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BATTERED WOMEN: A PROBLEM NOT YET RESOLVED

by

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'Domestic violence', also called 'battering' and spouse abuse', refers to assaultive behavior involving adults who are married, cohabitating, or have an ongoing or prior relationship.(1) From a well-conducted survey done in 1975, by the Justice Department based on a national probability sample of more than 2,000 families, researchers estimated that in the previous year over 1.7 million Americans had faced a spouse wielding a knife or gun; and over 2 million had experienced a severe beating at the hands of their spouse.(2)

A Justice Department study held between 1973 and 1981 found that 4.1 million homes were struck by some form of family violence.(3) Domestic violence is the most un-reported crime in the United States. According to a University Family Research Lab study, more than 1.8 million women will be punched, kicked or assaulted with a weapon in 1989, and 6.25 million will be slapped or shoved. "That is assuming everyone we interviewed told all," said lab director, Murray A. Straus. "In my judgement those figures should be doubled."(4) Domestic violence is becoming more publicized because of the women's liberal rights movement and the fact that violence of any form is no longer tolerated by society as a whole.

There are many myths about domestic violence that need to be demolished in our society in order to help decrease spouse-abuse. Many of these myths influence our judicial system. Our criminal justice system is only beginning to

realize that it has a greater responsibility to reduce domestic violence by eliminating the myths and resulting flaws now present in our judicial system. The purpose for this paper is to rectify some of the myths, to investigate how the system and society deals with domestic violence, and to review new ideas in the field. I will accomplish this by presenting the results of extensive outside reading on the subject. I shall also incorporate experiences and knowledge obtained as a result of my internship at Southeastern Family Violence Center, a shelter for battered women located in Robeson County. To the opinions of experts in the field, I shall add data obtained from my independent research utilizing the records from the clerk of courts office for Robeson County.

Domestic violence is psychologically much harder on the victim than public violence. Private violence leaves victims feeling more hurt and humiliated than outraged. The beating from one's husband is bad enough to endure but it is more shameful to have it revealed publicly. Home is meant to be life's one warm, safe place. It is a special betrayal to be beaten there by one's loved one; "acts of violence within the family victimize people where they are most vulnerable in their homes, where they expect nurture, love and protection." (5) Domestic violence has more effect on society "since the family is the primary environment in which we learn to relate to others; [therefore], violence in the family does have consequences for the larger society." (6)

Abuse has been accepted in the past. A woman was a piece of property belonging to the man, and he had the right

to keep her in her place. At one time, man literally took his wife and ruled her by physical force. The classic cartoon of the caveman dragging a woman off by the head of her hair depicts a scene that is anthropologically accurate. It is theorized that women chose to remain with one man in hopes that he would protect her from being beaten and raped by the brutes. (7)

The "English Rule of Thumb" referred to a husband's right to "chastise his wife with a whip or rattan no bigger than his thumb, in order to enforce the salutary restraints of domestic discipline." (8) This idea prevailed until the mid-1800s.

In the United States, the physical abuse of a wife was legal. As late as 1824, in *Bradley v. State-Mississippi*, the Supreme Court held that a husband should be permitted to "moderately chastise his wife without subjecting himself to vexations and prosecutions for assault and battery, resulting in the discredit and shame of all parties concerned." (9) In 1864, a North Carolina court, *THE STATE V. BLACK*, ruled that wife beating was a matter best left out of the courts. (10) Finally in 1871, *FULGHAM V. STATE*, an Alabama court ruled that men no longer had any right to beat their wives. (11) A few years later, Pennsylvania proposed legislation making spouse-abuse a crime punishable by 30 lashes, but the bill did not pass. In 1882, Maryland enacted a law to punish wife-beaters by giving them forty lashes with a whip or a year in jail. (12) Slowly as women earned the right to vote, legislation against battering also passed in many states, but still many laws were not consistent. Legislation established that a man had

no right to beat his wife, but it was also held that a woman could not bring a suit against her husband for beating her. (13) In other words, a man could be punished by the courts for beating a woman, but a woman could not carry a man to court until midway through the twentieth century.

In 1979, the North Carolina General Assembly passed Domestic Violence Legislation G. S. Chapter 50B. It was enacted to provide immediate remedies for the victims of domestic violence prior to the trial. It was designed to protect past or present spouses, or those persons of the opposite sex living together as though married, from bodily injury or fear of imminent serious bodily injury by threat of force. This legislation provides clarification about available remedies and does not replace the more permanent remedies resulting from trial. Aspects of the legislation focus on emergency situations and getting people apart for safety. It is not for a final resolution of the relationship. (14)

"The Domestic Violence Law focuses on the following areas: civil remedies; law enforcement response and assistance; a new criminal statute; and the addition of new bail and pretrial release conditions. The law reads:

CIVIL REMEDIES:

1. Emergency relief is available to a party if he or she believes there is a danger of serious and immediate injury. A hearing in district court must be held within ten days after a motion is filed for emergency relief.
2. Prior to the hearing, temporary orders may be made (by the district court judge) on good cause shown, to protect the victim or minor children from immediate and present danger.
3. By means of a protective order or a court approved consent agreement, the court may

direct that a party refrain from any acts of domestic violence or provide such other relief as is appropriate. A protective order or consent agreement may be valid for up to one year. A copy of the order or agreement is to be retained by the police department in the city where the victim resides. If there is no police department available, then a copy of the order is to be sent to the sheriff of the county in which the victim resides.

4. Any party to the action may file a motion for contempt for violation of the protective order or consent agreement. A law enforcement officer has probable cause to believe that the person has violated a court order if the officer is presented with or made aware of the fact that such an order exists.

LAW ENFORCEMENT RESPONSE AND ASSISTANCE

1. The victim of domestic violence may request the assistance of a local law enforcement agency in an emergency situation. However, the agency need not respond to multiple complaints from the same complainant when multiple complaints have been made within a forty-eight hour period, upon a determination by the agency that assistance is not needed.
2. The responding law enforcement officer may advise the complainant and may also transport the complainant to other appropriate facilities and accompany the complainant to his/her residence to remove needed personal items. A law enforcement officer is not subject to criminal or civil liability in rendering any reasonable assistance in the emergency situation.

A NEW CRIMINAL STATUTE (DOMESTIC CRIMINAL TRESPASS)

1. A new section has been added: Under this statute, a person who enters the premises of a present or former spouse (or a person with whom he/she has lived as if married) after being forbidden to do so, or remains after being ordered to leave, is guilty of a misdemeanor. Punishment may include a fine of up to \$500, six months imprisonment, or both. No person shall be charged under this statute if he/she has entered the premises pursuant to a court order or a written separation agreement.
2. A newly created subparagraph provides that a law enforcement officer may arrest without a warrant any person who commits any assault, communicates a threat, or violates the new criminal trespass statute.

BAIL AND PRETRIAL RELEASE CONDITIONS

1. Finally, a new section was added entitled, "Crimes of Domestic Violence: Bail and Pretrial Release." This statute provides that once a defendant is taken into custody and charged

with assault, communicating a threat, domestic criminal trespass, or violation of an order entered under Chapter 50B, the judicial official must make determinations as to: 1) whether the immediate release of the defendant will pose a danger of injury or intimidation to the victim or another; and 2) whether the execution of an appearance bond will not assure that such injury or intimidation will not occur. If the judicial official determines that the release of the defendant will pose a threat to the safety and well-being of the victim or any other person, the defendant may be held in custody for a reasonable period of time. If the defendant is released, certain listed conditions may be imposed. Along with these conditions, the judicial official may also require that the defendant post a secured appearance bond.

This statute is not intended as a means to detain a defendant until trial or to deny bail. It provides the one additional step of detention for 'a reasonable period of time' if the judicial official determines that an appearance bond will not prevent further violence or retaliation." (15)

Criminal Domestic Law remedies include: 'Assault on a female charges' if a male abuser over 18 years of age assaults a female; 'Domestic Criminal Trespass' provides each party to prohibit the other from each other's party; and, 'Communicating threats' in which a person is threatened with physical harm.(16)

Battering tends to be a repetitive process from generation to generation and understanding this process helps to understand the people involved in the violent relationships. Violence can be likened to the spread of a plague. Once the violence becomes routine in a household there is often no stopping the spread of viciousness. The husband may beat the wife; the wife may beat the children. The bigger siblings learn that it is alright to beat the younger ones, and the "family pet may be the ultimate recipient of violence."(17)

A wife-beater is often depicted as a lower class, beer-drinking, undershirt-wearing, Stanley Kowalski brute. Nowadays, he is also probably black, on welfare, and living in a teeming ghetto.(18) None of which is valid. Wife-beaters come in all sizes, shapes and colors and from both sides of the tracks. They are of all ages, communities, income levels, races, religions, employment situations and marital status. The occupations of the husbands studied include high government officials, members of the armed forces, businessmen, mechanics, policemen, truck drivers, blue-collar workers, the unemployed, physicians and lawyers.(19) David Adams, one of the founders of Emerge, a Boston counseling service for male batterers, says that his clients "are from all walks of life and ethnic and racial backgrounds. We've had a number of doctors, and we've had rabbis and ministers and some men who served time in prison for killing previous spouses and are back here because they're battering in a new relationship. We have a group now with two lawyers in it."(20)

Domestic violence often involves a long history of abuse. Because of the parties' relationship, a domestic violence offender typically has more access to the victim and is able to intimidate and manipulate her.(21)

Battering continues today because of two basic reasons. First, violence is a very effective means of control; the victim often spends a great deal of energy trying to avoid subsequent assaults. Second, men batter women because they can; because in most cases, no one has told the batterer to stop.(22) Violence is learned. Not only do batterers learn that violence is an acceptable way to solve problems but

that it works and "the combination of successful resolution of a problem plus the reinforcement of feeling good act as powerful motivators for the continued use of violence."(23)

Violence starts at childhood. A batterer usually comes from a home where he was beaten or his mother was beaten. As part of community education, Brenda Ivey, SFVC director, speaks to prisoners from the local prison at the Pre-Release Assessment Center about domestic violence. I attended a session and while listening to the prisoners, I heard the majority of them admit that they were from violent homes. A number of men stated they had physically abused women, but every man brought up in a violent home will not abuse women. While admitting that violence had adversely affected him, one prisoner confessed that he could not bring himself to hit a woman after watching his mother being beaten.

People believe that "battering is caused by an inability to express anger or handle stress."(24) Anger is associated with domestic violence, but it is not a cause. If battering was based solely on the fact that the batterer could not control his anger, then the victim would not be his only target. The batterer would lash out at co-workers, bosses, and strangers.

Batterers have a history of beating previous mates. Men who batter their wives tend to see change in their lives as threats. They become withdrawn and/or isolated due to the loss of a job or other personal problems. A lot of women are beaten when they are pregnant. The batterer sees the woman's pregnancy as a threat to his everyday life, because it is a change. These violent men usually lash out at

children, animals, or things without provocation. His aggressive acts tend to become increasingly physical.(25)

Battering husbands are described as angry, resentful, suspicious, competitive, moody and tense. They have about them an aura of helplessness, fear, jealousy, and frustration.(26) Studies of wife-beaters consistently reveal that these men feel inadequate about various aspects of their lives, particularly their jobs. Wife-beaters are often educational dropouts. Feelings of inadequacy are frequently intensified if the man's wife has more education, comes from a 'better family' or earns more money than her husband.(27) Dr Richard F. Lyles, director of the Crisis Center in Atlanta, Georgia, says that a major reason that men beat their wives is to "compensate for his own feelings of being less than an adequate male."(28)

Mental illness is sometimes blamed. The man is aggressive, dangerous and deeply immature. Most researchers do not believe that mental illness affects the majority of wife-beaters. Only 10 % of men are violent because of mental disturbances, character disorders, chemical imbalances, brain tumors, high blood sugar, or consumption of amphetamines.(29)

Another myth about domestic violence is that it is usually "precipitated by the victim's provoking statements or actions."(30) There are those people who believe that the women deserve their beatings; they ask for it by screaming or attacking their abuser. This is normally not the case. Usually a woman keeps very quiet because she is not sure of what will set the man off. A man could start beating if she cooked chicken instead of steak, or if he does not like what she is

wearing.

Alcohol and drugs are another explanation. Forty to ninety-five percent of spouse-abuse cases are estimated to be directly linked to alcohol.(31) In the vast majority of cases, most husbands have some sort of an alcoholic problem. Alcohol and family-violence are strongly connected, but alcohol is not the cause. Some men drink because they want to beat their wives. Some people act violently because they are drunk or they get drunk in order to have implicit social permission to act violently.(32) If alcohol or drugs are removed from the situation, a sober batterer remains.

One thing a person must understand is that in most situations, there is not consistent beating. The batterer can frequently become loving, kind, and contrite for a period of time following an attack. The attacker often knows that he has gone too far and tries to convince the victim that it is not going to happen again. The man usually brings his wife flowers or takes her out to eat after a violent fight. The following patterns are similar to Jekyll and Hyde.(33)

There are a lot of complications in a violent relationship. Some people like to blame the man for his abusive actions, while others blame the woman, saying that she asked for the abuse. One needs to examine both sides of the situation without placing blame on either party.

A battered woman's experience can be likened to that of a hostage ,a prisoner of war, or thought-reform camps. Random violence and isolation from relatives and friends are used against her. If she tries to take action against her abuser, the violence is increased.(34) The greatest fear that a

battered woman has is the enormous power that her mate holds over her life. One-fourth of all homicides and serious assaults are domestic.(35) Police records indicate that thousands of women are killed and millions are severely injured by their husbands or boyfriends yearly. The FBI reports that a woman is beaten in the home every 12 seconds.(36)

Childhood is a critical stage in everyone's development. People are born as someone to be shaped and formed by their surroundings. The environment that a person grows up in influences his/her morals and expectancy of the surrounding world. Physical violence is something that some women learn from childhood. Some grow up in a family where the mother or the children are beaten. Some females are literally trained by their parents to become battered wives. Young girls may grow up thinking that men are supposed to hit their wives. Some believe they deserve to be hit, need to be hit. Sixty-six percent of women who saw their parents exchange blows are victims of violent attacks by their husbands.(37) Some actually believe that hitting is an acceptable expression of love, or that a violent relationship is better than no relationship at all. There was a victim at the Southeastern Family Violence Center who said that as a child she was told, "I am beating you because I love you!" When she was married, her husband did the same thing. She grew accustomed to that and soon began to believe that if she was not beaten, then she was not loved.

People believe that the woman who is beaten is passive or masochistic and enjoys it. Some people believe that

battered women choose to stay in their violent situations because of their 'masochistic' personalities. People overlook the fact that you can love someone who beats you. That is not masochistic, it is a fact of life. (38)

There are many different reasons a woman stays in a violent situation. These women have low self-esteem, and a feeling of powerlessness. According to Terry Davidson, author of THE CONJUGAL CRIME, "the victims may exemplify society's old image of ideal womanhood—submissive, religious, nonassertive, accepting of whatever the husband's life brings...The husband comes first for these women, who perceive themselves as having little control over many areas of their own lives." (39) Battered women often view themselves and all women as inferior to men, have a tendency to cope with anger either by denying it or turning it inward, and suffer from depression, psychosomatic illnesses, and feelings of guilt. (40)

A lot of women blame themselves for the batterer's abusive actions. Battering may be interpreted by the woman as an indicator, not of her husband's problem, but as her failure as a wife. Some women feel that it is shameful to admit they do not have a good marriage which is caused by the "basic problem that society still makes women feel that if they have failed at marriage, they have failed as women." (41) Mortified, ashamed, humiliated, a woman may then remain silent about her abuse fearing most of all that she is ultimately to blame. Some women believe that it is their fault and that the kids will be taken away from them. Depression slows down a battered woman's ability to escape the battering. (42) A

victim said "the physical abuse escalated during the marriage in frequency and seriousness over time and so did my feelings of guilt, of shame about it, of dependence on the relationship and a deperate desire to be a better person so he would not beat me." (43)

A surprising number of women have a simple answer for why they stay with a man who abuses them- I love him. They love him and hope that he will change. They are mixed up with love, hope and loyalty. Many women are ambivalent, feeling both hate and love. They are often confused about what to do, and take no action. (44) They are usually more concerned for the children than themselves. Some women stay in their situation because they wish that it would not happen again. Some end up looking outward for help. Sometimes the help is denied and she either resigns herself to the situation or pulls herself together and starts making plans for a future life that includes only herself and her children. (45)

Usually the women are trapped. Some do not have the economic ability to stand on their own. They are economic prisoners and dependent on their husbands or boyfriends. Their love for their children play a big part in how women deal with the situations. They feel that they need the children's father to support the kids or they believe that mothers with kids find it difficult to get jobs. Some women truly believe that they cannot make it on their own; others believe that divorces are stigmatized by the community. The women may feel totally dependent on their husbands and feel they have nowhere else to go. A lot of women have a big fear of being alone, not being able to handle things, of having to

take total responsibility.(46)

Many times, a women gets the nerve to leave the relationship, but all too often they return. These battered women return to the relationship because the husband has apologized and promised never to strike again. They sometimes return out of concern for the children or worry over financial difficulties. Some come to a resignation to the 'inevitability' of violence. Sometimes the batterer will threaten other people and the woman will return because of her fear for the safety of others. Other women have a fear of being outside the home or of losing the status of 'wife'. Some women return because they are just plain scared.(47)

A decision not to return to the marriage comes about after there is a change in the woman's attitude toward her husband. One of the major reasons a battered woman leaves her husband involves a major attitude change about herself. Some women see their violent worlds as normal. If she thinks her life is no different than anyone else's, she is not apt to take steps to change it even though it is painful and unpleasant.(48) A woman finally decides to leave when she realizes that her world is not normal and there is a solution to her situation. The main solution is that the wife has to come to the understanding with her husband that he does not have the right to use physical force to have his way or to punish her. The critical point for a battered woman to remember is that it is up to her to initiate the action that will end her abuse.

There are those women who take drastic measures in order to escape their abuser. They reach the proverbial 'end

of their rope'. The criminal justice system is confronted with a difficult dilemma. Driven to the brink of despair, it is not uncommon for a woman to take a gun or a butcher knife to her husband.(49) The motive most often associated with spouse murder is self-defense or desperation culminating a period of abuse from a husband or father.(50)

The "battered woman who kills her mate is so consumed with helplessness, hopelessness, despair, low self-esteem, and a distorted conception of reality that she fails to think logically, to look beyond a horrible situation for which there seems to be no reasonable solution, and thus she seeks an unreasonable one."(51) Ultimately for most women their explosion of violence and escape occurs as a result of an "inability to express aggressive or hostile feelings after a long bout of aggressive, often violent victimiaztion."(52) All too often the killing is the result not so much of a clear case of self-defense as an "accumulation of suffering."(53) Some plead temporary insanity or impaired mental state. Others simply admit their guilt, while others plead self-defense.

The law states that in order to plead self-defense, the victim must have resorted to killing as a last resort. Society generally finds it difficult to feel sorry for battered women because people believe that abused-women have a choice of whether or not to leave the situation, but that is because society does not fully understand the dynamics of an abusive relationship. In a Kansis City study, police had been called once in eighty-five percent of spouse homicides. In fifty percent of the homicides, the police had been called

five or more times.(54)

In 1961, in California, PEOPLE V. JONES, a woman who had suffered a number of beatings from her husband was attacked again. She took a gun to defend herself, shot, and killed him. Under California law, it was justifiable homicide to kill someone while resisting a felony. Mrs. Jones was convicted.(55) In 1983, in England, a battered wife who killed her brutal husband was given a suspended sentence after pleading to manslaughter on the grounds of diminished responsibility and provocation. She had taken refuge in a shelter for battered women and had endured years of beatings and sexual abuse from her husband.(56) In Atkinson County, Georgia, Elaine Mullins, a battered wife of 13 years, was found guilty of murdering her husband. At the time he was killed, he was in the process of battering his wife. She received a sentence of life imprisonment. One juror said, "We couldn't let her go. It would have been open season on husbands in Atkinson County."(57) In some states, there have been those that successfully used self-defense as a defense, others have used deminished capacity as a defense. A prime example of a battered woman that the system came to understand and acquit is Francine Hughes. Her ex-husband continued to beat her for years after their divorce, and eventually she could find no alternative and killed him. She was acquitted.(58)

The woman usually faces difficult odds. She is often faced with an unsympathetic public, jury, and certainly the prosecutor. She may have to serve time in prison or in an psychiatric facility. If acquitted, she must still make a

life for herself and in many cases her children, who also suffered in one way or another. She must come to terms with the fact that for whatever reasons, she took another person's life; something that few can ever overcome. (59)

Hopefully a woman decides to leave her violent situation before she does anything drastic, and she usually becomes involved in the criminal justice system in another way. The criminal justice system has not yet found the proper way to handle the increasingly recognized social problem of men abusing women. Despite the fact that there is legal recognition of women's rights to physical safety and of the state's duty to restrain and punish her assailant through the criminal process, evidence indicates that in many jurisdictions the laws available for the protection of all people do not protect a woman involved with her assailant in a prior or existing relationship. (60) Violence against the person is usually handled through criminal law, but until recently most domestic violence cases entering the criminal justice system were either screened out or automatically sent through family courts. Such actions reflected society's view that domestic violence was a private matter. Society believed that the officials were acting 'in the best interest of the family' by not interfering. People felt that a man who assaults a stranger in a public place needed to be held accountable for his actions. There are those people who believe that the same attack on his wife in his own home is somehow different. Some people believe that the privacy of one's family and home should not be intruded upon by outsiders. They believe that the family's problems should be

worked out on their own. The criminal justice officials are increasingly realizing that spouse-abuse is a crime and should be treated as such.(61) In many jurisdictions, a person assaulting a stranger is treated more severely than a batterer.

The criminal justice process starts with the police; therefore, they play an important role in how spouse-abuse is dealt with. Traditionally, the police have viewed most incidents of spouse-abuse as private matters that are best resolved by the parties themselves without resorting to the legal process. The police have been known not to press charges even though the woman requests them. In the past, police were generally reluctant to respond to domestic disturbance calls, which are viewed as dangerous to themselves and difficult to resolve. Some police departments do require officers to respond to such calls, while other departments assign the calls low priority.(62)

Police usually tell the woman how much trouble it is to file charges. Many police officers attempt to dissuade wives from filing assault charges and many wives do not see an attack by a husband as a case of legal assault.(63) Because of the fear of retaliation by the husband, the matter is very important "when the victim calls the police, [because] her essential concern is protection. She wants the law to stop her husband from beating her. She is demanding her rights as a citizen to protection from violent force. She is also demanding justice. She wants the person who has committed an assault on her body taken away, punished, and prevented from assaulting her again."(64)

Traditionally, the police view the matter from an entirely different perspective. From their point of view, their job is to quiet things down and leave, to avoid making an arrest, to keep the matter unreported, and to settle the problem without resorting to criminal charges, the courts, or lawyers. (65)

Police believe that domestic calls are very dangerous. This belief is based on old statistics that say police are frequently killed on 'disturbance calls.' About 1985, the FBI provided a breakdown that showed most police killed on disturbance calls were dealing with bar fights. A much smaller number of police were actually killed in family quarrels than that which was believed. There were even less killed during them than the number of officers shot accidentally by other police officers. (66)

The police have legal authority to make an arrest only if they witness the incident or if they have obtained an arrest warrant from a judge. This is because the law classifies domestic assaults as misdemeanors. Felonies are the only offenses in which the police may make an arrest without a warrant or witnessing the alleged criminal act. Only in 28 states are police allowed to make arrests in misdemeanor domestic violence cases in which they did not witness the disputed conduct. (67) In some states, they are now required to arrest suspects of domestic violence, provided they have probable cause. (68)

Police often do not make arrests when they have the authority because they are afraid it will just cause more violence. Moreover, the police often do not believe that

arrest is appropriate handling of a domestic assailant, especially if there is evidence of the victim's verbal provocation of the assault.(69) Recent research supports the arrest of batterers is the most appropriate police response to such incidents.(70) A former batterer admitted, "It was such an extreme experience having actually been arrested and dealt with rather harshly...that I sought help."(71)

The next step in the justice system is dealing with the prosecutor. Prosecutors enjoy wide discretion to determine which criminal cases will be prosecuted and they often accord low priority to cases involving domestic violence. Some prosecutors hesitate to file charges against abusers, based on the belief that domestic violence is a noncriminal, personal matter. There are some prosecutors who have treated the victims of spouse abuse as if they were accused of criminal conduct, rather than victims. Some prosecutors believe that abuse victims will not cooperate with the prosecution of their cases; therefore, they frequently discourage the victims from using the criminal justice system.(72)

In some states, the woman may have to wait a certain period of time to file charges. The system is designed to wear her down. There is a test for worthiness of prosecution: 1) frequency, 2) severity, and 3) did the victim require medical treatment?(73)

This is a typical rundown on how they wear her down. A woman has to go to a complaint center, where she is first interviewed by an assistant district attorney. She is then referred to a social worker who decides if counseling

services would help. An interview with a detective who insists on medical evidence of injury is next. She has to see a doctor. Throughout this whole ordeal, the woman is run all over town and quite often she does not have any money or anybody to look after the children; therefore, she has to haul the babies with her. Finally, after all this, the prosecutor tells her that he is not going to issue a warrant but he will give her a peace bond.(74) A lot of help that is. A city prosecutor admitted, "When I look back at how it used to be with battered women, I can see that it was a self-fulfilling prophesy. We'd file if she really wanted us to, but we knew that she'd drop charges later...we may have even told her so. Then we sent her back home, often back to her often back to her abuser, without any support or protection at all. Sure enough, she wouldn't follow through and we'd think, 'It's always the same with these cases.'"(75)

A case that gets through the prosecutor is dealt with by the court. Most cases of spouse-abuse never reach courts of general jurisdiction. Entry-level courts generally resolve them. When abusers are convicted, judges seldom impose sanctions commensurate with the sanctions for similar violence against a stranger. Many judges approach abuse cases as isolated incidents of aberrant behavior between consenting adults rather than as examples of widespread social problem.(76)

During the pretrial period, the court can protect the victim by restricting the defendant's access to her as a condition of pretrial release. In most jurisdictions, a probation agency is responsible for investigating defendant's

eligibility for release on recognizance, and the need to attach specific conditions to pretrial release. During the investigation, the probation officer should contact the victim and gather information on her particular safety needs.(77) Protection orders can be issued to help protect the victim. The importance of enforcing protection orders cannot be overemphasized.(78) An unenforceable order is worse than none at all, because it gives the victim a false sense of protection.

Some judges are reluctant to issue a protection order that prohibits a man from his own home, fearing that the order violates his constitutional rights. However, state supreme courts that have addressed this issue have found that such conditions do not violate due process.(79) Some offenders comply with the no-contact orders and court-ordered counseling because they do not want to serve time in jail. Others readily violate these orders, especially if they have gotten away with violating them before.(80)

Fines can be imposed in accordance with state statutes. Sentences involving probation with a suspended jail term are very common in domestic violence cases. Incarceration is appropriate and necessary in more serious cases. Restitution can be considered in communities where there are such programs available.(81) Responding to the amount of sentence involved in domestic violence cases, an attorney remarked that "sentences in this area are very much lighter than comparable situations of stranger violence. It's very discouraging when everything works all the way to the end, and then the sentence is so light that it's, in a sense, a

final way of condoning the violence." (82)

In the past courts often imposed lesser sanctions for domestic violence compared with violent crimes involving strangers. In general, most experts agree that sentences should be aimed at holding offenders accountable, ending abusive behavior, and meeting the needs of victims and family members. (83)

State legislation plays a critical role in the fight against domestic violence. Increasingly, legislators are enacting laws aimed at improving the entire community's response to domestic violence, and "the value of domestic violence legislation cannot be overstated; such laws attest to the importance of domestic violence as a societal problem, allocate necessary resources, and set certain parameters for an appropriate community approach on domestic violence incidents. (84)

In all agencies, it is important to do the following: designate domestic violence cases as high-priority; establish detailed, written policies and procedures for handling domestic violence; ensure employees familiarity and compliance with written policies; coordinate with other criminal justice agencies; collect separate data on domestic violence incidents; sensitize staff members to the subtle ways in which their language and attitudes affect the parties in domestic violence cases; address special problems faced by non-English speaking women and women of color; and, coordinate with other community agencies and professionals that handle domestic violence cases. (85) Many of these policies are just being implemented in many jurisdictions.

A lot of "agencies within the justice system have begun to recognize their duty to provide legal remedies in domestic violence cases. Assault, battery, homicide, weapon use, kidnapping, and unlawful imprisonment are some of the most frequent crimes of domestic violence. More and more justice officials are realizing that a domestic violence incident constitutes a crime and, as with other crimes, the responsibility for taking legal action against an offender should rest with the justice system rather than the victim. When justice agencies deliver a clear message that domestic violence is unacceptable behavior that will not be tolerated, this view is encouraged throughout society."(86)

In many States, legislation has been enacted to reform the entire community response to domestic violence, forcing justice agencies to modify past policies. For example, laws are changed to define the boundaries of proper police arrest practices, mandate data collection and reporting, require domestic violence training programs, provide for various forms of victim assistance, authorize the use of civil orders for protection, and increase the penalties for repeat offenders. These and other provisions have been included in a single domestic violence statute in some cases, or in two or more separate pieces of legislation.(87)

Deputy Chief James Bannon of the Detroit Police Department says that "the real reason that police avoid domestic violence cases to the greatest extent possible is because we do not know how to cope with them."(88) In the past, police were given minimal training in domestic violence. Police training on domestic violent procedure should include

departmental procedures and understanding the dynamics of spouse abuse. Officer's attitudes toward these crimes should also be addressed. They are often frustrated when a woman is unwilling to cooperate, but that is because they do not understand the enormous pressures that a battered woman is under. (89) An officer needs to be alert to what kind of alternatives are available to the woman.

Reuben M. Greenberg, Chief of Police in Charleston, South Carolina, has implemented some significant changes in his department. Chief Greenberg does not keep any officer on his force who is a batterer, because it is hypocritical to send an officer to work in domestic violence cases who is himself a batterer. A police officer in Charleston is allowed to arrest a man for assault on a female without the woman filing charges. Another change in the procedure is that the police will go into the man's place of work or public area to arrest him for assaulting a female. This causes great humiliation for the batterer who believed that no one knew about his actions at home. There has been a case where the police has gone into the hospital to arrest a doctor. (90)

Some prosecutors are attempting to adopt some policy improvements for handling domestic violence cases. Improvements include: establishing domestic violence units in large offices to permit vertical prosecution and the development of prosecutor expertise on domestic violence cases; reviewing police reports on a regular basis to identify domestic violence incidents and conduct outreach to victims; developing objective filing and charging policies; and working with victim advocates, who can offer support and protection to

victims and maximize the likelihood that victims will cooperate with prosecutors. (91)

Judges are important in shaping the community's response to domestic violence. Judges can propose changes in legislation and help educate the public about the criminal aspects of domestic violence. Judges have the power to demand information from law enforcement agencies if a large number of domestic violence cases are showing up in the courtroom. Judges can communicate with city or state government officials about the need to devote more resources to the problem. (92)

Judges determine the kind of attention domestic violence cases will receive from probation agencies inside their own courtroom. They can give a strong signal that the probation agreements must be monitored closely in these cases. In some jurisdictions, the judge can set counseling as a part of the probation agreement. (93)

A study showed that judges are critical in deterring future violence by using judicial warnings and/or lectures to defendants concerning the inappropriateness and seriousness of their violent behavior. Secondly, judges occasionally counseled victims by telling them that they should not tolerate violent abuse, by suggesting counseling programs. (94)

Judges report that battered women are more willing to cooperate and testify when they receive information, emotional support, community referrals, and trial preparation from victim advocates who are assigned to each case. (95)

Local shelters provide a lot of help that the victims need in

these areas. There are a estimated 1,000 shelters nationwide. (96)

If a battered woman refuses to testify the judge could find her in contempt of court and impose a disposition that addresses her needs, such as participation in a battered women's support group. In some cities, a man who assaults a woman must be arrested and prosecuted even if the victim changes her mind about the whole thing. In Anchorage, Alaska, a woman who declines to testify against her husband may be fined or jailed. (97)

There have been over one-hundred specially designed programs for batterers implemented across the country. The programs are working more and more with local court systems. Experts agree that batterers tend to deny or minimize the seriousness of their violent behavior and are unwilling to accept responsibility for their actions. They typically refuse voluntary treatment; therefore, these mandatory programs can do some good. The primary goal of the batterer programs is to stop the violent behavior. (98)

Dr. Murray Strauss of the University of New Hampshire developed a violence scale of the forms of violence used in violent situations. It includes the following:

- 1) Throwing things
- 2) Pushing, shoving, or grabbing
- 3) Slapping
- 4) Kicking, biting, or hitting with fist
- 5) Beating up
- 9) Threatening with knife or gun
- 10) Using knife or gun (99)

A prosecutor could use this scale to help him evaluate the seriousness of the assault. This would help him decide what kind of sentence he/she should seek.

Most of my reading dealt with domestic violence on a national or state scale. However, during my internship at Southeastern Family Violence Center, I found that the tragedy of battered women exists here in our own neighborhood. This was most dramatically demonstrated in my experiences at the shelter. One of the reasons I choose the shelter as my placement was to help with this paper; another reason is because I felt the need as a criminal justice major to come to a better understanding of the dynamics of domestic violence.

While working at the shelter, I talked with the other interns and employees. Listening to them discuss various victims in Robeson County reinforced the research I did for my thesis. They discussed the fact that there are various external reasons for victims and batterers to stay in their relationships. I had always known that there was domestic violence in my community, but I did not realize the extent.

Southeastern Family Violence Center has a two-fold purpose for Robeson County. The shelter wants to provide education concerning the problem of domestic violence. The other purpose is to provide direct services to persons experiencing domestic violence. There is a 24-hour crisis line(739-8622) for victims to call and receive help. Immediate shelter is provided to those who need it. A victim usually stays until other housing can be provided or she decides to return to her spouse. The shelter has three

large bedrooms upstairs, and downstairs, and a large living room, dining room, and kitchen. Emergency transportation is available for those who need it. Someone can pick them up and transfer them to a safe place, whether it is a friend's or relative's home, or the shelter.

Crisis counseling is available to help a victim decide what to do when there is a crisis. The shelter will provide the victim with a court advocate. Information and referrals are available at all times. Individual counseling as well as support groups are available for the abused while counseling for batterers can also be provided.

The shelter is helping those that reach out for help in Robeson County, but it has not been able to reach them all. There were plenty of people who have gone through the judicial system that the shelter has not reached. Most of the magistrates have been a great help, sending victims to the shelter when they believe that they are in need of assistance. There are individual private citizens who are constantly donating clothes and other items to the shelter but, the shelter does not receive all the support that it could use. The shelter is a non-profit organization funded by United Way and donations. Community education is very important to the shelter because without the community, it would not survive.

An effort is underway to set up a batterer's program that would cooperate with the local law enforcement system. Much like the alcohol assessment program is part of probation for a person charged with "driving under the influence," a similar program could be designed for batterers. The program could be part of the probation requirements.

Going to the courthouse, I listened to various 'assault on a female' cases. I was surprised to hear the judgements because they were generally not harsh enough for the crime. A man pleaded guilty to a charge of 'assault on a female.' He was given 181 days in jail; a suspended sentence with two years on unsupervised probation; fined one-hundred dollars plus court cost; and restitution of twenty-two dollars for doctor bills. Later the same day, a man driving with revoked license was given the same sentence. The judges that I heard treated the victims in a cordial manner. There were a few cases in which the complainants wanted to drop the charges. Before the judges would allow them to do so, they made sure that the women had not been threatened. One judge gave a defendant a lecture on how much trouble he would be in if he returned to his court room again.

I used the records of past cases on microfisch in the courthouse. Using those files, I investigated how many times there were 'assault on a female charges' filed in Robeson County. As of February, 1989, there were still 238 cases pending; these dated from December 31, 1988 back to 1982. Out of the 238, ninety-one of the warrants went unserved. Eighty-four of the warrants came back returned-unserved. The fact that so many warrants were not actually served shows unfavorable light on our local system. The question arises as to how much effort was put forth to serve these warrants.

In the month of January, 1989, there were fifty-three cases still pending from that month alone. There were twenty-three cases actually disposed of in January.

Extrapolated to year's end, there will be at least nine hundred 'assault on a female' charges filed in the year 1989 for Robeson County alone. Realizing that only a minority of assaults are reported, the total number is indeed high.

Investigating the cases of murder and manslaughter that occurred in Robeson County, I attempted to find what number had domestic violence involved. First, I found the case numbers of all the cases on the microfisch available in the clerk's office. Then, I proceeded to look up each individual file and eliminate those where the defendant was of the same sex as the victim. Next, I tried to find out the facts of the cases and came to a stand still. The only way to find out the facts was to talk to the court clerk that was present during each trial. Time did not permit me to proceed, but I would estimate at least one-third of the cases had domestic violence involved.

Domestic violence is in a sense new to society. For most of mankind's history, the terms 'battered woman,' or 'spouse abuse' did not exist to explain broken arms, busted lips, black eyes or bruises on a woman as a result of her husband's anger. There is also the psychological damage. To live in fear or worse, confuse fear with love was a tragedy kept hidden within the walls of 'home' until recently. Progress has and is being made, but pain and fear are real and so is domestic violence. Battered women remain a problem not understood -- or resolved.

ENDNOTES

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