contact senior figures in the system when victims are not properly cared for and their rights are violated, which probably encourages people within the system to ensure these victims optimal care. When many cases receive optimal care, however, we may expect working procedures to change accordingly and habits to become entrenched in ways extending to other victims too.

The clear improvement in the situation of the escorted victims group makes it possible to set the goal that can be reached in the treatment of other groups as well, be they unescorted victims of sexual assault or sections of the population that could benefit from more sensitive care. Included among them could be members of minority groups whose access to the legal system to tell their own stories of injury is hampered by a foreign language or by cultural estrangement, and even suspects and defendants who at times suffer from rigid attitudes or from the violation of their rights. A follow-up study to examine the treatment received by other groups could provide answers to the question about the breadth and depth of the change, which so far remains open.