

A REPORT OF THE COMMITTEE ON DOMESTIC  
VIOLENCE AND INCARCERATED WOMEN

BATTERED  
WOMEN  
AND  
CRIMINAL  
JUSTICE

DOMESTIC  
VIOLENCE

"THE BATTERED WOMAN  
...LIVES IN A WORLD OF TERROR  
AND HER HOME IS HER PRISON."

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AND

CRIMINAL JUSTICE

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The quotation on the cover is from Voices Set Free, Barschard, L. and Kimbrough,... (Women's Self Help Center 1986).

The struggle to be free of violence...from men is a prerequisite for women's freedom. This issue is still avoided by men; it is considered unimportant, secondary, irrelevant.[1]

Important

This is a report concerning battered women who become involved with the criminal justice system in New York State. The impetus for the report and for our recommendations is the unusual and critically important hearing which took place at Bedford Hills Correctional Facility on September 26, 1985.[2] We dedicate the report to those incarcerated women who testified at the hearing. Their testimony must lead to constructive changes in our criminal justice system so that it will treat battered women better in the future than it has in the past.

The problem of battered women in the United States is widespread and deeply entrenched. It is, to a great extent, an issue that has been kept secret. However, about "half of all wives will experience some form of spouse inflicted violence

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1 Lefcourt, C., Women and the Law, (Clark Boardman Co., 1984), pp.1-8. Ms. Lefcourt is counsel to the New York State Division for Women.

2. The hearing was sponsored by the New York State Department of Correctional Services, the Governor's Commission on Domestic Violence and the New York State Division for Women. The hearing panel consisted of virtually all of the State criminal justice agency heads or their representatives, key legislators and representatives of the executive branch. Invited guests included people who work with incarcerated women and those involved in domestic violence issues. Over one hundred inmates and staff of the facility also attended.

during their marriage.<sup>4</sup>[3] In fact, between 1.8 and 2.9 million women will be battered yearly, according to expert estimates."<sup>4</sup>[4]

A number of recent reports have discussed the causes and manifestations of domestic violence as well as the treatment of victims by the police, family courts, criminal courts and other players in the system. We refer the reader specifically to the reports of the New York State Commission on Domestic Violence, the New York Task Force on Women in the Courts, and the United States Attorney General's Task Force on Family Violence. These reports agree in finding that the response of the criminal justice system to family violence has been both inconsistent and inadequate. For example, the U.S. Attorney General's Task Force found that "when one family member assaults another, it is commonly viewed as a family squabble, something less than a real crime,"<sup>5</sup>[5] while the New York Task Force on Women in the Courts found that "[j]udges, law enforcement officials and court personnel often misconceive the nature and effect of violence against women...[t]he courts appear indifferent and women are

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3 National League of Cities and the U.S. Conference of Mayors, cited in R. Langley and R. Levy, "Wife Beating: The Silent Crisis," pp.11-15 (1977).

4 M.A. Strauss, "Wife Beating: Causes, Treatment and Research Needs" (Consultation Report to the U.S. Commission on Civil Rights, Jan., 1978).

5 Attorney General's Task Force on Family Violence, Final Report, 1984, p.11.

denied effective relief." [6]

The women who testified at the Bedford Hills hearing were survivors of domestic violence.[7] Of the twelve, most had been convicted of killing their spouses, former spouses or live-in partners. Three had maximum life sentences. The average maximum sentence of the others was approximately fifteen years. They had been, according to their own accounts, battered women, victims of the men that they ultimately killed. Nearly all are women who had never been convicted of a crime until they committed the crimes to which they were inexorably led: the killing of men who had brutalized them. The nature of their crimes and the existence of a very low recidivism rate for those who have committed murder and manslaughter [8] provide substantial

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6 Report of the New York State Task Force on Women in the Courts, 1986, p.32.

7 The testimony of these women is remarkably similar to and supportive of the testimony provided primarily by professionals who deal with battered women to the New York State Task Force on Women in the Courts. Their testimony is mentioned in the Report of the Task Force issued in April, 1986. Urgent reform is also called for in that report. We support its recommendations. Our recommendations, in general, supplement those in the report. Some of our recommendations stem from the vantage point of battered women who have been convicted of serious felonies involving physical violence against those who battered them. The testimony of the women at Bedford Hills is included in a recently published book. Voices Set Free, Barschard, L. and Kimbrough, M., (Women's Self Help Center, 1986).

8 Female Offenders in New York State, M. John McDermott, NYS Division for Criminal Justice Services, 1985, p.58.

evidence that these women and others like them are not a danger to society. The wisdom of imprisoning them at all is certainly questionable. The extremely long sentences of the women who testified raise even more serious questions about the fairness of our criminal justice system. The testimony revealed numerous inadequacies in the way our criminal justice system treats battered women, and the urgent need for change.

Only during the past decade have we begun to recognize and address the issue of battered women and, in the words of Governor Mario Cuomo, "even today...too many of us continue to deny the existence and incidence of these great wrongs."<sup>[9]</sup>

#### History

The hearing at Bedford Hills was held to investigate one aspect of the problem of domestic violence, and to hear from women who were first victims of their batterers and who are now victims of a system that offered them no choices. The idea for this hearing was developed by Ronnie Eldridge, then Director of the State Division for Women.

A meeting was held between the staff of the State Division for Women and members of the Inmate Liaison Committee, which is

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<sup>9</sup> Cuomo, M., Prepared Remarks for Conference on Domestic Violence (4/15/86). The Governor dedicated the evening to all survivors and victims of domestic violence.

made up of the elected representatives of the inmates at Bedford. In a discussion of issues of concern to women and children, the problems of domestic violence, sexual abuse and child abuse were raised. Within seconds, the tone of the meeting intensified as many of the women began to share personal accounts of extended, often generational, histories of family violence.

They discovered that their stories were similar, that a majority of incarcerated women had been victims of violence which had been endured in lonely silence. From this discussion emerged the suggestion that by recounting their experiences they could demonstrate to other victims of similar abuse the need to seek assistance before the cycle of violence ended in incarceration.

The Department of Correctional Services, the Bedford Administration under the supervision of Superintendent Elaine Lord, and the Inmate Liaison Committee supported the idea of sponsoring a hearing, the first in the country to examine the relationship between family violence and crime. It was also the first public hearing of its kind to be held inside a correctional facility. All concerned inmates were invited to participate.

A decision was made to offer the women who testified legal counsel through Prisoners' Legal Services of New York. Additionally, assistance in helping the women to develop their testimony for the hearing was provided by:

- The New York State Division for Women
- The Governor's Commission on Domestic Violence
- The New York State Coalition Against Domestic Violence

In New York, over 5,400 women were arrested in 1984 for committing violent felonies. (10) This striking number of

arrests is important because there is a clear relationship between domestic violence and the commission of violent crimes. A 1982 survey of new commitments to the New York State Department of Correctional Services revealed that of those women who reported having been abused by their spouses or partners, 95% were committed for violent offenses. [11] Over half of the women at Bedford Hills were committed for violent crimes, including about 15% for murder, 20% for manslaughter, 18% for robbery and 7% for assault. Not surprisingly, only a small percentage of women had applied for and received services which might have been helpful to them prior to arrest.[12]

A survey conducted in July, 1985 at Bedford Hills, and responded to by 320 of 540 inmates, revealed that of 211 who said that their offenses were violent, 175 (83%) reported the act to be their first offense.[13] This very high rate of incarceration for first time violent offenders is attributable to

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11 "Female Commitments, 1982: The Offense," Jody Grossman, New York State Department of Correctional Services, 1984. In a more recent survey (1985), 30% of incarcerated women reported having been abused as adults.

12 In fact, only 8% received Orders of Protection, 8% assistance from a Women's Shelter, and 2% assistance by a court advocate from a domestic violence agency. DOMESTIC VIOLENCE AND INCARCERATED WOMEN: SURVEY RESULTS, p.7. See Fn. #13.

13 DOMESTIC VIOLENCE AND INCARCERATED WOMEN: SURVEY RESULTS, Jody Grossman, New York State Department of Correctional Services, 1985, p.3.

the Violent Felony Offender laws which mandate incarceration for most violent felonies. These laws have not only had the effect of increasing the number of women sent to prison since their enactment in the 1970s [14], but they have also lengthened the sentences for women committed to prison [15]. Similarly, the Second Felony Offender laws require the incarceration of first time violent offenders where a non-violent felony was committed within the previous ten years.

The Hearing

At the outset of the Bedford Hills hearing, Karen Burstein, Co-Chair of the Governor's Commission on Domestic Violence, spoke:

this [domestic violence] is an issue that has a long and ugly history...a subject closeted for a very long time...we know that one in every two families experiences some domestic violence...it is a complicated and frightening reality that it is all over and that you cannot turn your head from it...that it is mostly women and children and frail elderly people who are the victims...that they tend to be isolated...that there is enormous economic dependence on the batterer...[so escape is very hard...[16]

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14 Recent Trends in Arrest, Conviction and Sentencing of Female Offenders in New York State, Bruce Frederick, Steven C. Greenstein, New York State Division of Criminal Justice Services, 1985, p.5.

15 Female Offenders in New York State, M.Joan McDermott, New York State Division of Criminal Justice Services, 1985, p.58.

16 Hearing Transcript, pp.12-16.

She also spoke on the purpose of holding such a hearing:

We don't expect miracles at this hearing, but we expect consciousness to be raised. We expect people who are listening, people in the power structure of New York, people who make policy...to understand that the line between domestic violence and criminal violence is nonexistent...we expect them to understand and to begin to realize that it is enormous and costly for us to turn our heads. We also want people to know that there are points of intervention, and if we make this intervention early enough we can stop the violence and repair people's lives...[g]ive them a chance to resume lives of strength and dignity and purpose. Finally, we want all of us to understand that it will cost some money, now, to produce the services we need for the women.[17]

The incarcerated women spoke of their own experiences and of the need for various types of services for victims, batterers, and women in prison. The first woman who testified described what would be needed for change:

Increased sources of help from government agencies; expanded knowledge of these sources of help and methods of seeking them; the removal of the shame, the embarrassment, the stigma attached to being an abused woman; all of these things must occur, if we are to break the self-perpetuating cycle of domestic violence. You will hear, over and over again, the same factors recur as common denominators in the testimonies presented today.[18]

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17 Id., pp.16-17.

18 Hearing Transcript, p.20.

The second woman who testified spoke about the effect that being physically abused had upon her mentally:

Until someone is physically abused, they could never know: the humiliation - the damage that is done to your self-respect. To become diminished - to feel less than a human being. To be debased - to be lowered in character, dignity, and value. Emotional scars that never heal.[19]

When asked what kinds of things could be done for her in the way of support, she responded that it was extremely helpful to be meeting with a group of battered women who had been working together during the weeks before the hearing. She said:

I need to be made to feel like a whole woman again. I need to be put back together again and nobody can do that except another battered woman, who has been lowered, who has lost everything, all of her self-esteem and everything, I need to be made whole.[20]

The fourth battered woman to testify was forty years of age and had never before been convicted of a crime. She was serving 8 1/3 to 25 years for a manslaughter conviction after killing her common-law husband of nine years. She testified about numerous beatings during this period of time. Her experience

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19 Id., p.25.

20 Id., p.35.

with the police was not unlike that of too many other battered women including others who testified at the hearing. Despite severe beatings which, according to her testimony, caused broken ankles, broken fingers, and serious head injuries:

the police would come and he would talk his way out of being the cause of my injuries. If they did take him to the police station his boss would get the charges dropped.[21]

The seventh battered woman also testified about the effectiveness of the police response:

A couple of times the police entered my home because of a 'domestic squabble.' They would take my husband to the nearest motel, to cool off. I asked that they make him leave his house key, and was told, 'we can't do that.' I felt totally unprotected by the police department. I felt that they were giving my husband consent to come back and beat me some more after they left, and he did.[22]

She further testified that although the police came to her home on a number of occasions and saw that she had been beaten, they never arrested him.[23]

The tenth woman proposed that alternate sentence plans be

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21 Hearing Transcript, p.39.

22 Id., p.97,98.

23 Id., pp.105, 106.

developed for people who are first offenders with a background of domestic violence.[24] She said:

I love life, I love people and I believe that if I had been given a genuine opportunity I would never have crossed the stages that brought me in here and from the bottom of my heart I believe I will never get caught up in anything similar to this experience again.[25]

A number of women mentioned the need for alternatives to arrest for batterers as well because many women are reluctant to have their husbands put in jail.

Following some of the testimony, Parole Board Chairman Ramon Rodriguez commented:

I want you to know that on behalf of everyone here on the panel....I am very touched by what you just said, and what the panelists have testified and talked about...You should know that it is my feeling that you are a hero...You are special and you are important.[26]

Commissioner Jeanne Edna Thelwell of the New York State Commis-

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24 Hearing Transcript, p.141.

25 Id., p.141.

26 Id., p.46.

27 Id., p.119.

sion of Correction said:

...I stand in awe of your strength, that you could have lived through the experiences that you recount to us and remain coherent human beings. It is extraordinary. No matter how broken or devastated you feel, you should, all of you, realize that you are incredibly strong and that you will survive and we will help you. We must.[27]

A meeting following the hearing brought together people who had attended the hearing at Bedford Hills as well as others who work with battered women in a variety of contexts.[28] Among them were staff of battered women's programs, social workers, defense lawyers, law enforcement agency representatives, legislative staff people, survivors of domestic violence, and others. This was the first of many meetings which have culminated in this report.[29]

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27 Id., p.119.

28 The impetus for the first meeting was the testimony given by Sister Mary Nerney at the hearing, which was followed by a letter (excerpted below) (October 15, 1985) from Ronnie Eldridge, then Director of the New York State Division for Women and Linda Loffredo, program associate, inviting the non-panelists who had attended the hearing.

All of us who attended the Hearing on Domestic Violence at Bedford Hills were deeply touched by the stories of the women who testified. Many of those who attended have expressed interest in discussing and developing new programs, policy and legislative initiatives on domestic violence as a result of the hearing.

29 The report is only one effort of this Committee. The Committee also intends to encourage and work for change through program development, legislation and judicial reform. Other changes must be made by prosecutors and defense lawyers.

In preparing the report, we considered the work that has been done previously by survivors, battered women's organizations and groups such as the New York State Commission on Domestic Violence as well as the New York Task Force on Women in the Courts, the U.S. Attorney General's Task Force on Domestic Violence, and a number of police departments, including that of New York City. The women who testified at Bedford Hills reemphasized many points that have been made by those who have worked in and studied the area of domestic violence, while adding to the discussion a number of important aspects that have not been fully considered. The most important of these, of course, is what happens to women who are driven to defend themselves when legal defenses and police protection are not adequate.

#### Battered Women and the Battered Woman Syndrome

A battered woman who becomes involved with the criminal justice system is often one who has been "subjected by her mate to physical and psychological violence over an extended period of time which causes feelings of low self-esteem, guilt, humiliation and fear of reprisal." [30] Many, but not all,

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30 Price, R. "Battered Woman Syndrome: A Defense Begins to Emerge," The New York Law Journal (11/29/85, 12/2/85). See Walker, L., The Battered Woman, at 55-70 (Harper and Row, 1979). The cyclical repetition of violence causes some women to become so immobilized that "they sink into a state of psychological paralysis unable to take any action at all to change their situation." Psychiatrists term this conduct "learned helplessness."

battered women develop what is called the 'battered woman syndrome.' This is the name given to a still evolving concept which describes what happens to a number of women who have been the victims of repetitive physical and psychological abuse. According to some experts, there are three cyclical stages to this syndrome. In stage one there is verbal abuse and possibly physical abuse. In stage two there is an escalation of abuse both in degree and frequency. Extreme contrition and apparently loving behavior on the part of the male characterize stage three.[31] Some experts believe that:

A battered woman justifiably fears reprisal from the batterer if she attempts to leave him. She feels trapped and her abuser creates this trap by isolating her from family and friends. Often batterers track victims who manage to leave their trap and kill them. A battered woman tells no one for fear of a worse attack and because of her low self-esteem and shame at being battered. She becomes, as the stages progress, economically and psychologically unable to leave her attacker.[32]

Thus, despite long standing and reasonable fear of severe violent harm, battered women often remain with their mates. As Governor Cuomo has pointed out:

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31 O'Regan, M.A. and Berlin, B., "A Plea for Equal Treatment of Battered Women," The New York Law Journal (1/31/85).

32 Price, supra.

Studies of prisoners of war tell us that they ultimately become emotionally dependent on their jailers. What do we expect in situations where the jailer is the spouse or another loved one? Given this, the wonder is not that so many stay. The miracle is that some resist, separate and survive. But some are not enough.[33]

Many women do not become helpless in all areas [34], and some battered women do seek help [35], but "the legal system still fails to respond, or responds inappropriately and ineffectively to this violence."<sup>[36]</sup>

#### The Involvement of Battered Women in the Criminal Justice System

The battered woman is victimized by her mate and despite

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33 Cuomo, supra.

34 It has been pointed out by experts that "learned helplessness" does not necessarily mean that victims do not function well in other areas of their lives, e.g. jobs, raising children or seeking help. Nor does it preclude them from acting to defend themselves against the violence at some point in their lives. See Schneider, Self Defense for Battered Women: Defense Approaches and Problems to be published in 1987 as a supplement to Women and the Law, Clark Boardman Ltd., 1984, for a theoretical discussion of battered women as victims and as agents.

35 One study revealed that a vast majority of battered wives had at least spoken to someone about their husbands' violence. See Prescott & Lefko, Battered Women: A Social, Psychological Perspective, in BATTERED WOMEN, pp.72-94 (M. Roy, ed., 1977).

36 Lefcourt, p.9-3, in BATTERED WOMEN, supra, it was found that the only two members of the criminal justice system to whom women could turn, police and attorneys, had a proportionately greater negative rather than positive effect on the problems of these battered women.

attempts to extricate herself she may be victimized again by the legal system which responds ineffectively to her plight. Those who commit crimes of violence against their mates or others may then be even further victimized by our justice system. There is a lack of responsiveness from the police, court officers, district attorneys and judges who "often deny the existence, prevalence and seriousness of the violence. Consequently, even when legal remedies may be theoretically available to women, they may be inadequate." [37]

A battered woman may become involved with the criminal justice system in many ways. Police may be contacted by the woman or someone else (for instance a family member or neighbor) during or after a beating. A battered woman may be arrested for having committed a crime, often one of violence, sometimes against her mate.

a. The Police Response to Battered Women

The response by the police to domestic dispute calls will determine if the laws protecting citizens from violence will be ignored or followed. The law enforcement response will directly affect the safety of battered women, since it will determine if the woman will be left alone with her assailant after the police

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have gone. Statutory law is clearly blind to the issue of marriage; regardless of whether the assailant is a spouse, cohabitant, or romantic partner, acts of violence are illegal, and are to be treated as such by the police. Concern for battered women in the criminal justice system due to violent acts against abusive partners must not be limited to trial proceedings, or services after incarceration.

Action must be taken to prevent violence from reaching such a point that defending oneself by violence is the only option available to battered women. It is here that the police can play a crucial role in eliminating domestic violence. Police action will help determine whether society will view violence as a crime, or as a private family matter not to be investigated or challenged.

Inmate testimony at the Bedford Hills hearing describing inadequate or non-existent police action echoes the histories of other battered women seeking police protection. And, according to the New York City Police Department:

Historically, police attitudes and policies on domestic violence were reflective of societal views. Their favored approach had been mediation or separation of the couples until their 'heels cooled off.' [38]

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38 New York City Police Department, Domestic Violence Prevention Program, 1986, p.1.

The traditional police response of non-intervention, or of temporarily removing the batterer from the premises so he can 'cool off' often means that the battered woman may be forced to leave her home, possibly disrupt her children's schooling, and lose access to bank accounts and material belongings in order to escape from the batterer. She must also face the consequences of the message behind such police inaction: that the violence against her is of no importance, and will be ignored or trivialized.

Given that battering tends to escalate in severity, the response of society in the early stages of domestic violence is critical. The Final Report of the United States Attorney General's Task Force on Family Violence deplored the lack of serious attention given to domestic violence by various criminal justice agencies, including the police.[39] Although the use of arrest by police officers in domestic violence situations continues to be controversial, in the words of the NYPD:

...preliminary research has shown that an arrest is the preferred method of immediately dealing with such an offense (and is the current policy of our Department).[40]

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39 Final Report, supra, pp.10-13.

40 Domestic Violence Prevention Program, supra, p.1.

A number of other police departments in New York State have formal policies stating that domestic violence is a crime, and that arrest is often the appropriate response.[41] These have the following factors in common: they indicate that domestic violence should be treated no differently from any other allegation of criminal or violent conduct. All policies call for the officer to determine if probable or reasonable cause that a crime has occurred exists, regardless of whether it has been committed in the officer's presence. Arrests are to occur for alleged felonies. Procedures vary, but arrest may occur for misdemeanors or violations depending on the wishes of the victim or the degree of discretion available to the officer. Officers are not to discourage victims who wish to sign complaints or press charges in misdemeanor level offenses. Arrests can and should occur in cases involving a violation of an order of protection, regardless of whether these violations occurred in the officer's presence (specific provisions vary between policies).

Reports and police policies stress the importance of not considering arrest as the end of the social response to domestic

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41 Among them are the New York City, Albany, Rye, Nassau County and Suffolk County Police Departments. (Additional policies may exist in other parts of the State.)

violence. The entire community, including the local criminal justice system apparatus, must be prepared to address the issue of battery. Examples of inter-agency responses are the Duluth, Minnesota Domestic Abuse Intervention Project and the New York City Domestic Violence Prevention Program, which combine police services with social services and advocacy.

b. Battered Women as Defendants in the Criminal Justice System

Although changes are occurring in the response to women as victims of domestic violence they are slow, and many women do not feel the benefits of model programs and new police policies. Options for battered women are few, and there is a severe shortage of decent shelter space in both rural and urban New York. This situation can lead women to believe with justification that their survival depends on their protecting themselves. For example, in the summer of 1986 a woman was murdered by her husband. She had been a client of a shelter in upstate New York the previous winter. The shelter had been forced to close a few months before her death because of a lack of funds. [42]

While the law specifically, and society in general, have offered little help to the battered wife, and indeed may be partially responsible for the actions of those who strike back violently, many of these women

now face homicide charges brought by the same society and its legal system.[43]

The tragic reality in New York and elsewhere is that a battered woman, "frustrated and unprotected by an ineffective legal network, often sees no choice but to kill or be killed." [44] Fortunately, the battered woman syndrome, with its usual pattern of physical and psychological abuse, is being increasingly although still not frequently raised and recognized as a legitimate defense for women who respond violently.[45] However, a woman who might reasonably and successfully raise the defense often has a number of obstacles to overcome. First, even assuming that the defense is raised, the jury may find incomprehensible the claim by the defendant that her act of self-defense was the only reasonable response to the violence.[46] In addition, the plea of self-defense is complicated by the legal requirements that the defendant was in imminent danger and only used force equal to that used against her.

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43 Comment, The Battered Spouse Syndrome as a Defense to a Homicide Charge Under the Pennsylvania Crimes Code, 26 VIII.L.Rev. 105, 107-108 (1980).

44 Berda, M. and Butler, T. "The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence," 23 Journal of Family Law 359 at 360 (1984-85).

45 Price, R., supra. (see footnote 31)

46 Jurors apparently deny the reality of violence in the home. Equal Treatment, supra. J. O'Reilly, "Wife Beating: The Silent Crime," Time 23, Sept. 5, 1983; Schneider, E. Equal Rights to Trial for Women: Sex Bias in the Law of Self Defense, 15 Harvard Civil Liberties Rev 623 (1980).

In most instances, the woman uses what may appear to be a greater force (i.e. the woman uses fire, guns, knives, etc., while the man uses fists), and the woman is arguably in no imminent danger "if she may simply retreat and leave her home." [47]

Many attorneys have chosen to defend women who killed in response to sustained physical and psychological abuse with the traditional impaired mental state defense. [48] Reliance on such a defense is unsatisfactory not only because in many cases the facts do not support the defense, i.e. the woman's mental state was not impaired, but also because the defendant's act was reasonable and necessary given the circumstances.

Other attorneys may defend these cases by allowing the charge to be reduced to a lesser charge such as manslaughter where the woman might show that she was suffering from extreme emotional distress at the time of the incident. This defense, too, is unsatisfactory because pleading to a lesser charge will, of course, result in a conviction. [49]

In addition, uninformed attorneys may not be aware of the defense or sufficiently inquire into the circumstances which led

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47 Price, R., supra.

48 Schneider, infra, Equal Rights to Trial for Women: Sex Bias in the Law of Self Defense 15 Harvard Civil Liberties Law Review 623, 627-629 (1980).

49 Price, R., supra.

to the killing. Some battered women may not voluntarily discuss such circumstances and may, in fact, not be willing to reveal the underlying circumstances.[50] Finally, lawyers may not know about the availability of or may not have the financial resources to secure the service of experts who will testify on behalf of the defendant.[51]

Unquestionably battered women who kill may face tremendous obstacles in our criminal justice system. Currently they are subjected to unequal and unfair treatment.

#### Conclusion

The need for urgent changes in the way battered women are treated in the Criminal Justice System has been amply demonstrated.

The recommendations which follow are designed to bring about better treatment of battered women who become involved in the criminal justice system. As one of the women testified:

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50 Id.

51 "In the absence of expert testimony on the syndrome, woman defendants are seriously handicapped at trial." A Plea for Equal Treatment for Battered Women, supra.

it is now our dream that this hearing will have far reaching consequences. We know that changes must be made in the attitude in the public towards the victims of domestic violence. We know that changes must be made in the programs available to the victims of domestic violence...We are counting on you to be moved by what you have heard here today, to help implement these changes...Every woman needs to be made aware that no one has the right to abuse her. No one.[52]

## RECOMMENDATIONS

### General

- A. Domestic violence services should be coordinated with Parole, Probation, NYS Department of Correctional Services and local jails.
- B. The Duluth, New York City, and other model domestic violence programs should be studied to see how they can be adapted to other jurisdictions.
- C. Domestic violence services should be offered bilingually.
- D. Community involvement should be on-going for the development and implementation of all policies and procedures.

### To the Police

- A. Police departments should establish clear written policies which identify domestic violence as a crime requiring a high priority immediate response.
- B. Police policies should be established which clearly indicate that arrest is the preferred response to misdemeanors and is mandatory in all felonies in domestic violence cases and for violations of orders of protection.
- C. Police departments should immediately notify domestic violence advocates, who would be on call twenty-four hours each day of the year, to contact and meet with battered women.
- D. Police departments should maintain and have available for retrieval orders of protection and temporary orders of protection which are filed with them.
- E. Police departments should (in compliance with Chapter 847 of the Laws of 1986 of the State of New York, Section 812(5) of the Family Court Act and Section 530.11(6) of the Criminal Procedure Law) ensure that battered women are informed, orally and in writing, of their right to use either the Family or Criminal courts for protection, of the availability and purpose of orders of protection, and the availability of shelters and other community services.
- F. Police should maintain complete and accurate written records regarding all domestic violence calls.
- G. Seminars on domestic violence should be mandatory for both new officer training and in-service training

programs for experienced officers. Seminars should be conducted by staff of local battered women's programs in conjunction with the police department academy and other police organizations. These seminars should be in-depth and could be facilitated through organizations such as the New York State Coalition Against Domestic Violence and the Governor's Commission on Domestic Violence.

H. Cooperative relationships between police departments and local shelters or other services for battered women should be established.

To Bar Associations in the State of New York and the New York State Defenders' Association

A. A checklist should be prepared to assist attorneys to identify battered women who have been charged with crimes of violence. These checklists should be distributed to all criminal defense lawyers and local bar associations.

1. The checklist should contain information which will enable a defense attorney to determine and show:

a. if there is a link between the battering and the crime, and if such a link might constitute a mitigating defense.

b. whether the woman might benefit by being referred to a shelter or a domestic violence assistance program.

B. The State of New York should provide funding to all defender services for the indigent to hire expert witnesses, battered women's advocates, psychiatrists and/or psychologists who have worked with battered women to assist in the defense of battered women charged with violent crime(s). A list of expert witnesses should be prepared and distributed statewide to all defense lawyers, courtroom advocates, and battered women's programs.

C. Training should be conducted for defense lawyers representing battered women charged with violent crimes, particularly those charged with violence against their spouses or live-in partners.

1. Training should be conducted for judges on battered women in the criminal justice system.

2. Training should be conducted for prosecutors on battered women in the criminal justice system.

D. A manual for defense attorneys on legal representation and defense strategies in the cases of battered women defendants should be produced and distributed to

defense attorneys.

E. Pattern jury instructions for trials of battered women should be distributed to judges, prosecutors and defense lawyers.

F. Panels of lawyers should be established to represent women charged with crimes of violence and Penal Law Section 440 challenges to conviction and clemency applications.

To the Legislature

A. The State of New York should budget for and appropriate increased funding for existing and new shelters, advocacy, and other direct services for battered women and their children. There should be a shelter in every county and a children's program in every shelter.

B. The State of New York should provide increased funding for courtroom advocates from existing agencies or new agencies to interview criminal defendants and to assist those who have been identified as battered women. The advocate should provide assistance in obtaining group and individual counseling, alternative housing and legal services such as: criminal complaints against the batterer or former batterer, assistance in securing pre-trial release, alternative sentencing, and development of individual plans for clients.

C. The State of New York should provide funding for the production of a handbook for battered women who are criminal court defendants. This handbook should describe the legal rights of the battered woman defendant, including material such as that in the Governor's Commission pamphlet, A Guide to Legal Relief. It should also contain a directory of services for battered women and their families.

D. The State of New York should enact legislation which ensures that incarcerated parents are able to exercise their right to appear in all foster care proceedings in Family Court, and to be notified in a timely fashion of such proceeding.

E. Legislation should provide that when an arrest is made, the threat that the suspect poses to the victim must be considered in setting bail.

F. Legislation should be enacted which requires the criminal court, when considering whether to issue a temporary order of protection, pursuant to 530.11 and 530.12 of the criminal procedure law, to make a preliminary finding as to whether it is dangerous for the plaintiff and defendant to continue to live together. Where such a

finding is made by the court, the court should, as a part of the temporary order of protection order the defendant to stay away from the home, school, business or place of employment of the plaintiff.

G. Family Court Act Section 168(2) should be amended to require: 1. that those orders of protection or temporary orders of protection now filed by the clerk of the court with sheriffs' offices or police departments be filed within twenty-four hours of issuance and, 2. that also be filed with any appropriate law enforcement agency both in the county where a petitioner indicates that she intends to reside and any other county which she designates. The court should be required to request this information of a petitioner.

H. The second felony and violent felony offender laws should be modified so as not to require the incarceration of battered women who commit second or violent felonies. The amendment should be retroactive.

I. The State of New York should create community based residential centers where women who are convicted of killing a spouse or live-in partner can live with their children. These residences can be utilized when a short period of confinement is deemed necessary or appropriate, and additional support services can be provided to women and their children. Additional alternatives to incarceration should be developed.

J. Clemency should be available for victims who have killed their batterers, and are not a danger to society even if they have not served one half of their minimum sentence.

K. Educational and counseling programs for batterers should be available after arrest. When deemed appropriate these programs should be mandatory.

L. The State of New York should provide half-way houses for batterers providing a range of services. They should be available as an alternative to incarceration or as a condition of probation.

To the NYS Department of Correctional Services and Local Jails

A. The State of New York should fund individual and group counseling in local jails and prisons for prisoners who have been identified as battered women. Peer support groups within prisons and jails should be encouraged.

B. In-service training on domestic violence issues should be made available for staff of the Department of Correctional Services and local jails.

C. Education and individual and group counseling services in the area of domestic violence should be available to batterers within the prisons and local jails.

To the Probation Departments

A. A specially trained unit should be set up to provide services for battered women who have resorted to violence and are currently on probation.

B. There should be special training for pre-sentence investigation units on domestic violence and on alternatives to incarceration for women charged with violence.

C. Training on domestic violence should be available for Probation Officers who are servicing batterers.

To the NYS Division of Parole

A. The Parole Board members should receive in-service training regarding issues of domestic violence, particularly how this has affected women within the criminal justice system.

B. Institutional Parole Officers should receive in-service training regarding domestic violence, with special emphasis on preparing women for release. A listing of domestic violence services in the community should be made available to parole officers.

C. Women parolees should be informed of available domestic violence services and how to obtain them.

We strongly support the recommendations of the New York Task Force on Women in the Courts and the New York State Governor's Commission on Domestic Violence. These recommendations follow:

New York Task Force on  
Women in the Courts

RECOMMENDATIONS

For Court Administration

1. Take necessary steps to assure that judges, court clerks and security personnel are familiar with the nature of domestic violence, the characteristics of domestic violence victims and offenders and the impact of adult domestic violence on children in the home, including:

- a. The battered woman syndrome.
- b. The need for calendar preferences for violation of order of protection cases.
- c. The statutory prohibition against dissuading domestic violence victims from seeking court relief as provided in Family Court Act Section 812(3).
- d. The powers of local criminal courts in cases of domestic violence and harassment.
- e. The appropriateness of permitting advocates and others to accompany domestic violence victims into the courtroom as provided by Family Court Act Section 838.
- f. The due process violations inherent in granting a mutual order of protection when the respondent has not filed a petition.
- g. The efficacy of educational programs for those found to have been violent toward members of their families.
- h. The effectiveness of ordering those found to have committed family offenses to vacate the family home.

i. The appropriateness of jail for those found to have violated orders of protection issued by both the Family Court and criminal courts.

j. Issues of self defense as they pertain to women who kill men who have abused them.

2. Ensure availability of a judge to issue temporary orders of protection seven days a week, 24 hours a day pursuant to Family Court Act Section 161(2).

For the Legislature

Enact legislation that:

1. Prohibits mutual orders of protection unless the respondent has filed and served a cross petition requesting that relief.

2. Provides that adjournments in contemplation of dismissal may be conditioned upon the defendant's attendance at educational programs for those charged with family violence.

3. Provides that abuse of one's spouse is evidence of parental unfitness for custody and a basis for termination of visitation or a requirement of supervised visitation.

4. Permits visitation in supervised locations now utilized for children in placement when there has been violence against the custodial parent by the non-custodial parent.

For District Attorneys

1. Establish domestic violence prosecution units in those jurisdictions with sufficient volume to justify a unit.

2. Ensure that assistant district attorneys receive training as to the nature of domestic violence, the characteristics of domestic violence victims and offenders and the impact of adult domestic violence on children in the home, including the same particular areas recommended for judges and court personnel.

3. Provide for paralegal and social work support for domestic violence victims or link to existing services in the community to assure that the safety and social service needs of the victims are met.

4. Request orders of protection for victims of family violence when there is a prosecution pending or upon a conviction.

For Bar Associations

Conduct continuing education programs on domestic violence including the same particular areas recommended for judges and court personnel, and also including:

1. The need for fully informed consents from the client before agreeing to mutual orders of protection as a settlement.
2. The need for social work and other support services for clients who are victims of domestic violence and the availability of community resources.

For Judicial Screening Committees

Make available to all members information concerning the nature of domestic violence and the characteristics of domestic violence victims and offenders and the impact of adult domestic violence on children in the home, including the same particular areas recommended for judges and court personnel.

Governor's Commission on  
Domestic Violence

RECOMMENDATIONS

- 1 School-based domestic violence and child sexual abuse prevention programs, for both primary and secondary students, should be completed and pilot tested by the Commission. Such programs should include special instructional guides for teachers and an informational component for parents.
2. The Commission should work with professional organizations and schools of medicine, nursing, law, education, social work, theology and justice, etc. to include family violence materials in their curricula.
3. Comprehensive, statewide training should be provided to all advocates and professionals who have contact with families affected by domestic violence. This should include judges, criminal justice personnel, law guardians, social workers, emergency medical technicians, paramedics, doctors, nurses and educators.
4. The Commission should develop and publish a technical assistance package for use by law enforcement agencies, domestic violence service providers and local governments to assist in the development of a consistent police policy on domestic violence.
5. The Commission should continue to foster effective community outreach and public education with particular focus on developing a comprehensive media package, promoting public forums such as conferences and hearings and publishing issue-specific policy and technical assistance papers.
6. Valid reliable research on the incidence of family violence, inter-generational connections and the long term effects should be supported to facilitate treatment and prevention.
7. The economic impact of domestic violence on employers in both the public and private sectors should be calculated to demonstrate the need for, and the cost-effectiveness of, employee assistance programs which recognize and respond appropriately to affected workers.
8. The effect on victims of family violence of the

reduction in funding for legal and social services should be studied and recommendations made to fill the gaps which have resulted from such cutbacks. Specifically, the Department of Social Services domestic violence appropriation requires a substantial increase in order to support existing programs as well as to establish a mechanism for inter-county shelter transfers. There must be further investigation of methods for distributing domestic violence funds equitably across the state.

9. Battered women should be given priority status for public housing and provided protection from discriminatory practices by housing officials.

10. The special needs of rural victims of domestic violence, such as the lack of telephones and transportation, should be identified, and ways to meet these needs found.

11. Existing social services, mental health agencies and probation departments should be encouraged to provide counseling for batterers in counties where specialized batterer's programs do not now exist.

Committee on Domestic Violence  
and Incarcerated Women\*

Bonnie E. Carlson	Judson Memorial Church
Arlene Carmen	Prisoners' Legal Services of NY
**Ruth Cassell	Deputy Speaker of NYS Assembly
Ronnie Eldridge	Women in Criminal Justice
***Hon. Arthur O. Eve	The Fortune Society
Pauline Feingold	The Correctional Association of NY
Mary Follett	Pace Family Center
Robert Gangi	Park Slope Safe Homes Project
Dr. Carolyn Goodman	Women's Network - Mujeres Unidas
Ellen Gurzinsky	Victim Services Agency
**Joyce Klemperer	Prisoners' Legal Services of NY
Frances Kunreuther	Attorney
**David C. Leven	NY Women's Bar Association
Betty Levinson	Victims Intervention Project
Nechama Masliansky	NYS Senator
Sojourner McCauley	Westchester County Office for Women
***Hon. Olga Mendez	STEPS to End Family Violence, Edwin
Camille F. Murphy	Gould Services for Children
**Mary Nerney, C.N.D.	Women in Crisis, Inc.
Mari Nobles	NYS Senator
***Hon. Suzi Oppenheimer	Center for Women's Rights, Inc.
Margaret A. O'Regan	The Longtermers Committee of
Rosie O'Regan	Bedford Hills
Bernice Powell	United Church of Christ - Commission
**Adrienne Ross	for Racial Justice
Devvie Schleyer	Former Staff, NYS Coalition Against
**Louise Thompson	Domestic Violence
**Barbara Van Buren	Writer
Bonnie Wagner	National Organization for Women, NYS
Elizabeth Walber	National Women's Political Caucus
Phyllis Wallace	NYS Coalition Against Domestic
Martha T. Wray	Violence
	NYC Gay and Lesbian Anti-
	Violence Project
	Let Incest Victims Emerge (LIVE, Inc.)
	Victims Information Bureau
	of Suffolk, Inc.

\*Organizations listed are for affiliation purposes only.

\*\*Report Committee

\*\*\*Legislators who attended the Hearing