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Wife Beating: Government Intervention Policies and Practices

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Wife beating is a civil rights problem of enormous magnitude. It is a crime that has been hidden by ignorance and social attitude. Society has viewed what happens between spouses as consensual, permissible, and private. Negative perceptions of women by both men and women have resulted in tolerance of wife beating. As the values that condone violence in the home change, and the seriousness and extent of wife beating are recognized, solutions will emerge. This is a discussion of the legal problems facing battered women and some suggestions for providing relief.

Wife beating is physical abuse of a woman by her present or former husband or male companion. It consists of repeated blows inflicted with intent to do harm. Threats and verbal abuse that were preceded by beating are part of a pattern of control of a wife by her husband that is basic to wife beating. It is more serious than a mere dispute.

The term "battered wife" used here includes any woman assaulted or threatened by a man with whom she has been intimate or to whom she is or was married. A battered wife is uniquely dependent upon her attacker. She is bound to him legally, financially, and emotionally. Typically, battered wives feel powerless to change their victimized condition. They are filled with self-blame, believing that their actions have caused the beatings they suffer. Battered wives are trapped by an unresponsive legal system that effectively leaves them remediless against the men who seek to control them. Their plight is worse than that of rape victims because battered wives are compelled to continue living with their abusers.

The legal system fails to protect battered wives from illegal attacks by their husbands. It is assumed that the battered wife is the guilty party, who has provoked, deserved, and wanted the beating. Having no recourse under the law, the battered wife is therefore forced to flee and hide for her safety. As a result she is deprived of her liberty and property without due process of law. The offender is left at liberty in the comfort of his home and friends, his acts of violence not only excused and forgiven, but also condoned and reinforced. As a class, battered women are denied the protections afforded other victims of

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crime. They are discriminated against by police, prosecutors, and judges. As women victims of crime, battered wives are not believed. The statements of their husbands or male companions are given presumptive credibility. Finally, battered wives are expected to keep their feelings and opinions to themselves and to accept their husbands' abuse. Thus, battered wives are denied the civil rights and civil liberties guaranteed to all citizens by the Constitution.

Police

The police are the most important component in the criminal justice system's response to family violence. They are the only institution capable of providing immediate, lifesaving protection. Those endangered by the conduct of a spouse or companion, therefore, turn first to the police for help. Police agencies, however, traditionally have viewed family problems as noncriminal "disputes" or "disturbances," essentially verbal in nature, not serious, and causing no one injury.¹ The pervasive attitude among police officers is that family calls are not part of the real police function of maintaining order.²

Raymond I. Parnas studied the Chicago police response to domestic "disturbances" in 1967. He analyzed department documents and observed police officers on duty.³ He found that Chicago Police Department recruit training totaled 490 hours, of which less than 1 hour was devoted to domestic disturbance calls. This training stressed the danger to the responding officer only.⁴ There was no official formulation of policy or practice for response to family disturbance calls, in spite of the fact that these calls comprised half of all calls for police assistance. ". . . [P]ractically no attention, either within or without the police department has been directed toward this problem."⁵ Yet there was a consistent pattern of nonarrest, adjustment, and referral based on police officer patrol experience. Parnas called this practice the police "support function."⁶

In exercising the support function—the use of alternatives other than arrest in *aid of both* disputants—it is uncertain whether this police response is a recognition of the underlying value of

¹ New York City Police Department, ("NYCPD") *Police Student's Guide—Social Science*, VIII-41 (undated, hereafter "NYCPD, *Police Student's Guide*"); Parnas, "The Police Response to the Domestic Disturbance," 1967 *Wis. L. Rev.* 914, 915, 930 (hereafter 1967 *Wis. L. Rev.*).

² Parnas, 1967 *Wis. L. Rev.* 915, 956; Parnas, *Police Discretion and Diversion of Incidents of Intra-Family Violence*, 36 *L. & Contemp. Prob.* 539, 542-43 (1971); International Association of Chiefs of Police, Inc., *Police Reference Notebook*, "Unit 4A5, Disorderly Conduct and Domestic Complaints, Handling Domestic Complaints," (2d ed., undated, 1969, hereafter "Police Chief's *Reference Notebook*"); Bard, *Family Crisis Intervention: From Concept to Implementation* 4, 7 (December 1973, U.S. Dept. of Justice, National Institute of Law Enforcement and Criminal Justice).

³ Parnas, 1967, *Wis. L. Rev.* 915, n. 4.

⁴ *Id.* 916-20.

⁵ *Id.* 916.

⁶ *Id.* 915-16, 929-37.

preserving the private, personal, intimate, or family integrity of the disputants, or whether their response results from an awareness of the practical difficulties [time lost for numerous court appearances in which complainant withdraws] inherent in either a full-enforcement or no-response approach to the domestic disturbance. Policy statements and the comments of a majority of the officers interviewed generally emphasized the practical difficulties involved. . . . Practical and value-oriented approaches to dealing with domestic disturbances lead in the direction of adjustment rather than arrest.⁷

Even though the Chicago Police Department had a policy that all calls in which "contact" was made should be classified by dispatchers as "batteries," and those in which no contact had been made classified as "disturbances," in practice *all* domestic disputes were classified as disturbances. Dispatchers failed to obtain sufficient information to adequately set a priority level, or to inform the responding patrolman of danger from the presence of weapons. As soon as they determined that an intrafamily problem was the reason for the call, no questions were asked and the incident was classified a "domestic disturbance."⁸

Parnas concluded that the ad hoc response was inadequate to provide meaningful aid to the distressed family members and resulted in many police officer injuries and deaths.⁹ He advocated institutionalizing the police officer's support-social work function through official department policy and coordination with courts and social agencies.¹⁰ Parnas reasoned that primary responsibility for more effective response to family disputes rested with the police because they were usually the first agency to have contact with the troubled family.¹¹

At the same time that Parnas was proposing development and formalization of the police support function, Morton Bard was presenting the concept of police officers as community mental health workers.¹² Both Parnas and Bard advocated psychology training for police officers to enhance their spontaneous adjustment and referral work, and to reduce line-of-duty deaths and injuries occurring during responses to domestic disturbance calls.¹³ The International Association of Chiefs of Police also expressed concern over the high

⁷ *Id.* 955; Field and Field, "Marital Violence and the Criminal Process: Neither Justice Nor Peace," *47 Social Service Rev.* 221, 228-30 (1973) (hereafter "47 *Social Service Rev.* ").

⁸ Parnas, 1967 *Wis. L. Rev.* 928.

⁹ *Id.* 920, 955-60.

¹⁰ *Id.* 956-59.

¹¹ *Id.* 960.

¹² Bard and Berkowitz, "Training Police as Specialists in Family Crisis Intervention: A Community Psychology Action," 3 *Community Mental Health J.* 315-17 (1967).

¹³ Parnas, 1967 *Wis. L. Rev.* 955-60; Bard, "Alternatives to Traditional Law Enforcement," *Police Nov.-Dec.* 1970, 20-23, (hereafter "*Police Nov.-Dec.* 1970.") Reprinted in Karten, Cook, and Lacey, eds., *Psychology and the Problems of Society* 128-32 (1970); Bard "Extending Psychology's Impact Through Existing Community Institutions," 24 *Amer. Psychologist* 610-12 (1969, hereafter "24 *Amer. Psychologist* ").

proportion of police deaths and injuries while handling disturbance calls. The association cited the 1963 Uniform Crime Reports datum that during the 3-year period 1960-63, 21 percent of the total number of police officers killed in the line of duty died while handling disturbance calls.¹⁴ This pattern of police line-of-duty death and injury continues. In the period 1971-75, 106 officers were killed responding to disturbance calls. During this same period, 129 officers were killed responding to robberies in progress, and 130 were killed attempting other arrests.¹⁵

In response to the need for improved handling of disturbance calls, police departments, with the support of the Federal Law Enforcement Assistance Administration, began model programs with goals of developing policies and improving training. One of the most well-known projects was the Family Crisis Intervention Unit of the 30th Precinct in New York City, established by Morton Bard in 1967. Nine black and nine white police officers working in biracial teams received intensive training in psychology prior to their assignment. They performed their usual patrol duties, but were dispatched to family disturbances regardless of their location within the precinct. There was one team on duty during each 8-hour tour. Records were kept of each response by the unit so that all members of the team could act consistently. Weekly individual consultations and group discussions were held with psychologists at the City University. The unit mediated family disputes and made referrals for medical, psychological, and social work assistance from a resource list compiled and updated by the officers themselves. The referrals were followed up by the team.¹⁶

In 2 years the Family Crisis Intervention Unit processed 1,400 calls involving 962 families. The project was deemed successful by its formulators because there were no homicides in the families aided by the unit and no injuries to the policemen of the unit.¹⁷ During the period of the Family Crisis Intervention Unit experiment, two other patrolmen of the 30th Precinct and one patrolman of the neighboring control precinct were injured intervening in family disputes.¹⁸

The policies that emerged based on the Parnas and Bard studies and projects reinforced the nonarrest practices of police officers by making them the officially preferred course of action. The training materials published during the period 1969-76 stressed adjustment through mediation and referral as the proper response to family disputes. They

¹⁴ Police Chief's *Reference Notebook* 1.

¹⁵ U.S. Dept. of Justice, Federal Bureau of Investigation, *1975 Uniform Crime Reports* 225-26 (hereafter "1975 Uniform Crime Reports").

¹⁶ Bard, *Training Police as Specialists in Family Crisis Intervention, passim* (May 1970, LEAA).

¹⁷ Bard, *Police*, Nov.-Dec. 1970, 21-22; Bard, *24 Amer. Psychologist* 611.

¹⁸ Field and Field, *47 Social Service Rev.* 237.

minimized the seriousness of family disturbances for the participants while emphasizing the danger to responding police officers. Police recruits were taught that:

. . .the police officer who deals with family stress must be able to do more than arrest the disputants. . . He must seek to prevent, as well as to refer. . . The intervening officer should provide alternative courses of action for the involved parties by making intelligent appraisals and useful referrals.¹⁹

Training publications stressed that arrests were the last resort even when responding to violent family disputes.²⁰ The officer was instructed to stop the violence, separate the parties, keep his partner in sight, watch for possible weapons, render first aid, evaluate the emotional condition of the "disputants, and

*Make a summary arrest, if necessary. Take all factors into consideration before making arrest (last resort) sometimes arrest may add to problems instead of alleviating situation, i.e., family fight over money, father arrested and family loses his wages.*²¹

Arrest is repeatedly presented as counterproductive.

Ramifications of arrest procedure:

- (a) may be detrimental to resolution of the problem at hand (for family)
- (b) complainant may be seeking outlet for emotions (recognize)
- (c) Loss of breadwinner—if jailed
- (d) Adverse effect on children
- (e) Possible irreparable damage to family unit (split-up)
- (f) If circumstances warrant, convey:
 - (1) inadvisability of arrest
 - (2) unsound solution to actual problems
- (g) If arrest is unavoidable—outline procedure and responsibilities.²²

This arrest avoidance policy was based on the premise that most family disputes to which the police officer would respond were not violent and did not result in injury to family members.²³

In addition to the psychological training given to police recruits, sociological concepts were introduced. The San Francisco Police Department engaged Jeffrey A. Schwartz and Donald Liebman who prepared *Crisis Intervention Training Reading Assignment: Cultural*

¹⁹ NYCPD, *Police Response to Family Disputes*, Procedural Supplement No. 1 at i-ii (Sept. 1969); NYCPD, *Police Response to Family Disputes, A Training Manual for Family Crisis Intervention*, Introduction (undated, post 1969).

²⁰ City of Oakland, Police Service III-J, *Training Bulletin, Techniques of Dispute Intervention* 2-3, 5-10 (June 19, 1975).

²¹ NYCPD, *Police Student's Guide* at VIII-44, 49, 80-81.

²² *Id.* VIII-81.

²³ *Id.* VIII-41, 42, 47, 55-56, 60, 62, 66, 67.

Issues (undated). This 23-page pamphlet described the family structure and mores of the Mexican Americans, blacks, Orientals, and gays to aid officers in responding to family disturbance calls.

The importance of knowing how a citizen's values differ from the officer's can make a great difference in how the officer handles a particular issue in a family fight.²⁴

The New York City Police Department provided its students with a class analysis of family functioning.

Differences are generated by stratification of society which is fundamentally based on wealth. The upper class usually provides for its needs but the lower the strata, the more families tend to look outside for help with their difficulties.²⁵

A chart of "behavioral characteristics" presented the differences between classes: the middle class uses "withdrawal of love, withdrawal of approval, appeals to guilt," while the lower class resorts to "physical punishment."²⁶ The implication is that violence is endemic to lower classes and blacks; therefore, the police officer should not be critical of physical abuse in these families.

Studying attitudes toward wife beating in Michigan in 1974, two University of Michigan law students, Sue E. Eisenberg and Patricia L. Micklow, reviewed documents and interviewed police officials, prosecutors, and judges.²⁷ They found that police did not regard wife beating as criminal activity. A police lieutenant teaching the domestic complaints course at two police academies was asked: if a man punched his wife causing "a split lip or a bloody nose," would he be regarded as having committed "a serious infraction of the law"? He answered, "No."²⁸ Eisenberg and Micklow point out, in addition, that the euphemism "domestic disturbance," which is applied to a range of acts from verbal arguments to beatings, is indicative of police tolerance of wife beating.²⁹

Eisenberg and Micklow state that Michigan law requires a minimum of 240 hours of training for police recruits. Three to 5 hours are spent on domestic complaints even though these calls account for almost half of all calls for police assistance.³⁰ The Wayne County Sheriff Police Training Academy's *Domestic Complaints Outline* first warns the trainee to "avoid arrest," and then suggests ways of discouraging

²⁴ Schwartz and Liebman, *Crisis Intervention Training Reading Assignment: Cultural Issues* (undated).

²⁵ NYCPD, *Police Student's Guide* at VIII-53.

²⁶ *Id.* VIII-53-54.

²⁷ Eisenberg and Micklow, "The Assaulted Wife: Catch 22 Revisited," 3 *Women's Rights L. Rep.* 138, 139-40 (1977, hereafter "3 *Women's Rights L. Rep.*").

²⁸ *Id.* 145.

²⁹ *Id.*

³⁰ *Id.* 156.

victims of family violence from trying to get a warrant. Finally, the student is admonished, "Don't be too harsh or critical."³¹ In practice, reports of domestic disturbance calls are made only when there is an arrest. The police keep no information to aid them in identifying families in which the "disturbances" are becoming more violent and more frequent. Eisenberg and Micklow suggest that this data could be useful in avoiding serious injury to family members and police.³²

The California, Michigan, and New York police training publications did not discuss the possibility of a continuing pattern of wife beating as the cause of the family disturbance. This problem had not received public attention prior to 1974, and police departments had no input from groups aiding battered wives. Recently police departments have been receiving criticism of policy and practice and suggestions for change from battered women and their representatives.

As early as 1972 the staff of Brooklyn Legal Services Corporation B, a federally-funded free legal service for the poor, received daily complaints about the police from battered women divorce clients. Fifty percent of the women divorce clients, totaling about 300 women annually, were battered wives. Many of these women stated that they, their child, or a neighbor had called the police during or immediately after a beating, but the police had refused to come, referring the woman over the telephone to the Family Court where she could request a civil injunction against her husband's future violence. If the police did respond, the officers often joked with the husband, were sympathetic to him, and made derogatory comments about the wife. The most frequently repeated criticism was that the officers, without regard to the seriousness of the injuries or general evidence of physical violence from the disarranged and broken furniture, stated, "If you are married, there is nothing we can do." Women told of police officers refusing requests to arrest former husbands who broke into their former wives' apartments and beat them, because the victims could not produce copies of their divorce judgments.

In a case similar to this the former wife called the police on 5 consecutive days. She had a visible "black eye" from an attack the week before when the officers arrived on the first day. She showed them her lease, which was for herself and three children, and stated she was divorced. They said that without a copy of the divorce judgment they could do nothing. The former husband heard them say this. He returned every day for the next 4 days and heard different responding officers repeatedly state they could do nothing for this woman because this was a family matter. He forced the lock on the apartment door and slapped or punched and threatened to kill his

³¹ *Id.* 156-157.

³² *Id.* 157.

former wife each day. He left each time when the police came. On the fifth day the former husband was standing in the kitchen when the woman and their three children arrived home with groceries. He threatened to kill her. She told him to leave. He picked up a serrated steak knife and cut and stabbed her in the face, arm, and side. The neighbor heard the children's screams and called the police. The officers arrested the man for attempted murder.

Complaints of police indifference to obvious violence are still being received. Women report that police officers refuse to enforce the Family Court injunction, even though printed on the bottom of the order is the statement that it is authority for the officer to arrest upon allegation of violation. (Family Court Act §168 (McKinney 1977)) A woman who had experienced 14 years of beatings from a husband who neither supported her and their seven children nor regularly resided with them had gotten 1-year Family Court injunctions against his assaults seven times. Frequently, when the police responded they told her to file a violation petition, requesting the court to hold her husband in contempt. They did not arrest him until the night they found her dazed and dripping blood from a large head wound. Her husband had smashed her in the head repeatedly with a chair. He had inflicted several stab wounds with a screwdriver. She had lumps on the back of her head where her husband had hit her head against the floor. As the officers arrested the man for attempted murder, he protested, "But she's my wife."

In 1972 Brooklyn Legal Services' three requests to meet with the New York City Police Commissioner to discuss the police response to battered wives were not even acknowledged. As the hidden problems of battered wives first received press coverage in 1974 (J.C. Barden, "Wife Beaters: Few of Them Ever Appear Before a Court of Law," *New York Times*, October 21, 1974),³³ criticism of police failure to act came to public attention. Police departments defended themselves by displaying their new psychology-based, family dispute training materials. Groups working on behalf of battered wives responded by documenting police failure to aid injured and endangered women.

In Chicago, attorneys with Garfield-Austin Neighborhood Legal Services, a federally-funded free legal service for the poor, wrote to the Chicago Police Superintendent presenting their clients' complaints, making suggestions for change, and requesting a meeting. Their battered women clients stated that the Chicago police refused to arrest wife beaters in spite of clear evidence that violent crimes had been committed and that dispatchers place family violence calls on low priority. The practices described by Parnas in 1967 were now being

³³ The *New York Times* news service carried this story, which was printed in papers all over United States.

attacked by victims of family violence. The treatment of wife beating as a "quasi-permissible, social noncriminal problem," was presented as the cause of more brutal beatings of women after the police leave. The result is that women become reluctant to call the police and turn to self-help, killing, or being killed.³⁴ Meetings were held immediately and are continuing.

Initially, the police chiefs defended the practices of their officers and drafted a statement that made the criticized practices into official policy. After discussion of the draft, department representatives agreed to make changes. A new working draft was prepared by Candice Wayne, attorney with the Battered Women's Project, which opened October 17, 1977. This draft is now under consideration. It directs dispatchers to give family violence calls the same high priority as other violent crimes in progress. Police officers are to be told that wife beating is a crime to be treated the same as any assault. It expressly repudiates the "we cannot get involved in family matters" practice. Referral resource lists are required for every officer to use when arrest is not appropriate. Records of relationship of victim and offender, victim injury, and action taken would establish the frequency and severity of family violence and provide officers with a case history of complaints and police action in that household, as an aid to appropriate response in the future.³⁵

The movement for reform of police policy and practices has taken two routes in New York City. Twelve battered wives who were refused police assistance commenced a lawsuit against the NYCPD on December 6, 1976.³⁶ *Bruno v. Codd* is the first comprehensive attack on the failure of the criminal justice system to provide protection and medical aid to battered wives. For example, Carmen Bruno's allegations are that the police officers arrived while her estranged husband still had his fingers around her neck. Mrs. Bruno and her neighbors urged the police to arrest him. They refused and escorted him out of the building. The police failed to ascertain if Mrs. Bruno needed medical assistance. They did not follow any of the factfinding procedures set forth in the department's training guides. If they had asked questions, they would have learned that Mrs. Bruno fled her husband's brutality several years before. He had only recently learned of her address, whereupon he commenced making threats to kill her.

³⁴ Letter from Eileen P. Sweeney and Lucy A. Williams to Superintendent James Rochford, Sept. 27, 1976, on file at Brooklyn Legal Services.

³⁵ Telephone conversation with Candice Wayne, attorney, Chicago Battered Women's Project, Dec. 1, 1977.

³⁶ *Bruno v. Codd*, Supreme Court of the State of New York, New York County, Index No. 21946/76.

Mrs. Bruno feels that she is unable to get police protection and lives in constant fear.³⁷

The plaintiffs in *Bruno v. Codd* seek a State court declaratory judgment that the police failure to aid and protect battered wives is contrary to New York law. They are requesting an injunction prohibiting police officers from discriminating against battered wives and directing the department to treat family violence the same way violence between strangers is treated. They wanted arrests made when there is probable cause for the officer to believe that the accused committed a violent act. Plaintiffs ask that the court direct police officers to cease making comments supportive of men who beat their wives. In addition to many demands regarding enforcement of civil injunctions against family violence, as provided in New York Family Court Act §168, request is being made that the court order the police to assist battered wives to obtain medical aid as they do for other victims of crime.³⁸ Discovery is proceeding while the defendants have taken an appeal from the denial of their motion to dismiss the complaint for failure to state a cause of action.³⁹

Five months after the lawsuit was commenced, battered women's support groups and elected officials began meeting with NYCPD policymakers and trainers to obtain changes in family dispute policy and training. The first meeting was on April 14, 1977, with the commissioner and most of the deputies and chiefs of command. The commissioner established a department "battered women" (the police use quotation marks around the term) committee that is still in operation.⁴⁰ At the first committee meeting, members expressed concern that a diligent response to this "pressure group," as they denominated it, could be interpreted as an "admission of malfeasance or non-feasance" in light of the *Bruno v. Codd* lawsuit. The committee members believed that the department has met the battered wife problem adequately, but they were willing to discuss some modification of training.⁴¹ Several of the early demands that the police rejected were enacted into law by the New York State Legislature, effective September 1, 1977.⁴² These included provision that the victim be able to file a copy of her civil injunction with the police department and that the police institute family dispute recordkeeping. Improvements in training materials have been made as a result of the work of this

³⁷ *Bruno v. Codd*, Complaint at 13-17. A Federal civil rights class action was commenced Oct. 28, 1976, against the Oakland, California, Police Department. *Scott v. Hart*, C76-2395. A motion for summary judgment and dismissal was denied.

³⁸ *Bruno v. Codd*, Complaint, at 98-99.

³⁹ *Bruno v. Codd*, 396 N.Y.S. 2d 974 (Sup. Ct. N.Y. County, 1977).

⁴⁰ Memorandum for Commanding Officer, Quality Control Section, Re: Battered Women, Apr. 4, 1977, on file at Brooklyn Legal Services.

⁴¹ Memorandum for Chief of Operations, Re: "Battered Women"—First Meeting, Apr. 22, 1977.

⁴² McKinney, N.Y. Sessions Laws 1977 ch. 449.

community group. The newly published *Area Level Training Bulletin*, September 1977, incorporates these changes, but it retains many weaknesses. This publication will be discussed in greater detail below.

Seattle Times reporters Susan Schwartz and Dale Douglas Mills, in their unpublished monograph "Wife Beating: Crime and No Punishment" (1974),⁴³ describe numerous incidents of Seattle police refusal to aid battered women. Police officers refused to look at a woman's injuries, which would have given them probable cause for an arrest, but urged her to "make peace." An officer told a woman he could not take her complaint because it was Sunday.⁴⁴ Individual patrolmen have developed informal "policies" contrary to department regulations. They will not aid a woman who has suffered previous beatings. They have concluded that she will not prosecute, and therefore it is a waste of police time to help her.⁴⁵ Attorney Susan Jackson writes that the San Francisco police also base their decision whether or not to arrest a wife beater on their prediction of the probability that the victim will prosecute.⁴⁶

New York City, Seattle, and Ann Arbor are not isolated centers of police inaction against family violence. Del Martin discusses police lack of response all over the United States and Europe.⁴⁷ James Bannon of the Detroit Police Department criticizes police for their tolerance of family violence. He states that in Detroit family dispute calls are screened out by dispatchers as an official caseload control mechanism. This was the police department's method of reducing the number of police assignments when the requests for assistance exceeded the ability to respond.⁴⁸

In New York City, dispatchers give past assaults and assaults "in progress" a "2" or "3" response priority. The "2" priority is assigned to past and present assaults with knife or gun, while the "3" priority is given to assaults with other weapons. Disputes are given a "5" priority.⁴⁹ A dispatcher stated in an interview that family dispute calls are always treated as low priority. This conforms to Parnas' finding that dispatchers in Chicago treated family fights as low priority disputes even though their instructions were to rate them as assaults when violence was reported.⁵⁰

⁴³ On file at Brooklyn Legal Services.

⁴⁴ *Id.* 6-7.

⁴⁵ *Id.* 6-8.

⁴⁶ Jackson, "In Search of Equal Protection for Battered Wives," 8 (1975), unpublished manuscript on file at Brooklyn Legal Services.

⁴⁷ Martin, *Battered Wives* 87-99 (1976).

⁴⁸ Bannon, "Law Enforcement Problems with Intra-Family Violence" 1-7, unpublished address to American Bar Association section on Individual Rights and Responsibilities, Aug. 12, 1975, on file at Brooklyn Legal Services.

⁴⁹ NYCPD, *Radio and Incident Code Signals with Priority Level and Automatic Routing* 5 (undated). Priority level "1" is reserved for major catastrophies: plane crashes or building collapses.

⁵⁰ Parnas, 1967 *Wis. L. Rev.* 928.

The national tendency to regard family violence as beyond police response capability is expressed by the Federal Bureau of Investigation in its introduction to the discussion of homicide in the 1975 *Uniform Crime Reports*.

The circumstances which result in murder vary from family arguments to felonious activities. Criminal homicide is largely a societal problem which is beyond the control of the police. The circumstances of murder serve to emphasize this point. In 1975, murder within the family made up approximately one-fourth of all murder offenses.⁵¹

Thus, family disturbance calls, in spite of their potential for ending in homicide and aggravated assault, remain a lower priority than more easily resolved property crimes.

The police refusal to aid battered wives may in part be attributed to sexism and classism. Bannon, Martin, Eisenberg, and Micklow and Schwartz and Mills have reached this conclusion. Sexism and classism in the publications discussed above and in LEAA publications reinforce the common prejudices of police officers. These training materials make no mention of chronic wife beating. The LEAA training materials state that "close or intimate relationships are responsible for between 70 to 80 percent of homicides," but that "the officer should be aware that most family disputes are *not* violent."⁵² This emphasis leaves the officer unprepared to aid the battered wife and to prevent future violence.

The family dispute training materials reveal antiwomen attitudes that hinder objective response to battered wives. Family conflict is described as being caused by communication difficulties among family members with both parties contributing, or intrapersonal factors in which one party is the cause.⁵³ The most prominent value judgment is that a man's employment takes priority over his wife's safety.⁵⁴ In the NYCPD and LEAA publications, a list of three examples of "intrapersonal" problems begins with "the woman going through menopause who is very depressed."⁵⁵

In the summary outline of tactics that should be used by police in family disputes, the officer was warned that intoxicated people, *women*, and psychotics are "likely to resort to physical violence" in the presence of a police officer. The *Police Student's Guide* states that

⁵¹ 1975 *Uniform Crime Reports* 18.

⁵² Bard, *The Function of the Police in Crisis Intervention and Conflict Management: A Training Guide* 5.5 and 7.9, respectively (LEAA, National Institute of Law Enforcement and Criminal Justice, 1975, hereafter, "LEAA Training Guide.")

⁵³ NYCPD, *Police Student's Guide* at VIII-60, 67; LEAA, *Training Guide* 7.19-20.

⁵⁴ *Id.* VIII-41, 44, 49, 62, 81-82.

⁵⁵ *Id.* VIII-67. LEAA *Training Guide* 9.19.

women may become violent toward their men because they believe the officers will protect them.⁵⁶ It was not explained that her attack is caused by rage resulting from her defenselessness in the face of his assault before the police arrived. The list of four possible causes to consider in disputes involving children begins with the example:

a.

- (1) *Mother rejects father*
- (2) transfers love, affection to child
- (3) sometimes sexual forms
- (4) emotional stability of child may be impaired⁵⁷

No mention is made of the possibility of a father's incestuous activities with his daughter.

This emphasis on the guilty, rejecting wife as the cause of conflict is further developed in the LEAA, *The Function of the Police in Crisis Intervention and Conflict Management: A Training Guide*, and the NYCPD, *Police Response to Family Disputes, A Training Manual for Family Crisis Intervention*.⁵⁸ Both publications present the same four family dispute scripts as training exercises. All the women are dominating and forceful, except one who is a heroin addict. The conflicts portrayed in the first three plays are caused or aggravated by the women in the family. In the last play the wife shares the blame.⁵⁹ The actors are told to project the following roles:

Sister—Portray a dominant female figure who has control over father. . . .⁶⁰

Ann—This is a person who is very forceful and dominating in her actions and conversation. . . .She should be portrayed as a person who takes delight in controlling her husband. . . .In her role with the police officers, she should maintain her unyielding attitude and continued insistence on her husband's removal from the apartment.⁶¹

Wife—This girl [23 years old] should be portrayed as a drug user with typical addict mannerisms and apathy who will have very little interest in the welfare of her children and her role as a wife and mother. . . .

Husband—The Army Sergeant's role must be one of primary concern for one of the children, whose natural father he is. He tolerates the young baby [not his child. . . .]⁶²

⁵⁶ *Id.* VIII-76.

⁵⁷ *Id.* VIII-76.

⁵⁸ LEAA, *Training Guide* 7.26, 7.37, 7.39, 7.40.

⁵⁹ LEAA, *Training Guide* at appendix 1-9-1-36; NYCPD, *Police Response to Family Disputes, A Training Manual for Family Crisis Intervention* 28-49.

⁶⁰ *Id.* 28; LEAA, *Training Guide* at app. 1-11.

⁶¹ *Id.* 32; LEAA, *Training Guide* at app. 1-17.

⁶² *Id.* 38; LEAA, *Training Guide* at app. 1-23-24.

These women are the stereotypical nagging, manipulative wives who "deserve a smack in the mouth" from their long-suffering husbands. Negative portrayals of women do not help police trainees to understand the problems of battered wives.

The class and ethnic stereotypes are equally counterproductive.⁶³ The notion that violence among ghetto residents is an accepted part of life, which the police should understand, discourages assistance to ghetto battered wives. The *LEAA Training Guide* explains that:

Although the prevailing American culture tolerates a minimum of physical force as a reaction to anger, such physical force is the common response among certain ethnic groups. Therefore, whether or not the use of such force can be considered serious depends in part on the cultural background of the people using it.⁶⁴

There is no reason to rush to the aid of a minority woman who is being beaten by her husband if violence is part of their lifestyle.

The *LEAA Training Guide* and the *Police Student's Guide—Social Science* teach that economic class determines family behavior patterns. The middle class punishes through withdrawal of love and approval, but the lower class uses physical punishment.⁶⁵ The middle class discourages physical aggression, while physical aggression is regarded as normal by the lower class.⁶⁶ These notions have little basis in reality. A survey of 1,176 adults conducted in 1967 for the National Commission on the Causes and Prevention of Violence showed that more college-educated men and women "could approve of a wife slapping a husband" or a husband slapping a wife under some circumstances than those who had grade school education only. The researchers concluded that approval of slapping one's spouse increases with both education and income.⁶⁷

The movement to aid battered women has found that wife beating is prevalent in wealthy suburbs as well as in the ghetto. Montgomery County, Maryland, has a battered wives' refuge and support group that was featured on a television special. Fairfax County, Virginia, also has a support group. The Women's Center of Greater Danbury, in Fairfield County, Connecticut, has provided counseling for 26 battered wives in 2 months. All but two of the abusive men were

⁶³ Schwartz and Liebman, *Crisis Intervention Training, Reading Assignment Cultural Issues* 23 pp.; *LEAA Training Guide* 6.5-6.11.

⁶⁴ *LEAA, Training Guide* 6.9.

⁶⁵ *LEAA, Training Guide* 6.8; *NYCPD Police Student's Guide* at VIII-54.

⁶⁶ *Id.* VIII-54.

⁶⁷ Stark and McEvoy, "Middle Class Violence," 4 *Psychology Today* 54 (1970).

professionals, including lawyers, doctors, policemen, corporation executives, and ministers. One wife beater was a marriage counselor.⁶⁸

Middle class family violence is more difficult to observe because middle class reliance on private physicians and psychiatrists has prevented researchers from finding these battered wives among public and charitable agency clients. For this reason family violence will continue to appear to be a mostly lower class problem with occasional glimpses of it in the middle and upper classes. The middle or upper class battered wife, therefore, has greater difficulty getting police protection than lower class women. Thus, formerly battered middle class women have worked to gain public recognition of the problem of wife beating. Publicity combined with community pressure, litigation, and legislation have begun to produce policy changes in police departments.

As a result of pressure from battered women's support groups, recent police training publications have taken a pragmatic approach with less emphasis on psychology and sociology. There has been increased recognition of the danger of serious injury to the family members, and although arrest is still discouraged, standards are now provided for determining when arrest is appropriate. *Police Training for Tough Calls*, by Frank J. Vandall (1976), published by the Center for Research in Social Change of Emory University, demonstrates this revisionist position.

As in the earlier New York City Police Department materials, Vandall warns that arrest may cost the offender's job.

In some domestic disturbances the officer will desire to invoke the criminal process because there has been a serious violation of the law such as a battery. Before invoking the criminal process, however, the officer should consider several negative results that flow from such an action. The most serious factor to be considered is that the physical arrest record may contribute to the offender losing his present employment.⁶⁹

The mediation, adjustment, and referral technique is then outlined as in the New York City Police Department's, *Police Student's Guide—Social Science*. Vandall differs from the *Guide* in his presentation of factors that determine whether or not to arrest. He emphasizes that the key factor is the officer's assessment of the seriousness of the injury.

The absence of the offender in itself does not determine the answer to the question whether the officer should invoke the criminal process. . . .

⁶⁸ Cook, "New Focus on Battered Women," *New York Times*; *Connecticut Weekly*, Dec. 4, 1977, p. 1, col. 3; Martin, *Battered Wives* 19.

⁶⁹ Vandall, *Police Training for Tough Calls* 27, 38 (1976).

One of the most important factors to be considered. . . is the seriousness of the injury. An injury is serious if it is one that would normally require professional medical attention. . . It is not relevant that the victim refuses hospital attention. The decision as to the seriousness of the injury rests with the reasonable judgment of the officer.⁷⁰

Vandall uses the extent of injury as the measure of intent to do harm. He instructs the patrolman also to consider the weapon used, the present conduct and statements of the offender, any indications that the attack was planned, the offender's criminal record for violent crimes, repeat calls to the same household, intoxication of the offender, and recent threats by the offender to harm the victim.⁷¹

The most significant difference between Vandall's book and the current New York City Police Department treatment of family disturbances is Vandall's warning that the victim's refusal to sign a complaint is not relevant to the arrest decision. He explains that the victim of a domestic dispute is "under tremendous pressure and is not in a position to decide whether the offender should be taken into custody."⁷² Vandall instructs the officer to make the decision based upon his own expertise and then request the victim to sign a complaint. If the officer determines there is probable cause to believe a felony has been committed and the victim refuses to sign a complaint, Vandall states that the officer should sign the complaint himself.⁷³ This position is the opposite of the New York City Police Department policy of arresting only when the victim of a family assault expressly requests an arrest.⁷⁴ Vandall labels this an "unacceptable practice."⁷⁵

New NYCPD analysis of family disputes stresses that violence or threats of violence have "invariably" preceded the call for police assistance.⁷⁶ The absolute neutrality and mediation policies have been modified. Instead, the officer is instructed to "communicate the attitude that violent behavior is not excused or tolerated."⁷⁷ Police officers are being urged to change their former tolerance of family violence.

Both the urgency and destructive potential of violence in the family requires the kind of timely and authoritatively lawful third

⁷⁰ *Id.* 30-31.

⁷¹ *Id.* 31-34.

⁷² *Id.* 35.

⁷³ *Id.* 35-36.

⁷⁴ Testimony of Det. John Sullivan, teacher, New York City Police Academy, New York City Council public hearings on family violence, Oct. 14, 1975, unpublished.

⁷⁵ *Police Training for Tough Calls* 35.

⁷⁶ NYCPD, "Violence in the Family," *Area Level Training Bulletin, Instructor's Manual* 43 (September 1977, hereafter "NYCPD *Area Level Training Bull.*"). Contrast, NYCPD, *Police Student's Guide* at VIII-40, 44, 47, 60, 62.

⁷⁷ *Id.* 44. Contrast, NYCPD, *Police Student's Guide*, which admonishes the officer, "do not take sides," at VIII-43, 60, 67.

party response capability that is absolutely unique to the police function.⁷⁸

Preventing family violence is presented as promoting police safety, providing responsive service, and equally important as other forms of crime control.⁷⁹ The NYCPD training materials explain the reasons that victims of years of beatings remain with abusive partners: marriage is regarded as a sacred contract; the victim has been isolated; the victim does not know where to go for help; the victim is financially dependent on the offender; the victim stays so the children benefit from a two-parent home; the victim is ashamed; the victim fears that “*she*” will not be able to find a job; the victim fears reprisals from the offender. Most revealing is the statement that the victim may “have a feeling of helplessness; in the past when the person went to the police or courts, no action was taken.”⁸⁰ The victim of family violence is now portrayed as having limited resources and few alternatives. There is recognition that the police have been part of the problem for victims of family violence.

Mediation, adjustment, and referral remain the preferred course of action. The officer is still cautioned that arrest has a negative effect on family income and relationships and that these adverse results should be explained to the victim. There is some discussion of the appropriateness of a summary arrest in cases of assault, especially when there is a pattern of prior assaults.⁸¹ Although these arrest avoidance issues receive less emphasis than in previous training publications, the new treatment of arrest is insufficient to overcome the patrolmen’s prejudices against getting involved in family disputes.

The worst defect in the NYCPD *Area Level Training Bulletin* chapter on “Violence in the Family,”⁸² which is also present in Vandall’s *Police Training for Tough Calls* (34–38), is the intentional omission of the terms “wife beating” and “battered wife.”

Through questioning, it sometimes comes to light that a *person* has endured beatings from a spouse over a period of years. . . . There are many reasons for this. . . . The marriage contract is sacred, the *person* stays for religious reasons. . . . the *person* may be completely financially dependent on the spouse. . . . the *person* is afraid to leave because there are no jobs for a *woman* with children. . . .⁸³

⁷⁸ *Id.* 44.

⁷⁹ *Id.* 45.

⁸⁰ *Id.* 57.

⁸¹ *Id.* 58–62.

⁸² *Id.* 34–63.

⁸³ *D.* 57. (Emphasis added.)

These statements are disingenuous. The memoranda of the meetings between the NYCPD and the battered women's support group show that the department policymakers know that they are being criticized for their failure to aid and protect *battered wives*. They give the appearance of acceding to public pressure to improve the response to calls from battered wives, but the refusal to state that the "person" enduring the beating from "a spouse" is the wife implicitly denies the existence of the battered wife phenomenon.

Changes in policy that do not explicitly address the problem of wife beating give the impression that the department does not intend to effect basic reforms in the way officers treat battered wives. Because the new training materials only hint at the real issue, the police officer must be confused about just what his superiors expect of him. In contrast, the International Association of Chiefs of Police recently published two new Training Keys entitled, *Wife Beating* and *Investigation of Wife Beating* (1976), which demonstrate a preferable approach.

The first key tells the officer that wife beating is the typical form of violence he will encounter between spouses, although there are cases of wives beating their husbands. It explains that the victims are economically dependent on their husbands, are without job skills, suffer from low self-esteem, and are immobilized by constant fear of assault. The police officer's role is to prevent violence through mediation. If an attack has already taken place, however, the officer should conduct an assault investigation to determine if there is probable cause for an arrest and to gather evidence to support the prosecution. The officer is cautioned not to view wife beating as a "victimless crime." "A wife beating is foremost an assault—a crime that must be investigated."⁸⁴

The investigation provides the officer with the information upon which he will base his decision whether or not to arrest. The nature of the assault is the determinant. If a felony assault has been committed, the officer may make an arrest regardless of the victim's lack of cooperation. The association now suggests that a policy in favor of arrest in wife beating cases may help free the battered wife from the trap of violence.

A policy of arrest, when the elements of the offense are present, promotes the well-being of the victim. Many battered wives who tolerate the situation undoubtedly do so because they feel they are alone in coping with the problem. The officer who starts legal action may give the wife the courage she needs to realistically face and correct her situation.⁸⁵

⁸⁴ *Training Key 245, Wife Beating* 1-3, 3 (1976).

⁸⁵ *Id.* 4.

Investigation of Wife Beating instructs the dispatcher to inquire about the nature of the assault and the use of weapons, and to give this information to the responding officer. The officer is told to protect and give first aid to the victim and to ask if there are injuries that do not show. It is explained that victims often have internal injuries and injuries to the back of the head and parts of the body covered by clothing. "It is the police officer's responsibility to obtain the proper medical attention for her, even if she protests receiving it."⁸⁶ Just as for other crimes, the officer is told to find and interview neighbors and other witnesses, including children. Photographs should be taken of injuries and of the "crime scene." Blood-stained clothing and weapons should be collected and preserved. If the victim affirmatively refuses to cooperate in prosecuting her husband and there is insufficient evidence to sustain a felony charge, the officer should then explore alternatives such as social service agencies, civil court actions, emergency shelters, and temporary separation. The usual caution about liability for false arrest is balanced by a warning about liability for neglect of duty. Finally, the officer is told that a victim who continually refuses to take legal action should be advised that the beatings may continue and may become more severe.⁸⁷

In contrast to the NYCPD family violence materials, the tone and *content* of these two Training Keys clearly tell the patrolman the policy, his role, and his duty. He is given reasons, direction, and standards for accomplishing his tasks. The issues, prejudices, practices, and policies are explicitly discussed. The officer reading these knows that the practices of nonresponse and "get out fast" are no longer acceptable. He is told that he is required to respond affirmatively to battered wives. The policies and procedures set forth in the International Association of Chiefs of Police Training Keys on wife beating must be made part of the operations manuals used by those now on police forces, as well as part of recruit training. Inservice training must portray police assistance to battered wives as an essential part of aggravated assault and criminal homicide prevention.

In 1967 Parnas theorized that domestic disputes are the prelude to most spouse murders and serious assaults. He believed that prompt and skilled intervention at the minor disturbance level might decrease the serious violent crime occurring among family members.⁸⁸ The 1973 study of domestic violence conducted by the Kansas City, Missouri, Police Department and a 1974 study of conflict-motivated homicides and assaults in Detroit conducted by James D. Bannon and G. Marie

⁸⁶ *Training Key 246, Investigation of Wife Beating* 1-2, 2 (1976).

⁸⁷ *Id.* 4-5.

⁸⁸ Parnas, 1967 *Wis. L. Rev.* 959.

Wilt support Parnas' hypothesis that murder and serious assaults are preceded by minor assaults.

The Kansas City Police Department found that they had responded to disturbance calls at the address of homicide victims or suspects at least once in the 2 years before the homicide in 90 percent of the cases, and five or more times in the 2 years before the homicide in 50 percent of the cases. They had responded once to disturbance calls at the home of victims or suspects in 85 percent of the aggravated assault cases, and five or more times to disturbance calls in 50 percent of these cases during the 2 years before the aggravated assault.⁸⁹ Of the total sample of cases studied, 42.3 percent involved physical force, but when the participants were either married or divorced, the incidence of force rose to 54.4 percent. When the participants were common-law spouses, relatives, strangers, or acquaintances, however, physical force occurred only 30.7 percent of the time. Another significant barometer of violence was the threat. When threats were made violence occurred in 53.9 percent of the cases.⁹⁰ Of the 294 conflict-motivated homicides studied in Detroit, 90 (30.6 percent) involved family members.⁹¹ Sixty-two of these family murders were preceded by histories of conflicts.⁹²

The police crime prevention function is not being developed. In spite of emphasis on more sophisticated responses to domestic disputes, the average patrolman is failing to gather sufficient information to make a determination of the nature of the problem. There is no difference in the aid offered in cases of verbal disputes or physical assault. The spontaneous nonarrest practices described by Parnas have been extended by the patrolman, relying on official police department policy in favor of adjustment, to inaction in all cases of family assault. Arrests are not made when there has been violence, or when an injured wife requests to file a complaint. The mediation training for conflict resolution stresses neutrality, which in turn reinforces the wife beater's notion that he has done nothing wrong. Battered wives are made to share the blame for the injuries they have suffered, just as the rape victim has been held responsible for the crime committed against her. Thus, violence in the home escalates, because the victim has learned that the police will give no aid, and the offender knows that he will suffer no penalty.

Police training should include discussion of wife beating as a frequent form of criminal activity to which arrest is the appropriate

⁸⁹ Breedlove, et al., "Domestic Violence and the Police: Kansas City," in Police Foundation, *Domestic Violence and the Police* 23 (1977). (Addresses of multiple dwellings with many tenants were excluded from the analysis. No data were gathered on the number of disturbance calls that never resulted in violence.)

⁹⁰ *Id.* 27.

⁹¹ Wilt and Bannon, "Conflict-Motivated Homicides and Assaults in Detroit," in Police Foundation, *Domestic Violence and the Police* 37.

⁹² *Id.* 39.

response. Dispatchers must be required to get sufficient information to determine if there is a beating in progress or just ended, and if the offender is still present, and to treat these as priority, violent, crime-in-progress calls rather than low priority dispute calls. The category "family dispute" should be eliminated from the dispatcher's lexicon. It should be replaced with descriptive terms that give the responding patrolman useful information: assault, assault with weapon, verbal only. Threats must be recognized as predictive of acts and taken seriously. Officers must disregard the relationship of victim to suspect, or the likelihood of completed prosecution, but base their decision solely on probable cause for arrest.

The presence or absence of the suspect is irrelevant. In family assault cases it is almost certain that the suspect will return to the scene of his crime because it is his home. The standards for arrest developed by Vandall and the International Association of Chiefs of Police would provide patrolmen with functional guidelines for arrest based upon valid criminal justice concerns for prevention of violence. The seriousness of the injury, the use of a weapon, the evidence of premeditation, and the existence of prior or continued threats to maim or kill are the factors upon which the decision whether or not to arrest must be based. Once the decision to arrest is made, full investigation to gather evidence to support the prosecution is the next step.

If there is insufficient basis for a probable cause to arrest and the victim does not want to sign a complaint for misdemeanor assault or menacing, the officer should make referrals to agencies aiding battered wives. The International Association of Chiefs of Police urges the officer to encourage the battered wife to get help. An ideal way for this to be done is to discreetly give the woman a small referral card that she can use when she is ready to seek counseling or when she needs shelter. Plattsburgh, New York, police are distributing business-size cards with the 24-hour telephone number of Women, Inc., the local battered women's support group. Strongly worded departmental orders must advise patrolmen of these policies and procedures so that patrolmen know that they must aid battered women.

A proarrest policy has been suggested by the International Association of Chiefs of Police. It should be tried at least on an experimental basis. Those who aid battered women have come to the conclusion that the nonarrest, mediation, and adjustment practiced by police officers has a negative effect on the victim seeking help or escape and encourages the offender to continue his violence. Comparison studies of the effects of an arrest policy command, a mediation policy command, and a command with no stated policy (in which the officers would be free to ignore family calls) should be made to analyze the effects of these alternative approaches on future

violence between the parties. This type of comprehensive investigation is urged by the Police Foundation. Whether or not this research is undertaken, police officers must immediately provide protection, obtain medical assistance, effect arrests, and facilitate the escape for battered and threatened women.

Prosecutors and Criminal Justice Diversion Programs

Police need the positive reinforcement of having their arrests and investigations be the basis of prosecutions. The practice of prosecutors has been, however, the same as that of police officers in wife beating cases. Without regard to the history of violence or seriousness of the assault, they quickly "adjust" the matter and make inappropriate "referrals." They refuse to bring wife beating cases to trial.

Prosecutors cite the failure or refusal of battered wives to sign complaints and to appear in court to testify. It is generally agreed that more than half the battered wife complainants either fail to cooperate with the prosecutor or request that the charges be withdrawn. Traditionally, this failure has been deemed a waste of time for which the women have been blamed. Now that battered wives have begun to speak out, it has become clear that responsibility must be shared by the prosecutors and courts.

Raymond I. Parnas is again the most authoritative and methodologically sound investigator of prosecutor response to wife beating. He reviewed documents, corresponded with prosecutors and judges, and visited jurisdictions with innovative programs. Parnas focused on the "minor" family offenses.⁹³ He found that even those cases deemed serious by the police are adjusted without prosecution.⁹⁴

. . . [T]here is a tendency on the part of those in a position to respond to either ignore them altogether, or more usually, to respond in such a way as to get rid of such cases as quickly as possible.⁹⁵

In most jurisdictions this takes the form of exercise of prosecutorial discretion.⁹⁶ In Washington, D.C., in 1966, about 7,500 women requested the prosecutors to issue warrants for their husbands' arrests. Less than 200 such warrants were issued.⁹⁷ Some localities have special district attorney family offense units that conduct informal hearings

⁹³ Parnas, "Prosecutorial and Judicial Handling of Family Violence," 9 *Crim. L. Bull.* 733, 734, (1973) (hereafter "9 *Crim. L. Bull.* ").

⁹⁴ *Id.* 735.

⁹⁵ *Id.* 734.

⁹⁶ Field and Field, 47 *Soc. Service Rev.* 224-25.

⁹⁷ *Id.* 231-32.

with attorneys or investigators presiding. This procedure has been used in Washington, D.C., and in California.⁹⁸ In California the prosecutor warns the suspect that he will be arrested if he continues his offensive conduct. Suspects are not advised of their right to counsel and are not given *Miranda* warnings. Cases adjusted in this way rarely result in prosecutions. San Francisco has a Family Relations Bureau staffed by investigators who combine this warning and adjustment process with referral to social and legal services agencies.

Writing in 1975, attorney Susan Jackson, with the San Francisco Neighborhood Legal Assistance Foundation, Women's Litigation Unit, asserted that almost no wife beaters were prosecuted after they had failed to appear at the Family Relations Bureau for an informal hearing.⁹⁹ Even when the Family Relations Bureau determines that a warrant should be issued, the district attorney is not likely to agree. There were eight prosecutions resulting from the 5,000 calls received by the bureau in 1973.¹⁰⁰ Los Angeles tries to divert battered wives to civil court for divorces. If a woman insists on filing a complaint, she is told she must wait several days. Once the decision to prosecute is made, the complainant is warned that if she changes her mind, she will be assessed court costs.¹⁰¹ Parnas observed a similar imposition of costs in Detroit.¹⁰²

The police and prosecutor have a joint diversion program at the charging level in Detroit. Police officers assigned to the Misdemeanor Complaint Bureau conduct the type of informal hearing used in California. The disposition is frequently an "adjournment without date" or the placing of one or both parties on a fictitious "peace bond." Parnas states that in the first 10 months of 1970 there were 5,057 requests for misdemeanor warrants received by the bureau; 323 warrants were issued.¹⁰³ In 1972, 4,900 requests for warrants were prepared and resulted in less than 300 prosecutions, according to Bannon.¹⁰⁴ He also points out that the "peace bond" succeeded in stopping violence when it was issued by the prosecutor, who supported it by prosecuting violators. But now that the police issue "peace bonds" they have lost their effectiveness because the prosecutor does not enforce them.

Parnas believes that the diversion programs are better than uniform prosecution of all family offense cases. This conclusion is weakened by his assumptions that serious wife assaults receive the same kind of

⁹⁸ Parnas, 9 *Crim. L. Bull.* 735.

⁹⁹ Jackson, "In Search of Equal Protection for Battered Wives" 12-13.

¹⁰⁰ *Id.* 11.

¹⁰¹ *Id.* 13.

¹⁰² 9 *Crim. L. Bull.* 735-39.

¹⁰³ *Id.* 740.

¹⁰⁴ Bannon, "Law Enforcement Problems with Intra-Family Violence" 5.

treatment as other serious assaults and that the police and prosecutors' perceptions of what are "minor" family disputes are accurate. He ignores their tendency to classify all family violence as minor disputes.¹⁰⁵

Another form of court diversion at the prosecutor level is referral to independent community mediation and arbitration services. Participation in these programs is voluntary and both parties to the dispute must consent. Dispute centers perform a more useful service to disputants than the police or prosecutor hearings. Their staffs are trained for impartial mediation and devote all the time necessary to effect a workable, lasting solution to the conflict. They are not distracted by other "more important" duties as are police and prosecutors. Parnas describes the Washington, D.C., Citizen's Information Service and the Philadelphia Community Dispute Settlement Center.¹⁰⁶ A discussion of Rochester, New York, Arbitration as an Alternative to the Criminal Judicial Process (called the "4-A Program") is presented by Joseph B. Stulberg, director of community dispute services for the American Arbitration Association.¹⁰⁷

Each of these programs appears to be an excellent approach to resolving conflicts between parties who are equals. But when violence is more serious than a single slap, kick, or punch and becomes a series of blows inflicted by the stronger party with intent to harm the weaker party, then there is no equality. The weaker person is the victim, and the stronger person is the batterer, who wields the power. This is the battered wife's situation and one reason that mediation will not work to stop wife beating.

Wife beating is not a behavior pattern that can be altered in a single 2-hour mediation or arbitration session. At the point when the woman seeks police and prosecution intervention, beatings may have been a frequent occurrence for several years. Stulberg limits the application of the 4-A Program's combined mediation and arbitration technique to cases of verbal disputes, single blows, harassment, or threats without repetition of violence.¹⁰⁸

Mediation is not advisable because it requires that the battered wife share the blame for her husband's attack on her. Both the International Association of Chiefs of Police and the New York City Police Department have reversed their previous position in favor of

¹⁰⁵ Parnas, 9 *Crim. L. Bull.* 734, *passim*.

¹⁰⁶ *Id.* 740-47.

¹⁰⁷ Stulberg, "A Civil Alternative to Criminal Prosecution," 39 *Albany L. Rev.* 359, 360-70, 1975 (hereafter "39 *Albany L. Rev.* ")

¹⁰⁸ 39 *Albany L. Rev.* 360-70.

mediation in all family offense cases. They now stress that the responding officer express disapproval of violence.¹⁰⁹ The prosecutor should similarly express disapprobation of violence.

Complaints have been made that where community dispute centers exist, prosecutors divert all family offense cases to the centers. When the Miami Citizen's Dispute Settlement Center tries to send serious cases it cannot resolve back to the prosecutor, the prosecutor refuses to accept them.¹¹⁰ Diversion can become an end in itself instead of a rationally applied alternative.

When prosecutors either expressly or implicitly force a battered wife to take her case to a dispute center, they are denying her the protection she needs. She is being taught that there is no one more powerful than her husband who either can or will compel him to stop beating her. In cases of repeated wife beating, criminal prosecution restores some of the power balance that the husband has destroyed by his violence.

An absolute policy of not prosecuting wife beating cases endangers battered women's safety and well-being because this policy also discourages police response and investigation. In a county in New York State, an assistant district attorney announced to the Family Court Probation Service supervisor that she would prosecute serious assaults only. This type of *a priori* decision that assaults in which there was no serious injury or no weapon used are not appropriate for criminal prosecution may leave the victim of frequent assaults without recourse but to suffer more beatings until she is seriously injured or to use self-help.

In marriages in which there has been a history of wife beating, the woman becomes an expert on her husband's pattern of attacks. Her vigilance may well be the reason that she has avoided serious injury. She might have learned to duck and run. She knows when her husband is getting ready for a major attack or series of attacks. Once she has decided that she is ready to seek help and protection, this decision should be greeted with a positive response by those in a position to assist her, in spite of the fact that the most recent attack was not the most serious. It may be that this incident was the final proof that his promises to reform were empty and an indication that a more brutal attack is brewing.

Battered wives who insist upon criminal prosecution often do so after many attempts at other types of resolutions. The vast majority of wife beating can be controlled through civil injunctions, divorces, or separations. But those who have found these alternatives of no help

¹⁰⁹ *Training Keys 245 and 246 ; Area Level Training Bulletin*, both *supra*.

¹¹⁰ Letter from Sandra Conn, Greater Miami Legal Services, to Marjory D. Fields, Brooklyn Legal Services Corporation B, Sept. 14, 1976.

must have the option of criminal prosecution. Prosecution is, of course, ultimately dependent upon sufficient evidence to present a case. Even if the case ends in an acquittal, the experience of having been a defendant in a criminal trial that could have resulted in a jail sentence might have a deterrent effect. Prosecutors should discuss the marital history with the complainant to ascertain what other types of remedies have been tried. Research indicates that the longer the marriage, the greater the frequency and severity of the beatings, and the greater the number of previous unsuccessful attempts to get help, the more likely that the battered wife will follow through with criminal prosecution and divorce.¹¹¹

Subtler, but equally serious for the battered wife, are the common types of prosecutor neglect of wife beating cases discussed in a letter to the Cook County, Illinois, State's Attorney from two legal services attorneys. In the fall of 1976, after an "informal study" of six courtrooms in which domestic violence cases were tried, the following patterns were discerned: prosecutors stated that husbands' attacks against their wives were not as serious as attacks against strangers; without regard to the seriousness of the violence, husbands were prosecuted on charges of disorderly conduct; and prosecutors failed to engage in legal argument when judges dismissed complaints based solely on the irrelevant basis that a divorce action was pending.¹¹²

Another major criticism was that peace bonds, whereby the defendant signed a statement promising to cease his offensive conduct, were not explained to the defendant or complaining witness, and neither party was given a copy. Defendants were not told that they would be prosecuted for committing a subsequent offense or the possible penalties for violation of the terms of the bond. Finally, peace bonds were used even in serious assault cases, contrary to the statutory intent that they be used when threats have been made or it appears that violence may occur. These practices resulted in police not arresting for violations of peace bonds because the complainant could not produce a copy for the officer to read. The community learned that the peace bond was useless to the victim and was no threat to the offender.¹¹³

Negotiations with the prosecutor's office began November 17, 1976, and are continuing. Immediate agreement was reached to reform the peace bond abuses by complying with the statute (Ill. Rev. Stat. ch. 38, §200-1, *et seq.*). The legal services attorneys have a "modest" court-watching program and have trained lay advocates to accompany their

¹¹¹ Kirchner, "Profile of a Poor Battered Wife," 1977, unpublished, attached hereto as appendix A.

¹¹² Letter from Eileen P. Sweeney and Lucy A. Williams to Bernard Carey, dated Nov. 11, 1976. (On file at Brooklyn Legal Services.)

¹¹³ Ill. Rev. Stat. ch. 38, §200-2; letter from Sweeney and Williams to Carey, dated Nov. 11, 1976.

clients to criminal court. The advocates make certain the prosecutor understands the complainant's story and understands that the complainant wants the prosecutor to go forward with the case. This system also provides moral support for the complainant.

This lay advocate system is also used by Brooklyn Legal Services Corporation B. In December 1976 staff members met with the Brooklyn District Attorney, Eugene Gold, to discuss six examples of nonfeasance and malfeasance in wife beating cases in which sufficient evidence was available for trial. The case docket numbers were given to the district attorney in the letter requesting the meeting. He had the files before him at the meeting and acknowledged that errors had been made.

Agreement was reached to begin immediately a joint project of divorce and criminal prosecution whenever this was the victim's wish and there was sufficient evidence. Evidence is shared and trial preparation is done jointly. This enhances both the criminal prosecution and the divorce action. When battered wife clients of Brooklyn Legal Services complain of serious assaults and police refusal to arrest, the district attorney's office contacts the police in an effort to have them effect an arrest. (Unfortunately, the police do not always cooperate with the prosecutors, and the prosecutors lack the staff to have the officers assigned to them effect the arrest.)

This cooperative effort has worked very well. The indepth divorce interview gives an opportunity to find out if the woman feels that the only way she will be safe is if her husband is incarcerated or if a divorce is sufficient protection. In practice, very few women are in such extreme and continued danger that they need to have their husbands in jail. But in those cases, it is a matter of life and death that an informed decision be made by the prosecutor. Only one out of nine prosecutions was dismissed because the complaining witness requested it. In that case the judge who helped the parties reach a divorce settlement with a favorable lump-sum payment to the wife conditioned her approval of the settlement upon the wife's withdrawing the criminal complaint. In one case, protective custody was provided for a complaining witness whose life was threatened after her husband was indicted for attempting to murder her.

Jackson suggested *mandamus* actions against prosecutors who have an arbitrary policy of never prosecuting wife beating cases. *Mandamus* is a difficult form of action to maintain against prosecutors because of their broad discretion. It could be successful if a pattern of abuse of discretion is established. Other possibilities suggested by Jackson are actions for malfeasance in office or Federal civil rights violations. The civil rights action could be based on intentional discrimination based

on sex and denial of due process and equal protection. These issues would be difficult to prove, but worth the effort.¹¹⁴

Two battered wives in Cleveland, Ohio, brought a Federal civil rights class action against the prosecutor. They alleged due process and equal protection violations, and violation of the right of citizens to petition the courts for redress of grievances. Plaintiffs stated that they were married women who were beaten by their husbands. They accused the prosecutor of arbitrarily denying them access to criminal court because they were women who were married to their assailants.¹¹⁵

This action was ended by consent decree in which the prosecutor agreed to: consider each wife beating case on its own merits; order full investigation of wife beating complaints to obtain necessary evidence; provide for administrative review of decisions not to prosecute if the victim so requests; and notify the police department that the prosecutor's office has revised its policy and will prosecute men who beat their wives.¹¹⁶

Negotiations with and lawsuits against prosecutors by those who are in need of protection against violent husbands are often successful in effecting changes in policy. Input from those who use the services or are affected by the agency can provide the basis for correction of unacknowledged abuses. The problems of battered wives have only recently come to public attention. This information and the expectation of responsive policy changes must be presented to prosecutors. The Cleveland settlement embodies the basic concepts of fairness that should be applied to all crime victims.

The present operation of the criminal justice system leaves battered wives remediless. Consideration of the uniquely dangerous position of the battered wife as a complaining witness in a criminal prosecution should lead to changes in policy and practice. Prosecutors should provide protection for battered wives who may have nowhere else to live but with their husbands pending trial on the assault charges. The victim cannot lock the offender out of his home without court approval; therefore, request must be made to the court that pretrial release on the defendant's own recognizance or on bail be conditioned upon the defendant's staying away from the complaining witness. Police investigation should be encouraged through use of their knowledge of the condition of the victim and the crime scene as part of the decision whether or not to prosecute.

¹¹⁴ Jackson, "In Search of Equal Protection for Battered Wives" 20-22, 26-28.

¹¹⁵ Raguz v. Chandler, Case No. C74-1064, Complaint, at 4-8.

¹¹⁶ Letter from Richard Gurbst, Legal Aid Society of Cleveland to Laurie Woods, MFY Legal Services, Apr. 20, 1976 (on file at Brooklyn Legal Services), and Raguz v. Chandler, Motion for Class Certification and Preliminary Injunction.

Prosecutors in Brooklyn and Nassau County, New York, concerned with stopping wife beating stress that, in the plea bargaining process, guilty pleas to violent crimes only should be accepted. Even if the plea is to simple assault, and a sentence of probation imposed for a first offense, that conviction record will be the basis of a harsh sentence, should the defendant repeat his attacks on his present or a subsequent wife. The Brooklyn District Attorney is working with the Center for Responsive Psychology, which is developing guidelines for selection of jurors for wife beating prosecutions. The center has a questionnaire designed to show how prospective jurors perceive battered wives and accused wife beaters. It is hoped that new *voire dire* questions will enable prosecutors to determine who is prejudiced against battered wives so that prejudiced jurors may be eliminated.

Prosecutors should recognize that the victim may have positive reasons for withdrawing her complaint. The official threat of prosecution may have caused the husband to stop his assaults and to seek help to control his violence. In the alternative, the woman may decide that the only way she will be safe is to move away and leave no forwarding address. The time that the prosecutor has the defendant in custody pending arraignment or trial may give the victim the opportunity to escape. Since the prosecutor cannot guarantee her safety if there is a release pending trial or on a sentence of probation or upon acquittal, this may be her only nonviolent means of ending the beatings she has suffered. Thus, failure of a battered wife complainant to follow through may not be a waste of prosecutor time from a public policy point of view. The arrest and commencement of prosecution may have been successful in bringing a peaceful end to the violence.

Judges

The police response to battered women is the most crucial because they are in the position to stop beatings and save lives. The next most important authorities in the criminal justice system are the judges because they can compel police and prosecutors to protect battered wives, as well as sentence individual wife beaters. Since few actions have been brought against police and prosecutors, there is little material other than treatment of individual cases upon which to base an analysis of judicial response to wife beating.¹¹⁷

Judges sitting in criminal courts display the same prejudices as police and prosecutors, even though they see battered wives who have refused to be discouraged and have cooperated with the prosecution. Statistics discussed above show that there are few prosecutions resulting from thousands of requests for warrants. This may indicate

¹¹⁷ Adjudication of individual civil actions will be discussed in the chapter on civil statutes and judicial interpretation, below.

that only the most serious cases, in which the victim believes that jail is the only way to stop her husband's attacks and the prosecutor believes he has sufficient evidence for conviction, go to trial. Yet judges treat these cases as though there had been no attempts to screen them out on the police and prosecutor level. They tell women to forget the injuries and reconcile with their husbands. Marriage counseling is ordered without consideration of the seriousness of the assault, or women are told to get a divorce and the case is dismissed.¹¹⁸

Schwartz and Mills reviewed the results of nine cases tried in Seattle. Suspended 1-month sentences and fines of up to \$50 were imposed on defendants who pleaded guilty to charges of "causing a disturbance." The seriousness of the actual offenses had no effect on the sentence.

Although the assaults included stabbings and broken bones, none was charged as a felony. All were considered misdemeanors. Not one of these assailants went to jail.¹¹⁹

Parnas described similar patterns in the courts he observed. In Chicago's Court of Domestic Relations, 50 percent of the cases were intrafamily assaults. The most frequent dispositions were summary dismissal for failure of the complainant to appear or at her request. In those cases in which a hearing was held, the most common disposition was an unsecured, unrecorded, blank, fake peace bond. Neither party received a copy and the consequences for violation were not explained. If a defendant on peace bond came before the court again, there would be no way for the judge to know that a bond had been previously imposed unless one of the parties told him. Parnas found that, "Regardless of the disposition stated in court (i.e., pleaded guilty, found guilty, put on "peace bond," etc.), the official docket entry is almost always "DWP" (discharged for want of prosecution)."¹²⁰ In Detroit and Baltimore, Parnas observed that the family and neighbor assaults combined amounted to 5 to 15 cases out of 70 to 90 cases per day, and 10 to 15 percent of the daily docket, respectively. Judges in both cities attempted to delay hearings or dispositions as long as possible to get the parties to settle the matter. If this did not succeed, defendants were lectured and put on unsupervised or pro forma probation.¹²¹ Parnas summarized his findings concerning the operation of the criminal courts as a failure to serve any "correctional" function that would reduce recidivism. Family violence was "handled summarily and off-the-cuff."¹²²

¹¹⁸ Eisenberg and Micklow, 3 *Women's Rights L. Rep.* 159.

¹¹⁹ Schwartz and Mills, "Wife-Beating: Crime and No Punishment" 12-13.

¹²⁰ Parnas, 9 *Crim. L. Bull.* 748-49.

¹²¹ *Id.* 749-50.

¹²² *Id.* 747-48.

The Chicago Legal Services attorneys, Sweeny and Williams, who initiated negotiations with police and prosecutors, also negotiated with the judges. They observed the same practices noted by Parnas. They particularly criticized a judge who stated in a radio interview that he always asked battered wives if they had been "faithful" to their husbands. They asserted that it was a common practice among judges to tell battered wives to "kiss and make up." Judges in Chicago routinely refer women to divorce court and dismiss the criminal charges without inquiry into the allegations or circumstances of the case.¹²³ Negotiations with the Chicago judges commenced in November 1976 are being continued by Candice Wayne of the Battered Women's Law Project.

In New York Family Court, judges presiding in civil, family offense proceedings for injunctions, called orders of protection, hardly ever impose jail sentences for contempt for violation of prior orders, although the complete case history is always before the court. This is in spite of the option to sentence a man to serve this time at night and on weekends so that he can keep his employment.¹²⁴ Judges avoid making decisions by issuing "mutual orders of protection," ordering each party not to harm the other. This has the negative effects of holding the woman equally guilty for the beating she suffered and relieving the wife beater of responsibility for his violence. Allegations of battering are viewed as shams used by wives to gain a weapon to achieve control over their husbands.¹²⁵

Some judges are reluctant to grant any relief. A woman who had been beaten frequently during 18 years of marriage sought an order of protection in Brooklyn Family Court. She decided that she needed help because the beatings were getting more severe and more frequent. The judge told her that he was not granting her an order of protection, even though the beatings were not denied but only minimized by her husband. The judge ordered both parties to go for counselling. The woman protested that she had tried counselling, but it did not work. The judge was adamant. The husband felt vindicated. The woman sued for divorce because she believed she could be safe only if she no longer lived with her husband.

This woman said she felt that the judge was more critical of her failure to take action against her husband before this court proceeding than of her husband's violence. The judge's attitude was, "If you never tried to get help before, then I will not try to help you now." Her years of sacrifice and suffering to keep her family together were being

¹²³ Letter from Eileen P. Sweeney and Lucy A. Williams to Hon. Eugene L. Wachowski, Nov. 5, 1976, on file at Brooklyn Legal Services.

¹²⁴ See, Maitland, "Courts Easy on Rising Family Violence," *New York Times*, June 14, 1976, p. 1, col. 3.

¹²⁵ Interview with a New York City Family Court Probation Service supervisor, Sept. 24, 1976.

turned against her. She was treated as the culpable party for fulfilling the role of patient wife and dutiful mother.

Criminal court judges in New York are equally reluctant to incarcerate wife beaters. An unprecedented sentence of unsupervised "probation" was imposed on a man who had cut his wife above the eye with a piece of broken glass. Judges continue to refer battered wives' complaints to family court even though this transfer power was repealed effective September 1, 1977, and the prosecutors show them the new law.

Judges persist in their belief that a divorce will cure the "family problem." In a recent case in Brooklyn a judge told the defendant that if he did not fight the divorce action he would consider dismissing the indictment for attempted murder. This discussion took place after the prosecutor requested that bail be revoked because the defendant was telling his wife's friends that he was going to kill her. Even though the victim was in hiding with her 8-month-old child, these threats made her fearful. She had been beaten five times during her pregnancy and had been stabbed four times during the attack that was the basis of the indictment. Her husband's continued pursuit of her finally led the prosecutor to take her and her child into protective custody in a secured hotel used for endangered material witnesses.

When confronted with unmarried women assaulted by men friends or former husbands, in which case New York Criminal Court has always had exclusive jurisdiction, judges often dismiss complaints on the defendant's unenforceable promise to stay away from the victim. A man who had brutally beaten a former woman-friend so that she required hospitalization four times was released without penalty each time on his promise to leave the woman alone. The detective who had repeatedly arrested this cruel man was so frustrated with the court's refusal to sentence the man as a violent criminal, that he wrote an "Op. Ed." article, for the *New York Times*.¹²⁶ Thus, the repeat offender who is charged again has a record of acquittals and, if he were finally convicted, it would be as a first offender instead of as a recidivist.

Prosecutors are prohibited from appealing dismissals or dispositions of the types described above because they are technically on the merits. Without appellate review, judicial discretion is virtually unfettered. In New York, even the passage of strong new laws accompanied by much publicity did not quickly change judicial attitudes. Negotiation is the only tool and its success depends completely upon the good will and openmindedness of the judges. Decisions are not written when judges routinely dismiss wife beating charges. Only a campaign of citizen court watching can compile the

¹²⁶ Hart, "Thomas Promised That He Would," *New York Times*, June 10, 1975, "Op. Ed."

data to prove judicial practices and note the kind of prejudiced remarks often heard from judges. Attempts to change judicial practices will indeed prove the most difficult.

Several simple reforms could be made immediately. Pretrial release on recognizance and release on bail should be conditioned upon the defendant's staying away from his wife, her place of residence, work, or school. Communicating with the children should be by telephone or letter, and visiting should be away from their mother's home. In cases in which the children were also victims, the court should deny the defendant any contact with the children. Upon conviction for a first offense, a sentence of probation could be similarly conditioned. Although courts have this inherent power, judges fail to exercise it. Prosecutors should repeatedly seek these conditions as a way of educating judges. The New York State Legislature expressly gave judges the authority to condition pretrial release and sentences of probation so that battered wives are not compelled to live with their assailants pending trial for criminal assault or harassment. Violations of the conditions should be punished by revocation of the release.

Police, prosecutors, and judges treat battered wives with mistrust. Women seeking aid from the criminal justice system are regarded as inherently untruthful, as though they were trying to misuse the courts to achieve an illegitimate purpose. Women must be treated with the same respect and belief accorded to men in courts. Battered wives should be believed to the same extent as male victims of crime. Now that the extent and seriousness of wife beating is becoming known, battered wives can be recognized as the experts that they are with respect to their husbands' capacity for physical violence and emotional torture. As the courts have ceased their former abuse of rape victims, they must reform their treatment of battered wives.

Spouse Murder

There were 2,359 spouse murders in 1975 reported in the FBI *Uniform Crime Reports*. This was 11.5 percent of the total number of criminal homicides committed in that year. "Romantic triangles and lovers' quarrels" accounted for another 7.3 percent of the murders in 1975. The wife was the victim in 52 percent and the husband was the victim in 48 percent of the 1975 spouse murders.¹²⁷ More than 20 years earlier, the same proportion of wife to husband victims was found in a sample of 100 spouse murders; 53 wives and 47 husbands were slain.¹²⁸

¹²⁷ 1975 *Uniform Crime Reports* 18-19.

¹²⁸ Wolfgang, *Patterns in Criminal Homicide* 212 (1958).

A 1960s study of 200 women imprisoned in California found that 63 of these women had killed their husbands or "lovers."¹²⁹

Sociologist Marvin E. Wolfgang examined all of the 588 criminal homicides committed in Philadelphia between January 1, 1948, and December 31, 1952.¹³⁰ He found that when women killed men they always used weapons to overcome the males' greater strength, but that beating was the method men used to kill women in 23 percent of the cases in which women were the victims.¹³¹ Women were more likely than men to be killed where they lived. Of all women killed, 68 percent were killed in the home (as opposed to the street or public places), whereas 46 percent of all men killed were killed in the home. But 55 percent of those women killed in the home were killed in a home they shared with their assailant. In comparison, 35 percent of men killed in the home were killed in a home they shared with their assailant.¹³² Wives killed by their husbands constituted 41 percent of all women who were killed, although husbands killed by their wives make up "only 11 percent" of all men who were killed.¹³³

Wolfgang developed the concept of "victim-precipitated" homicides. He defines them as "those criminal homicides in which the victim is a direct, positive precipitator in the crime." The victim is the first person to use physical force against his eventual murderer.¹³⁴ Applying this analysis to spouse murders, he found that 28 husbands and 5 wives were victims of victim-precipitated homicides, but in non-victim-precipitated homicides, 19 victims were husbands while 48 were wives.¹³⁵ These factors had an effect on convictions and sentences of spouse murders. More husbands than wives were found guilty. Wives were acquitted in 34 percent of the cases, but husbands were acquitted in only 4 percent. Husbands were convicted of more serious degrees of homicide than were wives. None of the wives but one-third of the husbands were convicted of first-degree murder.¹³⁶ (See table 1.)

This differential treatment was based on the differences in the actions of the defendants and their victims.

Close examination of these mate slayings reveals, however, that it is not necessarily true that the courts treated wives with unjustifiably greater leniency than they did husbands, for in 28

¹²⁹ Ward *et al.*, "Crimes of Violence by Women," in 13 *Crimes of Violence* 868 (Staff Report, U.S. National Commission on the Causes and Prevention of Violence [1970] (Hereafter, "13 *Crimes of Violence*").

¹³⁰ Wolfgang at 15.

¹³¹ *Id.* 85-87, 215-16.

¹³² *Id.* 123.

¹³³ *Id.* 213.

¹³⁴ *Id.* 252.

¹³⁵ *Id.* 260.

¹³⁶ *Id.* 217.

TABLE 1

	Husband	Wife	Total
First degree murder	10	—	10
Second degree murder	10	4	14
Voluntary manslaughter	10	15	25
Involuntary manslaughter	4	7	11
Total	34	26	60

	Husband	Wife	Total
Guilty	34	26	60
Not guilty	2	16	18
Nolle prosequi	2	2	4
Pending	3	2	5
Suicide	10	1	11
Died before trial	1	—	1
Fugitive	1	—	1
Total	53	47	100

Source: Marvin E. Wolfgang, *Patterns in Criminal Homicide* 216 (1958).

cases of female defendants, the husband had strongly provoked his wife to attack, and, although she was not exonerated on grounds of self-defense, there had been sufficient provocation by the husband (as victim) to reduce the seriousness of her offense. In contrast, provocation recognized by the courts occurred in only 5 cases in which husbands killed their wives.¹³⁷

The motives for spouse murders are often veiled behind the police use of the label "domestic dispute." Wolfgang relied upon the police designations of "domestic quarrel," and "jealousy," "altercation," and argument "over money." He noted that these were the reasons for 80 percent of all criminal homicides.¹³⁸ Wilt and Bannon reviewed the offenders' statements to obtain more depth than the motives ascribed by the police. They tried to find the conflict that immediately preceded each homicide, the conflict history of victim and offender, the sex and parental role concepts, and the economic role concepts of the parties. There were 57 spouse murders among the 294 conflict-motivated homicides they studied. The most frequently recurring (53

¹³⁷ *Id.* 217; Danyluk and Herbert, "Killer of Husband Spared by Weeping Judge," *New York Daily News*, Dec. 17, 1976, p. 7, col. 4.

¹³⁸ Wolfgang at 324.

cases), immediately precipitating pattern was the verbal challenge between husband and wife that developed into physical conflict ending in murder. In 32 of these cases the victim was the first to make a threat to kill, which led the offender to get a weapon. In the other 21 cases resulting from this pattern, the offender started the argument and had a weapon from the beginning of the conflict. The offenders in this group intended serious harm or murder from the outset of the fight.¹³⁹ The discussion of conflict histories includes the spouse murder cases in the broader category of 90 family killings. There were 62 of these cases that were preceded by histories of frequent arguments and/or physical fights by the offender with the victim, or with the victim and others.¹⁴⁰

Wilt and Bannon analyzed the way the victim and offender perceived their sex roles. In 21 cases husbands insulted their wives and then physically attacked them. These men "indicated to their wives that they should accept their husband's insults passively."¹⁴¹ Husbands ordered their wives to do something for them and then began either shouting at or beating their wives for not performing the task satisfactorily in 18 other cases. Fatal conflicts were precipitated in 13 instances by men insulting their wives, and then telling their wives they deserved to be killed or threatening to kill their wives. In three cases the wife insulted her husband in the presence of others. The husband reacted by physically attacking his wife, "indicating that she was not going to 'get away with' that sort of behavior." In two instances women insulted and then physically attacked their husbands when there were objections to the insults. Wilt and Bannon concluded that these cases were examples of one spouse defining the other "as an object of personal property and acting on the basis of that definition." Their investigation showed that the husbands acted this way toward their wives much more frequently than did the wives toward their husbands (55 times for the husbands, compared to 5 for the wives).¹⁴²

It appears from the studies conducted by Wolfgang and by Wilt and Bannon, and from other research, that wives murder their husbands after abuse by the husbands. During 1976, 40 percent of the 132 women detained in Cook County jail on charges of killing their male partners had been assaulted several times by the men they killed.¹⁴³ The superintendent of the Illinois State prison for women estimates

¹³⁹ Wilt and Bannon in *Domestic Violence and the Police* 37.

¹⁴⁰ *Id.* 39.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ "Study of Female Killers Finds 40% Were Abused," "Around the Nation," *New York Times*, Dec. 20, 1977, p. 20, col. 8.

that one-third of the women in her custody convicted for killing their husbands or lovers had been beaten by those men.¹⁴⁴

The theory that women kill after being repeatedly beaten by their husbands is supported also by the recently publicized cases of Roxanne Gaye and Francine Hughes. Both of these women murdered their husbands after years of extreme physical and emotional abuse.¹⁴⁵ Gaye is in jail pending trial. Hughes is free, having been found not guilty by reason of temporary insanity. A Washington, D.C., physician's wife was twice found guilty of murder for shooting her husband who beat her while she was pregnant with their second child. An appeal is pending.¹⁴⁶ A Montana woman was acquitted of murdering her husband after suffering years of beatings by him. A New York City woman was sentenced to 5 years' probation after being found guilty of stabbing her husband who had beaten her frequently.¹⁴⁷ All of these women had children under 18 years of age.

Spouse murders have a greater social and economic cost than other homicides because the incarceration of the offenders makes orphans of their children.¹⁴⁸ A study of women in prison for murdering their husbands or companions should inquire into the history of their relationship with their victim and who is caring for and supporting their children. This could document the hidden social and economic costs of the orphaned children of battered wives, as well as the potentially lethal consequences of wife beating.

Definitions of self-defense and victim provocation are being expanded to provide the basis for acquittal and light sentences when husband murders are committed by wives who have been the victims of years of wife beating. A wife's conviction for murdering her husband was reversed because the trial court failed to charge the jury that the defendant had no duty to retreat from an assailant in her own home.¹⁴⁹ These defenses raise difficult problems for a society that seeks to deter murder by making it unrewarding and unnecessary. Is someone who has killed a danger to society as one who lacks impulse control or as a model of permissible antisocial behavior? Is the punishment to be tailored depending upon the circumstances of the homicide? If the answer to the first question is, not always, and to the second question, yes, then the next problem is to define the mitigating

¹⁴⁴ As related in an interview with Candice Wayne, Esq., Dec. 5, 1977.

¹⁴⁵ Cook, "Battered Wife Campaign Focusing on Women Charged with Murder," *New York Times*, Aug. 12, 1977, p. B3, col. 5; Jacoby, "Hers," *New York Times*, Dec. 1, 1977, p. C2, col. 1, discuss the Gay and Hughes cases, respectively.

¹⁴⁶ *United States v. Ibtamas*, Appeal #12614, United States Court of Appeals, D.C. Circuit.

¹⁴⁷ *Danyluk and Herbert*, "Killer of Husband Spared by Weeping Judge," *supra*.

¹⁴⁸ cf. "Parents in Prison, Forgotten Children Find Home in School," *New York Times*, Nov. 17, 1977, p. 35, col. 1.

¹⁴⁹ *People v. Paxton*, 47 Mich. App. 144, 149, 209 N.W. 2d 251, 253-54 (1973).

circumstances so that the conflicting social goals of murder deterrence and individual safety are both advanced.

In the most extreme cases husbands have kept their wives and children prisoners, or have tracked their fleeing wives across the country to continue their assaults, or have made threats against the lives of their wives' parents or the children should the wives attempt to escape.¹⁵⁰ Wife beating takes place in the home the victim shares with her attacker.¹⁵¹ This frequently leaves the victim nowhere to go to escape from her husband's attacks, which she knows are increasing in frequency and severity. Finally, society has failed or refused to protect the battered wife or to restrain her attacker. Under these limited conditions, her act of murder could be held to be self-defense or to be prompted by mitigating provocation, without creating a danger to society.

Wife abuse entails not only extreme physical punishment, but extraordinary degradation of the woman.¹⁵² A person whose sense of self-worth has been destroyed in this way is not deterred by the probability of punishment for murder. She may believe that she is worthless and deserves to go to prison. She may see prison as better than her present existence with its constant brutality. The woman who suffers in this way may be considered to be temporarily insane and therefore not guilty of murder. Each case must be evaluated so that it is clear that these defenses will succeed only when escape is practically impossible, or the offender is not capable of knowing the meaning of her act.

Ward, Jackson, and Ward, who conducted the California women's prison study, drew two conclusions from their findings. The first is that "in order to prevent a major portion [one-third] of the criminal violence in which women engage, one would have to do something about unhappy [violent] marriages and love affairs." Secondly, they point out that there is a trend toward increased violence by women, which may be "accelerated as women become emancipated from traditional female role requirements."¹⁵³

These theories have grave implications for increases in spouse murder resulting from husbands treating wives as objects of property. The traditional role of wife as servant who may be chastised by her husband is being rejected by women. If women are unable to get help from society to extricate themselves from such violent relationships, or to restructure these relationships, they may increasingly turn to violence as the only apparent resolution. When ultimately lethal

¹⁵⁰ Martin, *Battered Wives*, 76-86; Eisenberg and Micklow, 3 *Women's Rights L. Rep.* 144-45.

¹⁵¹ Gelles, *The Violent Home*, 93-110.

¹⁵² Martin, *Battered Wives* 1-8, 76-86; Wilt and Bannon, *supra*, at 39-40; Eisenberg and Micklow, 3 *Women's Rights L. Rep.* 144-45.

¹⁵³ 13 *Crimes of Violence* 907.

confrontations take place between spouses, it has been shown that either party could become the victim.

Society has an obligation to make this type of murder unnecessary and to make the alternative of escape possible and rewarding. Meaningful responses to the needs of battered wives will save the lives of women and men. Studies have presented the patterns that precede spouse murder. Study is needed to determine the significant differences between those wife beating situations that result in murder and those that are ended by other means. The various methods of peaceful resolution should be analyzed to determine their frequency and their efficacy for the family members. The patterns of conduct and relationships present in the histories of each of the violent groups should be compared with those of families in which wife beating has not existed. From the results, conclusions could be reached about the types of services and intervention that bring about the most effective, peaceful end to wife beating and that may prevent family violence. Policies can then be designed that will make homicide an unnecessary means of ending wife beating and make life outside of prison satisfying enough to make murder unrewarding.

Criminal Statutes

The relationship of murder victim and offender are carefully recorded. Antecedent incidents of wife beating are, however, subsumed under the general categories of violent crimes and offenses variously denominated: attempted assault, simple assault; aggravated assault or assault and battery; attempted murder, assault with intent to maim, and murder; harassment; menacing; reckless endangerment; and criminal trespass. Commentators have noted that, because the relationship of victim and offender is recorded for murder only, the true extent of serious wife beating is hidden in the criminal assault arrests and convictions.¹⁵⁴

It has been suggested therefore that a mandatory registry of wife beating incidents similar to that used in child abuse cases be established. The record created would help identify repeat victims at an early stage and facilitate appropriate medical and police intervention. Enacting this proposal, however, would lead to violations of the civil liberties and civil rights of those women who are not willing to be identified as battered wives. Physicians making reports would violate the women's privilege of confidential communication with physicians

¹⁵⁴ Eisenberg and Micklow, 3 *Women's Rights L. Rep.* 140-41; Jackson, "In Search of Equal Protection for Battered Wives" 1-2; Martin, *Battered Wives* 10-11; 1975 *Uniform Crime Reports* 18-21. The United States National Commission on the Causes and Prevention of Violence conducted its own survey in 1967 to ascertain the relationship of victim and offender in aggravated assault cases. United States National Commission on the Causes and Prevention of Violence, Staff Report, 11 *Crimes of Violence* 206 (1970).

and the women's right to privacy. Compulsory reporting may discourage battered women from seeking emergency medical care. Although battered wives' alternatives are restricted by economic and social factors, they are not as helpless as battered children. Constitutional rights of due process and equal protection, freedom of expression (or silence), and privacy are antithetical to the notion that helping institutions should become the conservators of otherwise competent battered wives. The courts stand in *parens patriae* for children but not for adults. A voluntary registry for those women who request aid, in individual hospital emergency rooms and local police agencies, however, does not suffer from civil rights and civil liberties impediments.

Commentators generally agree that the existing criminal statutes are adequate to provide protection for battered wives.¹⁵⁵ Rather it is the police, prosecutor and judicial policies and practices of nonenforcement, coupled with careless referrals, and the difficulties in application of the law of arrest which create the problems for battered wives seeking protection.¹⁵⁶ Most jurisdictions prohibit police officers from making arrests for misdemeanors not committed in their presence. Arrests may be made for felonies, however, even though the officer did not witness the commission of the crime. The California felony wife beating statute enacted in 1945 permits an officer to make an arrest for an act of violence not committed in his presence even though such violence would not be a felony were the victim someone other than the assailant's wife (or child).¹⁵⁷

Elizabeth Truninger, in her analysis of legal remedies available to battered wives, states that medical evidence of injuries or visible bruises are required under caselaw to sustain a charge of felony wife beating. She found several weaknesses in the application of this statute. Police and prosecutors are unwilling to apply it because they are reluctant, based on a lesser degree of injury and intent, to make the felony charge permitted by this statute. They are concerned that the higher bail imposed in felony cases could result in prolonged pretrial detention and cause the family economic hardship. Truninger believes that the delay due to the indictment process might discourage wives from following through. She states that victims often fail to obtain medical treatment which would provide the evidence necessary to

¹⁵⁵ Eisenberg and Micklow, 3 *Women's Rights L. Rep.* 146-51; Jackson, "In Search of Equal Protection for Battered Wives" 1-2; Martin, *Battered Wives* 87-89, 100-01; Parnas, 1967 *Wis. L. Rev.* 955-60.

¹⁵⁶ Bruno v. Codd, Complaint, pp. 77-83; Eisenberg and Micklow, 3 *Women's Rights L. Rep.* 156-61; Martin, *Battered Wives* 90-92; Truninger, 23 *Hastings L.J.* 261-65, 270-76.

¹⁵⁷ Cal. Pen. Code §§273d, 240, 241, 242, 243, 245, 836.

prove the injuries at trial. She concludes, "this statute can provide little protection to the wife."¹⁵⁸

Truninger and the plaintiffs in *Bruno v. Codd*, the New York suit seeking an injunction against illegal and prejudicial police policies and practices, believe that the police should be required by statute or administrative regulation to advise battered women of their right to make a citizen's arrest when there is not sufficient basis for an arrest by police officers.¹⁵⁹ This common law right, which has been codified in most jurisdictions, could be a useful procedure for removing the wife beater from the family home for a few hours to enable the woman and children to escape. It may be the only practicable way to overcome the police practice of nonarrest and to provide protection in those cases in which the victim knows that the violence will continue after the police refuse to arrest. Another legislative proposal designed to mitigate the effects of police and prosecutor nonenforcement is requiring police officers to record the relationship of victim and assailant whenever there is an allegation of assault, and what the officer did in response. Finally, most analysts urge the expansion and simplification of civil injunctions as noncriminal remedies that are often effective in ending wife beating.¹⁶⁰

Civil Statutes and Judicial Interpretation

In most States civil injunctions or restraining orders against a spouse's violence are available only during the pendency of a matrimonial action.¹⁶¹ Violations of these orders are punishable by imprisonment for civil contempt of court. Eisenberg and Micklow and Martin discuss several weaknesses in this apparently satisfactory remedy. Police do not enforce these civil court orders. If a battered wife calls the police because her husband has beaten her, thereby also violating her restraining order, the police tell her to call her lawyer and refuse to arrest even for the crime of assault.¹⁶² Some lawyers do not request restraining orders because they believe this type of preliminary injunction is ineffective and impedes favorable financial settlement for the wife. Finally, judges are reluctant to order jail for contempt. One judge uses the technique of holding both the wife and husband in contempt when the wife complains of violations of the restraining order.¹⁶³ Truninger, commenting on this remedy, is critical of the technical paperwork requirements, which necessitate an

¹⁵⁸ Truninger, 23 *Hastings L.J.* 262-65.

¹⁵⁹ Truninger, 23 *Hastings L.J.* 276; *Bruno v. Codd*, Complaint, p. 98.

¹⁶⁰ Field and Field, 47 *Social Service Rev.* 237-39; Parnas, 9 *Crim. L. Bull.* 750-55; Truninger, 23 *Hastings L.J.* 273-74, 276.

¹⁶¹ Cal. Civ. Code §4359 (West Supp. 1971); Ann L. of Mass. C.208 (1975); Mich. GCR 723.3 (1964).

¹⁶² Eisenberg and Micklow, 3 *Women's Rights L. Rep.* 153-55; Martin, *Battered Wives* 105-09.

¹⁶³ Eisenberg and Micklow, 3 *Women's Rights L. Rep.* 153-55.

attorney, and the additional requirements of filing for marital dissolution.¹⁶⁴

Several States have enacted a form of plenary, civil injunction proceeding without the requirement of first commencing a divorce action. The injured spouse must establish that the other spouse has committed acts that would constitute a crime—harassment, menacing, attempted assault, or assault—by a preponderance of the evidence. Since the proceeding is civil in nature, it has this lower standard of proof and does not give the husband a criminal conviction record.

From September 1, 1962, to September 1, 1977, in New York State the Family Court had exclusive original jurisdiction over all crimes, other than attempted murder and murder, between family members residing in the same household.¹⁶⁵ Now there is concurrent jurisdiction exercised by the criminal courts and the Family Court and the victim selects the forum. Family Court may still issue orders of protection, which are civil injunctions that direct the respondent to cease his offensive conduct. They may also order the respondent to seek counselling, to move from the marital residence, grant one-party custody of the children, and set visitation conditions. Contempt is punishable by up to 6 months in civil jail, which could be served overnight and weekends to permit the offender to keep his job and support his family.¹⁶⁶ Because of possible imprisonment, even though there is no State prosecutor and the petitioner does not have a right to free counsel, the respondent has a statutory right to assigned counsel as in a criminal prosecution.¹⁶⁷ This is a procedural weakness that often prevents distressed and inarticulate women from obtaining relief. Both parties should have a right to counsel.

The purpose of the Family Court proceeding is to provide the victim with protection and to preserve the marriage. It provides a nonpunitive alternative to criminal prosecution and a basis for reconciliation of the parties. Unfortunately, this New York law applies only to those who are legally married or related by blood or affinity to the second degree, and are residing together.¹⁶⁸ *De facto* families, even those with children, were intentionally excluded by the legislature. There is no session of New York Family Court at night or on weekends. A woman attacked on Friday night must wait until Monday morning to commence a civil proceeding for an order of protection. If a woman elects to seek a criminal prosecution, she may not also request

¹⁶⁴ 23 *Hastings L.J.* 267-68.

¹⁶⁵ N.Y. Family Court Act §812 (McKinney 1977).

¹⁶⁶ N.Y. Family Court Act §846 (McKinney 1977).

¹⁶⁷ N.Y. Family Court Act §262 (McKinney 1977).

¹⁶⁸ McKinney, New York Sessions Laws 1977, ch. 449, Family Court Act §812, attached as appendix B.

an order of protection from Family Court, but may seek this relief in the criminal court.¹⁶⁹

Pennsylvania Act No. 218 of 1976, the "Protection from Abuse Act," does not have the limitations of its New York counterpart. Any "persons living as spouses, parents and children, or other persons related by consanguinity or affinity" may seek a protection order under this act.¹⁷⁰ Those who cohabit as though they were a family unit and those who are related even though they are not residing together may use this civil injunctive remedy.¹⁷¹ Jurisdiction over these injunctions was vested in the State court of general jurisdiction because of the power to grant the victim exclusive use of real property owned by the offender.¹⁷² Emergency relief may be granted by lower courts on weekends when the court of general jurisdiction is not in session.¹⁷³ The civil injunctive relief provided by this statute is in addition to any other civil or criminal remedy available under Pennsylvania laws.¹⁷⁴ A drafting oversight, which will be corrected, was the omission of a provision empowering the police to arrest for violation of protection orders.

Civil injunctions provide the wife who does not wish to have her husband prosecuted on criminal charges or to seek a divorce with an alternative remedy that may give her protection. A court order directing the offender not to strike, menace, harass, or recklessly endanger his wife will in most cases be sufficient to stop the attacks. Much of the effectiveness of such orders will depend upon the general public's knowledge that they are enforced by sentences for contempt. If the offensive conduct does not cease, or is resumed after a hiatus, then the victim may realize the need for the more drastic legal remedies of criminal prosecution or divorce. Thus, the injunctive remedy can be useful even when it is not successful in ending the violence.

Decisions interpreting cruelty divorce laws reveal the extent of judicial insensitivity to wife beating. Most States have no-fault divorce or dissolution of marriage, but apply previously established marital fault standards in determining custody, child support, alimony, property use, and property distribution. Michigan is a no-fault divorce jurisdiction in which fault is still assessed in deciding these collateral issues.¹⁷⁵ For this reason Eisenberg and Micklow analyzed the

¹⁶⁹ *Id.* Family Court Act §812; Criminal Procedure Law §530.11.

¹⁷⁰ Penn. Ac. No. 218 of 1976, §2 (hereafter "Act No. 218").

¹⁷¹ Act No. 218, §6, attached as appendix B.

¹⁷² Act No. 218, §2.

¹⁷³ Act No. 218, §8.

¹⁷⁴ Act No. 218, §9.

¹⁷⁵ *Kretzschmar v. Kretzschmar*, 48 Mich. App. 279, 285, 210 N.W.2d 352, 356-57 (1973).

Michigan cases construing physical and mental cruelty grounds prior to no fault.¹⁷⁶

The Michigan courts recognize defenses of provocation, recrimination, and condonation to a wife's allegation of physical cruelty. A wife was deemed to have provoked her husband's violence by refusing sexual relations, failing to prepare the children's breakfast, refusing to take her husband's business messages, and absenting herself from home overnight. The Michigan Court of Appeals held this course of mental cruelty by a wife was justifiable provocation of her husband's physical cruelty and therefore affirmed the trial court's dismissal of the wife's counterclaim for separate maintenance.¹⁷⁷

New York is one of the few remaining fault-only jurisdictions. Until 1976 case law required a "continuous course of cruel conduct" to sustain an action for divorce based upon "cruel and inhuman treatment."¹⁷⁸ Although the initial decision enunciating this requirement was in a case in which mental cruelty was alleged, this standard was later applied to a case in which two beatings were charged.¹⁷⁹ In *Echevarria v. Echevarria*, the trial court and four out of five intermediate appellate judges held that two beatings separated by an interval of 4 years did not satisfy the statutory standard of cruel and inhuman treatment that made it unsafe or improper for the wife to cohabit with her husband.¹⁸⁰

The plaintiff testified that her husband had beaten her just after the parties were married. He struck her repeatedly with his hands all over her face, head, and body. The second beating took place 4 years later. She testified that it was "much more cruel," made her fearful and nervous, and caused her to move out of the marital residence. Plaintiff's credibility was never in issue. Defendant did not deny the assaults; he stated only that he did not want a divorce. The trial court believed plaintiff's testimony, but held as a matter of law that she failed to present a *prima facie* case.¹⁸¹

The New York Court of Appeals unanimously reversed the lower courts, holding that one beating is sufficient basis for a divorce because it is comprised of a series of acts.¹⁸² Prior to *Echevarria*, there was no judicial statement of what was the minimum physical cruelty a woman had to suffer to have grounds for divorce and to be justified in leaving

¹⁷⁶ 3 *Women's Rights L. Rep.* 151.

¹⁷⁷ *Metcalf v. Metcalf*, 28 Mich. App. 442, 445-46, 184 N.W.2d 560, 562 (1970); 3 *Women's Rights L. Rep.* 151-53.

¹⁷⁸ *Rios v. Rios*, 34 A.D.2d 840 (1st Dep't., 1971).

¹⁷⁹ *Echevarria v. Echevarria*, 48 A.D.2d 681, 682 (2d Dept., 1975).

¹⁸⁰ *Id.*; N.Y. Domestic Relations Law §170 (McKinney 1977).

¹⁸¹ *Echevarria v. Echevarria*, 40 N.Y.2d 262 (1976).

¹⁸² *Id.*

her spouse. Cases had held that a single slap or shove were insufficient to entitle the recipient to a divorce.¹⁸³ Thus, the importance of the *Echevarria* decision lies in its recognition of a single beating as grounds for a cruelty divorce.

Even though the law is clear in New York, this one-beating standard is not always applied. A wife seeking to escape her husband's cruelty will have a difficult time in any State. Civil court calendar delays make it virtually impossible to get emergency relief. When temporary relief is granted, judges frequently refuse to "throw a man out of his house." So it is the wife who must leave. Many lawyers advise a battered wife client not to move from the marital residence because she could lose her property rights. Courts are intolerant of a woman who abandons her children. Regardless of the danger to her safety, if she leaves home without her children it will be difficult for her to win custody when she establishes a safe home of her own.

In fault-only jurisdictions, if she leaves before the beatings become frequent or serious, she may not have grounds for divorce. In States retaining fault defenses to alimony and distribution of property, a fleeing wife appears to have abandoned or deserted her husband. Proving the abandonment is easy: the wife left the marital home. Defending against it is difficult without corroboration of her testimony. Wives of professionals or businessmen have a hard time proving physical cruelty unless they have photographs, witnesses, or medical reports. Judges are deferential to and identify with high-status men. They do not believe wives who claim that these men have committed the "lower class" act of wife beating.¹⁸⁴

Crowded court calendars make the legal process work in favor of the husband who controls the family income and assets. Getting temporary alimony or maintenance and child support can take months, sometimes as long as the dissolution itself. A woman may be forced to stay with her husband during the divorce action, unless there is a relative willing to take her in with her children or a refuge for battered women. In community property States, the woman may be in no better financial position, because after the divorce or dissolution the litigation to define the community property can continue for years. The ultimate legal irony is that even when the battered wife gets an award for alimony and child support, it is usually too low for her to maintain herself and the children, and too many times it is not paid at all.

A 10-year study of court-ordered child support in an unidentified Wisconsin metropolitan county showed that only 38 percent of husbands fully complied with the child support provisions of divorce

¹⁸³ Rios, *supra*; Cinquemani v. Cinquemani, 42 A.D.2d 851 (2d Dep't., 1973); "Single Act as Basis of Divorce or Separation on Grounds of Cruelty," 7 A.L.R.3d 761.

¹⁸⁴ See Wells v. Wells, 6. Mich. App. 434, 149 N.W.2d 213, 214-15 (1967).

judgments less than 1 year old. Forty-two percent failed to make any payments in the first year after judgment. As the age of the judgment increased to 10 years, the number of fully compliant husbands dwindled to 13 percent, while the number of nonpaying husbands grew to 70 percent.¹⁸⁵

A current study of child support compliance in 10 Illinois urban and rural counties reveals that, of judgments entered in 1965, 56 percent were fully complied with and 20 percent were not at all complied with during the first year of the judgment. By the fifth year of the judgment, full compliance dropped to 37 percent and noncompliance rose to 33 percent. For judgments entered in 1970, there was full compliance in 43 percent and noncompliance in 33 percent of the cases during the first year. In the fifth year full compliance dropped to 18 percent and noncompliance rose to 65 percent.¹⁸⁶

Federal Government statistics on women's wages show that the earnings of all working women lagged 75 percent behind those of all working men in 1974. That year 53 percent of employed women earned less than \$7,000 while only 18 percent of working men earned less than \$7,000. Eighty-two percent of working women earned less than \$10,000 a year.¹⁸⁷ Because separated or divorced women cannot rely on continued payment of support and can find only low-paying employment, many battered wives stay with their husbands.

Some State welfare officials compound this economic pressure by refusing to give either emergency or permanent public assistance to married women whose husbands are willing and able to support them. Women with no assets or income of their own who have left their homes to escape from physical brutality are denied aid and told to return to their husbands. Last summer in two separate cases Brooklyn welfare department employees called husbands to ascertain if they were willing to support their wives. Both husbands said they were supporting their wives, so the welfare workers denied assistance and sent the women home. New Federal welfare regulations should be published clearly stating the welfare eligibility for battered wives and their children so that the States cannot continue to deny them assistance.

Many of these civil legal problems could be surmounted if there were adequate free legal counsel available for battered women. The Legal Services Corporation, created and funded by Congress, places low priority on family law and fails to recognize the emergency nature of battered wives' problems. Local offices handle many undefended

¹⁸⁵ K. Eckhardt, "Deviance, Visibility, and Legal Action: The Duty to Support," 15 *Social Problems* 470, 473-74 (1968).

¹⁸⁶ W. D. Johnson, "Child Support: Preventing Default," 16 *Conciliation Court Rev.* 27, 32 (June 1978).

¹⁸⁷ United States Department of Labor, *The Earnings Gap Between Women and Men* 1 (1976).

divorces, but they have long waiting lists and do not regard wife beating cases as requiring immediate, out-of-turn attention. The few battered women's law projects or special units devoted to women's issues are supported by private foundations and Comprehensive Education and Training Act Grants. The Litigation Coalition for Battered Women, composed of attorneys from three neighborhood legal service offices in New York City, was denied an ongoing "special needs grant" from Legal Services Region II. The coalition provides emergency individual as well as group representation to battered wives. The coalition represents the plaintiffs in *Bruno v. Codd*, provides legal assistance to two shelters, aids groups all over New York State seeking to form shelters, assists legislators in drafting innovative laws, and gives technical litigation assistance to groups throughout the country. The Corporation should allocate some of its increased funding to establish specialized units to represent battered wives in divorce and separation actions and in welfare cases.

Another possibility is to establish the right to counsel in divorce actions. States have exclusive control over the creation and dissolution of marriage.¹⁸⁸ Even though the State is not a direct participant in the divorce action, it exercises a greater degree of control than in any other civil dispute between private citizens. Unlike other controversies that may be settled, the dissolution of a marriage *must* be adjudicated.¹⁸⁹

Strict State control of this basic human relationship involving the parties' liberty and right of association raises divorce actions to a constitutional plane higher than that of other civil litigation and creates a right of access to the courts to commence a divorce action.¹⁹⁰ The United States Supreme Court has consistently recognized this extraordinary legal position of marriage and divorce.¹⁹¹ Divorce proceedings are technically complex, requiring the filing and service of summons, pleadings, and judgment, as well as testimony. When a judicial proceeding is technical and its possible consequences are serious, the Court has held that due process includes the right to counsel even though the proceeding is civil.¹⁹² Thus, the nature of the proceeding and its impact on individual rights gives rise to the right to counsel in divorce actions. This theory has not, however, found favor in the State courts.¹⁹³

¹⁸⁸ *Boddie v. Connecticut*, 401 U.S. 371, 376-77 (1971); *United States v. Kras*, 409 U.S. 434, 445 (1973).

¹⁸⁹ New York Constitution, art. 1, §9, for example, requires that a marriage can be dissolved by due judicial proceedings only.

¹⁹⁰ *Boddie v. Connecticut*, 401 U.S. at 383.

¹⁹¹ *Ortwein v. Schwab*, 410 U.S. 656, 658-59 (1973); *U.S. v. Kras*, 409 U.S. at 444-45; *Loving v. Virginia*, 388 U.S. 1 (1967); *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

¹⁹² *In re Gault*, 387 U.S. 1 (1966); *see Argersinger v. Hamlin*, 407 U.S. 25 (1972).

¹⁹³ *Matter of Smiley and Monroe*, 36 N.Y.2d 433 (1975).

Another important step is to enact new support and alimony enforcement remedies. All support orders should from their inception be paid by payroll deduction order. This way support payments will be assured for as long as the man is employed, and payroll deduction orders will not stigmatize a man as one who has previously defaulted. In addition, men will be saved the emotionally stressful task of writing checks to their former wives.

Initial support orders should provide for payments retroactive to the date of commencement of the support proceeding. This relief would destroy the current advantage gained from delaying a hearing and thereby the court's determination of the prospective support award. Emergency public assistance grants could be repaid from the retroactive portion of the award.

Defaults in support payments are not penalized. The nonpaying spouse has interest-free use of the money he should be paying for the support of his wife and children. Those dependent on the payments often pay interest on money borrowed for living expenses. Arrears owed should be awarded with interest, counsel fees, and court costs to deter support default and to make the recipients whole.

The moving party in a support enforcement action may recover only the arrears accrued at the time of the commencement of the proceeding. Arrears that accrue after the commencement of the enforcement action must be subject to a subsequent proceeding. The spouse who should be receiving support payments must bear the expense and burden of successive actions to recover all that is due under a support and alimony judgment. Statutory provision should be made for amendment of the wife's papers on the date of the hearing of submission of the enforcement application to include any arrears accumulated since commencement of the action. This would also save court time by reducing the number of enforcement proceedings. Of course, husbands have always had the right to present evidence of payments made up to and including the date of the hearing.

A last suggestion for facilitating support enforcement is that attachment of the defaulting spouse's property be mandatory when arrears exceed \$1,000 and a payroll deduction order is impracticable. Men with valuable assets but little or no visible income from employment should not be insulated from judgments for arrears. Judges are reluctant to use their contempt powers to sentence a man to "alimony jail." Contempt is a questionable weapon, of limited success in getting the payments needed by the family. Attachment of assets has the advantage of producing income from sale or redemption. If battered wives can rely on support and alimony payments, they may become freer to leave husbands who fail or refuse to cease their assaults.

Finally, the most important aid to battered wives is a shelter where they can safely stay with their children. Shelters provide constantly available emergency refuge. Residents give emotional support by believing and understanding the problems of women fleeing violent husbands. Staff assist the women in obtaining welfare assistance, legal representation, and medical treatment. Publicity about the existence of shelters gives battered wives knowledge that they have alternatives available in times of emergency. From this position of safety and strength, a woman can determine if she wants to try to reconcile with her husband or if she wants to start a new life on her own.

The immediate practical solutions provided by shelters, however, have the effect of clouding the civil rights violations inherent in this response. Shelters are protective prisons where the victims and their children hide from the offender. Battered wives and their children are deprived of their liberty and their property without due process of law. They lose their home, clothing, furniture, toys, and schoolbooks. The wife beater remains at liberty to enjoy the comforts of his home and his usual associations. The offender, who almost always is male, receives all the constitutional and statutory protections the legal system has devised, including the right to counsel and speedy trial. But the female victim has no protection. She is left without counsel to perhaps ultimately get some much delayed relief. Because the legal system cannot effectively restrain the offender, it violates the rights of the victim and her children.

Unfortunately, these basic defects in the way victims are treated will take a long time to correct. While that slow process is proceeding, battered wives need the immediate protection of shelters. For this reason shelters must receive public funding. They cannot feed and house women and children without the certainty of a permanent income. Shelter funding must be a major priority on the Federal and State levels.

Conclusion

The traditional nonresponse policies and practices of institutions called upon to assist and protect battered wives has effectively deprived them of their civil rights and civil liberties. The failure to intervene must be reviewed in light of new information and reformed. The extraordinary position of battered wives should lead to a policy of especially swift and positive intervention.

The Federal Government is in the best position to effect attitude and policy changes with respect to wife beating, as it has with racial discrimination. Training programs for police, prosecutors, and judges should emphasize the seriousness of wife beating and the need for a forceful criminal justice response to provide both protection for the

victim and correction of the offender. The Federal Bureau of Investigation should reassess its position that murder in the home is beyond the crime prevention capabilities of the police and look for new techniques to meet the challenge of stopping family violence. The Department of Justice should investigate and sue police and prosecutors who arbitrarily discriminate against battered wives. *Amicus* briefs should be filed in support of battered wives' suits against police and prosecutors in State courts.

Shelter and legal assistance programs should receive direct Federal funding and matching grants with State governments to provide safety and obtain civil legal remedies for battered wives. Federal welfare, housing, and job programs should issue regulations and guidelines to assure that women receive their full share of public benefit programs. Research and demonstration projects should be undertaken to learn the most effective police, prosecutor, and judicial response to family violence. Comparison studies should be conducted to ascertain the differences among families in which there is no wife beating and those in which violence was resolved peacefully and families in which violence was ended by homicide or serious assault. From the results of these studies, programs and policies can be formulated that will facilitate the peaceful resolution of family violence and foster the conditions in which nonviolent family relationships develop.

Appendix A

Profile of a Poor Battered Woman

The following figures were compiled from statistics kept by Brooklyn Legal Services Corp. B.

They reflect a poor to lower middle class urban population.

The statistics were compiled during the period from March 1976 to May 1977.

Rioghan M. Kirchner

Appendix A continued

TOTAL CLIENTS—700
WOMEN—600
MEN—100

OF THE 600 WOMEN

327 or 55% were black
 157 or 26% were Puerto Rican
 108 or 18% were white
 8 or 1% were others

Total number of women beaten during marriage was 357 or 59.5%.

OF THE BEATEN WOMEN

192 or 59% of all black women were beaten
 85 or 54% of all Puerto Rican women were beaten
 77 or 71% of all white women were beaten
 3 or 38% of all other women were beaten

AGE

The beaten women, as a group, were on the average younger than the nonbeaten women.

	Beaten	Nonbeaten
Average age at marriage	21.2 yrs.	22.2 yrs.
Average age at divorce	30.5 yrs.	33 yrs.
Average length of marriage	9 yrs.	10.6 yrs.
Average length of cohabitation	6 yrs.	5 yrs.
Average length of separation prior to divorce	6.9 yrs.	5 yrs.

EDUCATION

	Battered	Nonbattered
Average	10.74 yrs.	9.25 yrs.
Up to 9th grade	72 or 20%	80 or 33%
Some high school	132 or 37%	77 or 32%
Completed High School	105 or 29%	63 or 26%
Completed 1st yr. college	21 or 6%	10 or 4%
Completed 2nd yr. college	19 or 5%	5 or 2%
Completed 3rd yr. college	3 or 1%	4 or 2%
Completed 4th yr. college	5 or 1.4%	3 or 1%
Completed grad. school	1 or 3%	1 or .4%

WHITE WOMEN

	Average	Mode
Total group had	12.48 yrs. ed.	12 yrs. ed.
Beaten women had	12.92 yrs. ed.	12 yrs. ed.
Nonbeaten women had	11.41 yrs. ed.	12 yrs. ed.

BLACK WOMEN

Total group had	10.87 yrs. ed.	12 yrs. ed.
Beaten women had	11.11 yrs. ed.	12 yrs. ed.
Nonbeaten women had	10.53 yrs. ed.	10 yrs. ed.

PUERTO RICAN WOMEN

Total group had	9.09 yrs. ed.	10 & 12 yrs. ed.
Beaten women had	9.8 yrs. ed.	10 yrs. ed.
Nonbeaten women had	8.27 yrs. ed.	12 yrs. ed.

OTHER WOMEN

Total group had	6.6 yrs. ed.
Beaten women had	6.5 yrs. ed.
Nonbeaten women had	6.7 yrs. ed.

The educational level of the women seems to have a direct correlation to violence. White women had the highest average educational level; they also had the highest percentage of beaten women. Beaten white women had a higher educational level than that of those who were not beaten. The same holds true for the black and Puerto Rican women. "Other" women do not follow—probably because of their diverse backgrounds and the small number in the sample.

CHILDREN

Battered	Nonbattered
Average 2.2 children	2.4 children
1.78 children of the marriage	1.65 children of the marriage
0.04 out of wedlock	0.66 out of wedlock
10% had no children	14% had no children

PREGNANCY

Battered	Nonbattered
17% had children immediately prior to marriage	12% had children immediately prior to marriage
33% pregnant at time of marriage	25% pregnant at time of marriage
19% became pregnant within 1 year of marriage	12% became pregnant within 1 year of marriage

TOTAL

69% pregnant within 1 year prior to or after marriage	59% pregnant within 1 year prior to or after marriage
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26 or 26% of men did not finalize divorce
 138 or 23% of women did not finalize divorce
 23.5% of battered women did not finalize divorce
 22% of nonbattered women did not finalize divorce

BATTERED WOMEN WHO COMPLETED DIVORCE

BATTERED WOMEN WHO DID NOT COMPLETE DIVORCE

	Av.	Mode		Av.	Mode
Age of marriage	21	18	Age at marriage	20	19
Age of divorce	31	26	Age of application for divorce	29	24, 26, 29 & 31
Length of marriage	9	5	Length of marriage	8.4	3
Length of cohabitation	6	2	Length of cohabitation	5.4	3
Length of separation before divorce	2.8	0-1	Length of separation before divorce application	3.4	0-1

Appendix B

Official Advance Copy of Statute Enacted at 1976 Session

No. 218

AN ACT

SB 1243

Relating to abuse of adults and children by a person who resides with them; and providing for remedies and procedures.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known and may be cited as the "Protection From Abuse Act."

Section 2. Definitions.—As used in this act:

"Abuse" means the occurrence of one or more of the following acts between family or household members who reside together:

(i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon.

(ii) Placing by physical menace another in fear of imminent serious bodily injury.

(iii) Sexually abusing minor children as defined pursuant to the act of November 26, 1975 (No.124), known as the "Child Protective Services Law."

"Adult" means any person 18 years of age or older.

"Court" shall mean the court of common pleas.

"Family or household members" means spouses, persons living as spouses, parents and children, or other persons related by consanguinity or affinity.

Terms not otherwise defined by this act shall have the meaning given to them by the Crimes Code.

Section 3. Jurisdiction.—The court shall have jurisdiction over all proceedings under this act. The plaintiff's right to relief under this act shall not be affected by his or her leaving the residence or household to avoid further abuse.

Section 4. Commencement of Proceeding.—A person may seek relief under this act for himself or herself, or any parent or adult household member may seek relief under this act on behalf of minor children by filing a petition with the court alleging abuse by the defendant.

Section 5. Hearings.—(a) Within ten days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court shall advise the defendant of his right to be represented by counsel.

(b) The court may enter such temporary orders as it deems necessary to protect the plaintiff or minor children from abuse, upon good cause shown in an ex-parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

Section 6. Relief.—(a) The court shall be empowered to grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children, which may include:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children.

(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties.

(3) When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff, or by consent agreement allowing the defendant to provide suitable, alternate housing.

(4) Awarding temporary custody of and/or establishing temporary visitation rights with regard to minor children.

(b) Any protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(c) No order or agreement under this act shall in any manner affect title to any real property.

Section 7. Notification.—A copy of any order under this act shall be issued to the plaintiff, the defendant and the police department with appropriate jurisdiction to enforce the order or agreement.

Section 8. Emergency Relief.—(a) When the court is unavailable from the close of business at the end of the week to the resumption of business at the beginning of the week a petition may be filed before a district justice who may grant relief in accordance with section 6(a),(2) or (3) if the district justice deems it necessary to protect the plaintiff or minor children from abuse, upon good cause shown in an ex-parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.

(b) Any order issued under subsection (a) shall expire as of the resumption of business of the court at the beginning of the week or within 72 hours, whichever occurs sooner; at which time, the plaintiff may seek a temporary order from the court.

(c) Any order issued under this section and any documentation in support thereof shall be immediately certified to the court. Such certification to the court shall have the effect of commencing proceedings under section 4 and invoking the other provisions of this act.

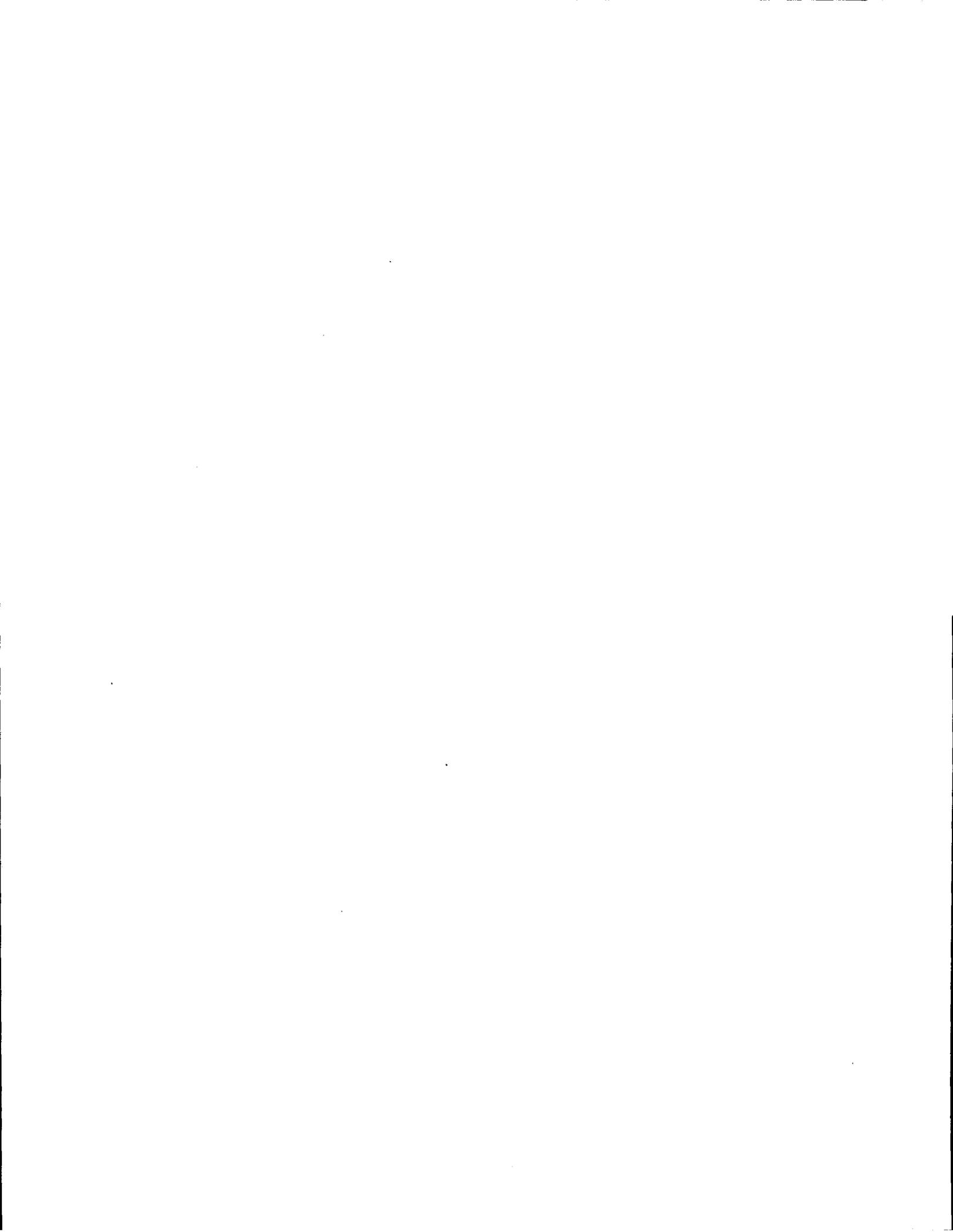
Section 9. Procedure.—Any proceeding under this act shall be in accordance with the Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.

Section 10. Contempt.—Upon violation of a protection order or a court approved consent agreement the court may hold the defendant in contempt and punish him in accordance with law.

Section 11. Effective Date.—This act shall take effect in 60 days.

APPROVED—The 7th day of October, A. D. 1976.

MILTON J. SHAPP



END