

## Cyberviolence and Electronic Evidence

Justice Susan Glazebrook<sup>1</sup>

I am delighted to be able to open this conference today. Now more than ever our gatherings, even if virtual, are so important to keep alive the work and spirit of the IAWJ. As the recent events in Afghanistan show,<sup>2</sup> the fight for gender equality is still a daily one.

The theme of this conference is cyberviolence and electronic evidence. These are very important topics. Technology has a major presence in just about every aspect of our lives and those of our children. For example, social media and the internet have transformed our lives and how we interact with others. On the plus side, this has allowed families and friends to keep in touch, even if they are based in different countries and that has obviously been important over the past two years with Covid-19 lockdowns and travel restrictions. The internet has also been used by women to transform their lives: from receiving an education,<sup>3</sup> to gaining access to health services<sup>4</sup> to developing businesses.<sup>5</sup>

Social media and the internet have also allowed greater global co-ordination around social issues. I mention, for example, the #MeToo movement which has spread around the world.<sup>6</sup> There are some more localised examples such as the “No Woman Moves” day in Mexico in

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<sup>2</sup> For more information on the IAWJ and its efforts to aid women judges in Afghanistan, see Paula Penfold and Louisa Cleave “Justice for All” (September 2021) Stuff; Joshua Rozenberg “Judges in Jeopardy” (podcast, 26 October 2021) Law in Action on BBC Radio 4 <[www.bbc.co.uk/](http://www.bbc.co.uk/)>; and David Zucchino “Afghan Women Who Once Presided Over Abuse Cases Now Fear for Their Lives” *The New York Times* (online ed, New York, 20 October 2021)..

<sup>3</sup> Intel Corporation Women and the Web (2012) at 30–32. Intel conducted a survey into women’s access and use of the internet. Most of the respondents reported they used the internet primarily for their own education.

<sup>4</sup> For example, automated voice messages containing vital health information are sent to pregnant women in Ghana. See Elie Chachoua “How mobile technology could change healthcare in developing countries” (18 March 2015) World Economic Forum <[www.weforum.org/](http://www.weforum.org/)>. Many women also report using the internet to research health information: Intel Corporation “Women and the Web”, above n 2, at 32.

<sup>5</sup> For example, Soko is an online shopping site which sells items from artisans in developing countries, <[shopsoko.com](http://shopsoko.com/)>.

<sup>6</sup> The #MeToo movement went viral in October 2017 as a result of allegations by many actresses of sexual abuse by Harvey Weinstein (a Hollywood producer). Alyssa Milano (a US actress) urged her followers on Twitter to tweet #MeToo if they had been sexually harassed or assaulted to show the magnitude of the problem.

March 2020 where women disappeared from public view for a day in order to highlight the contribution women make to society.<sup>7</sup>

Technology has also had benefits for the court system in this time of Covid. Virtual and online hearings have allowed justice to continue.<sup>8</sup> While this has had its challenges, many of you will now be adept at conducting virtual hearings and of course attending virtual conferences.<sup>9</sup> We are all very familiar with the catch cry of the year “you are on mute”.

But technology also has its dark side. Cyber abuse and harassment have become yet another tool of abusers. Some examples of online abuse include revenge porn and posting information on social media with a view to causing embarrassment or humiliation. Technology has also greatly enhanced the methods available to those abusers who exercise coercive control over their victims. This type of abuse involves a pattern of behaviour where the abuser utilises intimidation, often paired with physical victimisation, to create dependence, isolation and a climate of fear.<sup>10</sup>

With technology the abuser can be ever present even after the relationship has ended. There is now, for example, the ability to monitor from a distance through tracking use of email accounts, banking passwords, spyware and monitoring browsing histories. As an example, in Australia, an ex-partner found out the location of a women’s refuge after he put a tracking device in his daughter’s doll at an access handover.<sup>11</sup> And just this month, a woman posted on Instagram that she had found a tracking device on her car. A week and a half later, she was found shot

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<sup>7</sup> Kevin Sieff and Gabriele Martínez “In Mexico, here’s what a day without women looks like” *The Washington Post* (online ed, Washington DC, 9 March 2020). See also BBC News “Violence against women: ‘Day of the dead women’ protest in Mexico City” (4 November 2019) <[www.bbc.com](http://www.bbc.com)>; and the follow up protest in 2021: BBC News “Hundreds join violence against women protest in Mexico” (4 November 2021) <[www.bbc.com](http://www.bbc.com)>.

<sup>8</sup> For an overview of virtual hearings globally, see Michael Legg and Anthony Song “The Courts, the Remote Hearing and the Pandemic: From Action to Reflection” (2021) 44 UNSWLJ 126. See Steve Rubley “The Covid-19 pandemic and the courts – Aggravation or opportunity” (8 December 2021) Reuters <[www.reuters.com](http://www.reuters.com)> for their survey of American court participants post-pandemic.

<sup>9</sup> The IAWJ’s own 2020 biennial conference was postponed as a result of the pandemic. In May 2021, the postponed biennial went ahead, using a hybrid model of in person (for New Zealand and Australian delegates) and online for other delegates. See <[www.iawj2021auckland.com](http://www.iawj2021auckland.com)> for the conference website.

<sup>10</sup> See generally Julia Tolmie and others “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” [2018] NZ L Rev 181.

<sup>11</sup> Matt Wordsworth “‘Stalker apps’ and GPS allow domestic violence abusers to discover hidden refuges” (28 June 2015) ABC News <[www.abc.net.au](http://www.abc.net.au)>.

dead in that same car.<sup>12</sup> In another example from the US, spyware to monitor computer usage was installed onto a victim's computer simply through her opening a link sent by email by her ex-partner.<sup>13</sup>

Technology is a readily available and relatively inexpensive way to harass, control and stalk a victim. The increasing reliance on technology, coupled with its speed, ensures abusers are more easily able to access the victim. Further, the use of technology increases the likelihood that an abuser will avoid detection, apprehension and ultimately prosecution.

Even in this area, there are some bright spots. The technology that might put us in harm's way can also save us. On the social media platform, TikTok, a hand signal has been widely shared that women can use when they are in danger and need help. This month a young woman in the US used the signal to indicate to a following car she needed help. She was rescued by police.<sup>14</sup>

Technology has also made getting help for domestic violence easier, with the internet providing links to resources for victims. Some New Zealand businesses with online presences are now using their websites as "shielded sites" so a victim can click for help in a manner which will not be logged into the browser history.<sup>15</sup> Many websites providing assistance for abused women also have "quick hide" buttons that divert the page to news websites should anyone approach while victims are using a computer to seek help.

My talk would not be complete without a brief mention of the effect of Covid-19. The pandemic has not created domestic abuse but it has exacerbated the problem within our communities. Experience around the world has been that family violence spikes with every stay at home order.<sup>16</sup> This is unsurprising because victims are with their abusers 24 hours a day and this can amplify the daily stressors that may trigger violence. In Mexico I understand

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<sup>12</sup> Jonathan Edwards "A Texas man 'envisioned future' with a stripper. Then, he killed her, police say." *The Washington Post* (online ed, Washington DC, 5 November 2021)

<sup>13</sup> Cynthia Fraser and others "The New Age of Stalking: Technological Implications for Stalking" (2010) 61(4) *Juv & Fam Court J* 39 at 46.

<sup>14</sup> Samantha Lock "Teen rescued after showing domestic violence hand signal known on TikTok, police say" *The Guardian* (online ed, London, 8 November 2021).

<sup>15</sup> See "The Shielded Site Project" <[www.shielded.co.nz](http://www.shielded.co.nz)>.

<sup>16</sup> Emma Graham-Harrison and others "Lockdowns around the world bring rise in domestic violence" *The Guardian* (online ed, London, 28 March 2020) and Jillian B Carr "Domestic violence 911 calls increased during lockdown, but official police reports and arrests declined" (28 July 2021) *The Conversation* <[www.theconversation.com](http://www.theconversation.com)>. It should be noted that studies are still underway and that trends differ from country to country, given the types and lengths of lockdowns.

there was a 30 per cent rise in emergency calls last year.<sup>17</sup> What is more, services that are not deemed essential may also shut down or have limited capacity to assist, such as refuges. Support networks, such as family and friends, can be cut off. That phenomenon had been noted in Nigeria and UN Women set up a transitional shelter for victims to stay where they would be safe.<sup>18</sup> The UN has described this increase in forms of violence against women a “shadow pandemic”.<sup>19</sup>

This is all exacerbated for those who may live in already precarious situations: for example people who have lost their jobs or been made redundant due to the pandemic. There are also increased household and childcare duties which generally fall on women. In addition, children, who may not normally be present to witness abusive situations in a household, may now be observing them and suffering accordingly.<sup>20</sup>

There may also be a reluctance to call the police to report domestic abuse or go to Court for fear of risking exposure to Covid-19.

Covid-19 has also led to an increase in the use of technology in abusive situations. During lockdowns, people spend more time on the internet. In my country, New Zealand, all forms of online harassment increased during Covid-19 lockdowns. Physical threats or intimidation online were up 53 per cent.<sup>21</sup> Unconsented sharing of intimate images and recordings were up 65 per cent. The internet allows people a sense of anonymity where they might feel they can say anything they want without repercussions, although we of course know that nothing is truly anonymous on the internet.

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<sup>17</sup> Christine Murray “Emergency calls on violence against women spiked in Mexico in 2020” (26 January 2021) Reuters <[www.reuters.com](http://www.reuters.com)>.

<sup>18</sup> UN Women “From Where I stand: ‘Due to COVID-19 people were not going to the police’” (1 June 2020) <<https://www.unwomen.org>>.

<sup>19</sup> UN Women “The Shadow Pandemic: Violence against women during COVID-19” <<https://www.unwomen.org>>.

<sup>20</sup> The United Nations Population Fund (UNFPA) and UNICEF have noted that there is a high correlation between children who witness family violence and those who also experience physical, sexual or emotional abuse: UNFPA and UNICEF “Making the Connection: Intimate partner violence and violence against children in Eastern Europe and Central Asia – Executive Summary” (2018) Children who witness violence are then more likely to also be in relationships later in life where violence is present, at 15. It has also been noted that witnessing violence at a young age can impact on a child’s development, at 18.

<sup>21</sup> Netsafe “Online harm skyrocketed during New Zealand’s COVID-19 Lockdown” (press release, 22 November 2020).

Which brings me to another theme of this conference: electronic evidence. Police now regularly access digital technology to help secure convictions. Technology has meant that we document our daily lives through photos and text messages which can be admitted as evidence. Digital evidence can often provide concrete proof that something occurred at a particular time and can add more weight to a victim's testimony. Sophisticated technology now means deleted items can be recovered and large amounts of data, such as thousands of photos, analysed. This all helps paint a fuller picture in court of what happened.

Digital evidence can also ameliorate some of the stress of appearing in court. In many jurisdictions' complainants have the option of having a recorded evidential interview played in court or give evidence through closed circuit television so they do not have to face their accuser in court.<sup>22</sup> This can have the added advantage of increasing accuracy of testimony as this will often have been recorded at a point when the situation was fresh in their mind.<sup>23</sup>

You will hear much more detail about all of these topics during the rest of the conference and will be able to share experiences and strategies on these important topics. I am sure you will find the conference instructive and valuable. I congratulate the organisers.

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<sup>22</sup> Section 105 of the Evidence Act 2006 provides for alternative modes of giving evidence should some of the factors in s 103 be present. This can include the age or maturity of the witness, any fear of intimidation and any trauma the witness may have suffered.

<sup>23</sup> For example, family violence complainants can give evidence-in-chief through a video record if it is made within two weeks of the alleged incident: Evidence Act, s 106A(3)(b).