



U.S. Department of Justice

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Violence Against Women Act Initiatives

The Clinton Administration has been steadfast in its commitment to ending violence against women and children. As a result, we have been able to lay a strong foundation for implementing the 1994 Violence Against Women Act (VAWA) and related laws. In the nearly 3 years since VAWA was enacted, we have made tremendous forward movement in enforcing its criminal provisions, strengthening its legal protections (with antistalking and firearms legislation, for example), helping states build law enforcement and prosecution infrastructures, and providing helplines to victims.

VIOLENCE AGAINST WOMEN ACT GRANTS: In 3 fiscal years (beginning FY 1995) the Violence Against Women Grants Office has announced more than \$275 million in S*T*O*P grants to help states, territories, and Tribal jurisdictions restructure their criminal justice response to sexual and domestic violence. Additional funds will enable states to intensify intervention efforts in rural jurisdictions and address child victimization (\$7 million). Another \$28 million in grants to states was awarded to promote mandatory arrest or proarrest policies.

The Office of Community Oriented Policing Services (COPS) awarded more than \$46 million to police departments working in partnership with service providers and advocates to combat domestic violence. 336 departments received COPS funding.

NATIONAL DOMESTIC VIOLENCE HOTLINE: The domestic violence hotline opened February 21, 1996. By the end of its 1st year, the hotline had received more than 87,000 calls for help from residents of all 50 states, the District of Columbia, Commonwealth of Puerto Rico, and U.S. Virgin Islands. Roughly 47 percent of callers said they were victims of domestic abuse. The hotline is operated under a grant from HHS by the Texas Council on Domestic Violence.

SEX OFFENDER REGISTRY: In April 1996, the Department published implementation guidelines for the 1994 Jacob Wetterling Act. Under the Wetterling law (which passed as part of the 1994 Crime Bill) states are offered a financial incentive to establish sex offender registries that meet minimum national standards. They also must (1) register all convicted offenders with a designated local law enforcement agency, (2) ensure registries are kept

current by periodically verifying offenders' addresses, (3) notify local and state law enforcement when a registrant moves to another town or state, and (4) set more stringent registration requirements for a group of highly dangerous offenders known as, "sexually violent predators."

In May 1996, the President signed Megan's Law to amend the community notification provisions of Wetterling, requiring states to release information as necessary for the protection of the public. The change is often referred to "as making notification mandatory."

On October 3, 1996 the President signed the Pam Lychner Act, which requires the Attorney General to establish a national sex offender database at the FBI, makes the FBI responsible for offender registration in states with systems that do not meet "minimally sufficient" standards, and amends the Wetterling Act to prescribe more stringent registration requirements in some areas. The FBI has built an Interim National Sex Offender Registry. Revised guidelines for Megan's Law and Wetterling guidance for states are forthcoming.

FULL FAITH AND CREDIT: Under the Full Faith and Credit provision of VAWA, all states, territories, and Tribal jurisdictions must give full faith and credit to domestic violence protection orders issued in other states, territories, and Tribal jurisdictions.

The Department of Justice is providing technical assistance to states on setting up automated systems that can link with the FBI's NCIC to give quick access about protection orders to officers on patrol. Approximately 20 states have systems that can connect with the FBI's. The FBI has set up a file for protection orders that will be open the first week in May 1997.

The Justice Department is also funding a pilot project in Kentucky that can serve as a testing ground for implementation of the Full Faith and Credit provision. Kentucky was chosen because of its progressive work in battling violence against women and its geographic boundaries shared with seven states.

PROSECUTIONS UNDER VAWA: Close to 40 cases have been brought under VAWA new criminal laws, including United States v. Rita Glutzman, which ended in the first conviction of a woman under VAWA.

LEGISLATIVE UPDATE:

Section 922 (g) (9) of the U.S. Code 18 amends the 1968 Gun Control Act to prohibit anyone convicted of a misdemeanor domestic violence charge from possessing firearms. Section 922 (d) (9) adds domestic violence convictions to the "Brady checklist" and makes criminal

the knowing transfer of a firearm to a person convicted of a qualifying domestic violence misdemeanor.

The first case under the new statute is in the Northern District of Iowa. The defendant faces charges for possession of a firearm after a domestic violence misdemeanor conviction.

The Interstate Stalking and Punishment Act of 1996 makes it a federal crime to stalk or harass someone across state lines or within special maritime and territorial jurisdictions regardless of whether the stalker has committed an act of violence, has a protection order against him or her, or is the spouse or partner of the victim.

The Family Violence Provisions included in the August 22nd Welfare legislation gives states the option to screen welfare recipients for domestic abuse; refer them to counseling or supportive services; and temporarily waive--if the state chooses--any program requirements that would keep recipients from escaping violence or would unfairly penalize them. The Justice Department and HHS have a Presidential directive to prepare guidance for states. States have until July 1997 to submit their plans to HHS, including whether or not they will adopt the Family Violence Provision.

Immigration Legislation. On September 30, 1996 the President signed legislation to ensure that immigrant women and children who are victims of domestic violence are eligible for vital public health services and are not denied services due to changes in deeming rules. The Administration also succeeded in removing provisions from the bill that would subject battered immigrants to deportation for receiving these services. The bill also makes battered immigrants eligible for cash assistance and Medicaid if the states exercise their option under the welfare law.

IMMIGRANT SELF-PETITIONING RULES were published last spring to allow abused spouses and children of citizens or legal permanent residents to self-petition to become legal permanent residents.

THE ADVISORY COUNCIL ON VIOLENCE AGAINST WOMEN: The Council was chartered July 13, 1995 and is cochaired by the Attorney General and Secretary of HHS. The Council has 47 members representing all segments of society. There is strong support for renewing their charter. During its first term, the Council conducted tremendous community outreach including preparation of "A Checklist for Communities" and creation of the Workplace Resource Center.

Intramural Agency Projects:

VAWO has been working with the Criminal Division and the Civil Rights Division to evaluate the Organization of American States' Convention on Violence Against Women and to gain the Attorney General's approval for the U.S. to become a signatory to the treaty.

United Nations Interface:

The largest and most sustained international initiative of the VAWO relates to Departmental follow-up on issues raised at the U.N. Fourth World Conference held in Beijing, China in September of 1996.

Bonnie Campbell was a member of the U.S. delegation to the Conference. Conference participants decided to make the conference a "conference of commitments" by agreeing to return to their countries and working, both at the governmental and nongovernmental levels, to implement the conference platform.

To foster implementation of the Beijing platform by the federal government, the President established an Interagency Council on Women, which is chaired by Secretary Shalala. Bonnie Campbell is also the Department's representative to this Interagency Council.

Federal agencies have two mandates regarding implementation of the Beijing platform: 1) to assess the extent to which policies and programs already in place respond to and fulfill the platform mandates, and 2) as appropriate, to initiate additional policies and programs which implement the platform's mandates.

In March of 1996, VAWO convened a working group which has accomplished the first of the two tasks. A report detailing the Department's accomplishments relating to the Beijing platform is being finalized and will be forwarded to the Interagency Council on Women for inclusion in their report on the federal government's progress in implementing the platform.

Additionally, the Department's working group has identified some initiatives which could be implemented in furtherance of the platform's mandates and will likely make some recommendations in the early spring.

Another outgrowth activity of the Beijing Conference that the VAWO is involved in is the International Leadership Forum for Women with Disabilities that is being planned for June of 1997 in Eugene, Oregon. This is an event sponsored by a partnership of governmental agencies (spearheaded by the U.S. Social Security Administration and Department of Education), NGOs and the IDEAS 2000 project. Its objective is to create an opportunity for disability policy makers and disabled women world-wide to exchange

information, receive training and participate in an international support network aimed at creating self-sufficiency.

VAWO staff are developing – in coordination with representatives from the Disability Rights Section of DOJ's Civil Rights Division and the Center for Disease Control – a workshop program on *Violence Against Women with Disabilities* as a part of a larger program covering "Health and Family Issues".

Finally, in terms of United Nations interaction, VAWO is working with the Criminal Division to evaluate U.N. resolutions that implicate gender issues or Domestic violence issues.

Other Participation in Conferences, Symposia, and International Forums:

Bonnie Campbell also participated in last summer's Canada-USA Women's Health Forum held in Ottawa, Canada.



Department of Justice

STATEMENT
OF
JANET RENO
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

VAWA

CONCERNING
THE VIOLENCE AGAINST WOMEN ACT

PRESENTED ON
MAY 15, 1996

WRITTEN TESTIMONY OF ATTORNEY GENERAL JANET RENO
ON THE VIOLENCE AGAINST WOMEN ACT

Good morning Chairman Hatch, Senator Biden, members of the Committee. It is always a pleasure to testify before this committee, and I thank you for the opportunity to join you this morning to discuss the Violence Against Women Act (VAWA).

Introduction

Study after study, including a recent report from the American Psychological Association, have shown that children who are abused and who witness violence at home are substantially more likely to commit violent acts themselves. We are never going to end the violence on America's streets unless we first end it in our homes.

The cycle of violence that begins in the home is felt in every American community and in every institution, in our schools, our workplaces, and our hospital wards. The scars that are left from growing up in an abusive home remain for years after an incident may have occurred.

The immediate past President of the American Medical Association, Bob McAfee, recently called family violence a major public health threat. We already know that it is a major public safety threat. Police departments in America's smaller cities point to domestic violence as their number one criminal concern, requiring more attention than even drugs or gangs.

The Congress and President Clinton recognized that our country was not providing an adequate response to these crimes when you enacted VAWA as part of the historic 1994 Crime Act. The passage of VAWA was a turning point in our national response to the problems of domestic violence and sexual assault, a milestone in the effort to break the cycle of violence.

I am very happy that the bi-partisan support demonstrated by Congress when it passed this law continues to be strong, as evidenced by the decision of Congress to fully fund the President's budget request for 1996.

By combining tough federal penalties with substantial resources to the states and our communities, this legislation has already had an enormous impact on women and families across the country.

Just consider, before the Violence Against Women Act, if a state wanted to train its law enforcement officials on how to respond to domestic violence calls or wanted to provide services

and advocates to victims of crime, they lacked crucial resources.

Today, we have already provided states and territories with \$26 million, and will provide \$130 million in fiscal year 1996, providing states with a greater ability to train their law enforcement officers, hire more prosecutors and provide assistance to victims of violence.

Before the Violence Against Women Act, many states required victims of sexual assault to pay the costs of their own rape exams.

Today, the STOP Violence Against Women grant program makes it a prerequisite that states relieve victims of the burden of covering this expense.

Before the Violence Against Women Act, a batterer who brutally beat his partner and then drove her across state lines to leave her at a hospital, would likely escape prosecution because of jurisdictional problems.

Today, these batterers are prosecuted, convicted, and sent to jail for years because of the newly created federal crime of interstate domestic violence.

And before the passage of the Jacob Wetterling Act, a provision intimately linked to our efforts to fight domestic violence and sexual assault, a sex offender released from prison could move into many neighborhoods without any notice to law enforcement and community members.

Today, states are developing systems so that these sex offenders are required to register with state law enforcement and communities, giving police, families, and care providers the information they need to feel safe and secure.

Administration Priorities

The President and the Administration are committed to fighting violence against women and carrying out the mandate of VAWA in the same spirit of cooperation, consultation and partnership with which it was crafted. In fighting violence against women, the Department has identified several priorities: (1) the quick and efficient awarding of VAWA grant funds to states; (2) the vigorous federal prosecution of domestic violence and sexual assault offenders under VAWA; (3) the implementation of VAWA's full faith and credit provision; (4) the encouragement of states to establish sex offender registration systems under the Jacob Wetterling Act; (5) the enhancement of victim's rights; and (6) the development of new and innovative public/private partnerships.

The Violence Against Women Act is working because it has provided a catalyst for states and communities to come together, and develop multi-faceted, interdisciplinary approaches to these crimes.

I know from my own experiences in South Florida how effective a coordinated and cooperative approach can be, when police are working with doctors, when shelters are in touch with officers on the front lines, and when churches and community leaders speak out in a unified voice against violence against women. That kind of cooperation can and does make a difference. Much work remains to be done, but we are very pleased with the progress that is being made and very proud of the collaborative efforts that are currently underway.

A little over a year ago, former Iowa Attorney General Bonnie Campbell joined the Justice Department as Director of our Violence Against Women office. She has worked tirelessly to get the message out and to make certain that VAWA is working for the men and women on the front lines in the effort to combat violence against women. Director Campbell does this by reaching out to victims, advocates, police, judges, and prosecutors to learn about their concerns, their ideas -- about what works and what does not. As a former prosecutor who, for a time, was herself victimized by a stalker, Director Campbell has brought a unique perspective to our efforts. She has done a tremendous job at seeing that we meet our obligations to move forward in our implementation efforts. And Director Campbell is here with me today.

The Problem

Nothing tells us more about the need for the VAWA than the number of calls to the National Domestic Violence Hotline. On February 21, 1996, the President announced the opening of this National Hotline funded under the Act. In its first months, the hotline received almost 15,000 calls. Nearly half of these calls were from victims of domestic violence -- many of whom did not know where to go for help; others complained they could not get help from local law enforcement. Fifteen percent were calls from concerned friends or family members, and about 10% were from advocates and service providers.

The most recent statistics from the Department's Bureau of Justice Statistics show just how serious the problem is:

- In 1993 and 1994, women age 12 or older annually sustained almost 5 million violent victimizations;
- About 60% of all violence against women was perpetrated by offenders the victim knew; about 15% of violence

against women was committed by their relatives, and 30% by someone well-known to the victim;

- Nearly a third of the women who experienced violence at the hands of an intimate were victimized again during the same year;
- By 1992 and 1993 numbers, women attacked by a lone offender were nearly six times as likely as men to be victimized by an intimate;
- During 1992 and 1993, women annually reported to interviewers about 500,000 rapes and sexual assaults. Friends or acquaintances of the victims committed over half of these rapes or sexual assaults.
- In 1994, female victims of rape or sexual assault stated that in only about a third of the incidents of rape was the crime reported to the police, regardless of the victim's relationship to the offender.

One of the most startling facts that emerges from these new figures is the extent of violence and sexual assault committed by people the victim knows -- and trusts -- relatives, friends, spouses, partners.

These are the stark challenges that face the nation: and here is how the Violence Against Women Act can and is making a difference.

Federal Funds to the Front Lines

In fiscal year 1995, Congress appropriated \$26 million for the STOP Grants program, which stands for Services, Training, Officers and Prosecutors.

The Department worked to distribute these funds as quickly and efficiently as possible. Less than two months after the final rules for the program were published in the Federal Register, 53 states and territories had received their \$426,000 in grant funding. The Department also delivered \$1 million in STOP funding to 14 Indian tribes, with grants of \$75,000 each.

The STOP Grants are about partnership and effective collaboration. Every state filed a plan detailing the collaboration it envisions among police, prosecutors and victim advocates. In this way, the federal dollars are used to encourage new partnerships and innovative programs, while each state retains the flexibility to meet its own special needs.

We have already begun to see results. Fifteen states have either made all of their subgrants and several others have begun the process. States have made nearly 200 subgrants to develop or strengthen existing victims services programs. Forty other subgrants are being used to train police and prosecutors, and others are being used to create and support specialized police and prosecution units that will focus on the problems of domestic violence and sexual assault.

- In Utah, STOP Grant funding is being used to support 18 new domestic violence and sexual assault advocates across the state. One of those advocates will be working in the new women's shelter being built in the South End of Salt Lake City Valley, a shelter that upon completion will double the number of beds available for battered women in the Salt Lake City area.
- In Delaware, STOP Grant funds are being used by the Wilmington Police Department to hire a civilian victim service outreach worker to help victims secure protection orders and to follow the victim through the prosecution phase of their case.
- In Reno, Nevada, STOP Grant funding was used to organize a training session attended by more than 550 city, county, state and federal law enforcement officers from agencies throughout the state. It seems so simple, yet this kind of training had never been done before.
- In Massachusetts, the Administrative Office of the Trial Court is using its funding to help more women understand how the criminal justice system can help them. They are creating a domestic violence video tape explaining in English and 3 other languages, how to obtain a restraining order.
- In Iowa, STOP grant funds are being used to hire three advocates to assist victims in 11 rural counties that have never had advocates before.

The initial funding for 1995 was only a down-payment. Thanks to recent passage of the Department's budget for fiscal year 1996, we are moving forward rapidly to provide the states with \$130 million in 1996 STOP Grant funding. We are committed to getting this funding to the states as quickly as possible so that they can build on the important initiatives that began last year. I am happy to announce that the application packets for the states will be mailed within the next few days.

We will move just as quickly with the other grant programs that Congress has funded, including \$7 million for abused women

and children in rural America, who because of their location far from urban shelters and services, are often at special risk. Application kits for these grants are nearly complete and should be available within the month.

We will also be distributing \$28 million in funding to encourage mandatory arrest policies for the primary aggressor in domestic abuse cases. Too often, a batterer is left at home with his victim because the victim has refused to press charges. This should never be the case.

In addition to the VAWA grants, the Department will soon announce the award of grants under the COPS/Domestic Violence initiative. These grants were developed in response to the real needs expressed by law enforcement officers, many of whom report that domestic violence incidents are the most dangerous and difficult encounters they experience on the job. The response to this program by police departments has been overwhelming -- over 700 agencies have applied for assistance. Police departments, working in partnership with victim advocates and others in their community, will receive funding to develop domestic violence programs that utilize the proven techniques of community policing.

Federal Funds to Fight Violence Against Women in Indian Country

Each of the grant programs in VAWA is available not only to states and territories, but tribal governments. We have seen that the problem of domestic violence and sexual assault in Indian country is extreme. The Rosebud Sioux tribe in South Dakota, with a population of 18,000, makes approximately 1,700 domestic abuse arrests per month. In the Salt River Pima Maricopa Indian Community in Arizona, where the population is 5,000, the tribal police receive approximately 400 domestic violence calls per quarter. Yet, this tribe has no domestic violence code and more than 90% of the cases are dismissed.

The federal government has a responsibility to meet head on the needs of Indian country. While 14 tribes received \$1 million under STOP last year, we expect to provide \$5 million to as many 56 new tribal governments under STOP in FY 96. In addition, a number of tribal governments will be recipients of COPS domestic violence grants.

Prosecutions

Resources are only part of the story. The Violence Against Women Act is also about tough law enforcement.

The interstate domestic violence and harassment provisions of VAWA have been used to great effect, when state and local prosecutors believe it is in the best interest of justice that the case be tried in federal court. We have used these provisions to insure that batterers did not slip through the cracks in the criminal justice system with the same ease that they slipped across state lines.

The Violence Against Women Act authorizes severe federal penalties for abusers who travel interstate with the intent to injure, harass, or intimidate an intimate or with the intent to violate a protection order. More than a dozen cases have been brought successfully in districts throughout the country, due in no small measure to unprecedented cooperation between state and federal law enforcement:

For example:

- U.S. v. Ricky Steele, Northern District of California. In this case, the United States prosecuted Ricky Steele, who severely beat his girlfriend in the state of Oregon and then forced her to drive with him to Las Vegas. While driving through California, a witness saw the girlfriend try to escape and called 911. California Highway Patrol made the arrest.

California state prosecutors were worried about their ability to prosecute Steele successfully, as there was no clear assault in California. Local law enforcement in Oregon indicated that Steele was not likely to get more than a year in prison if found guilty under its state law for the assaults.

Both states consulted federal officials and we prosecuted Steele in federal court under the Violence Against Women Act crime of interstate domestic violence. Steele was sentenced to 87 months in prison.

- U.S. v. Derek Page, Southern District of Ohio. A weightlifter in Columbus, Ohio, severely beat his former girlfriend, stabbing her with the claw end of a hammer several times, breaking her femur bone, punching her with his fists until her eyes were shut, and injuring her feet so that she could not walk. After this beating, he took his victim 150 miles to a hospital in Pennsylvania.

With the victim, medical witnesses and evidence in Pennsylvania, local prosecutors in Ohio faced difficult evidentiary problems in pursuing prosecution. In Pennsylvania, local prosecutors could not proceed because no criminal conduct had occurred in that state.

Local law enforcement turned to federal prosecutors in the Southern District of Ohio, who prosecuted the case and obtained a conviction.

Page has been held in custody without bond since his arrest seven months ago and is awaiting sentencing.

We will continue to forge these prosecutorial partnerships with state officials.

Full Faith and Credit

Tough and effective law enforcement does not just mean punishment, but it also means preventing these crimes from happening in the first place. Mr. Chairman, the Justice Department is working with the states to ensure that protection orders are given full faith and credit by law enforcement agencies and courts throughout the country. Protection orders issued by a court directing a batterer to stay away from a victim of domestic violence or sexual assault can do much to prevent violence or the recurrence of violence.

But, a protection order is not worth the paper it is printed on if it is not enforced.

A police officer in one state needs to know that the protection order issued in another state is valid in his or her jurisdiction. To this end, the Justice Department is helping states to improve their criminal history databases to include records of protection orders.

I have seen a computerized protection order file system, the Kentucky LINK (Law Information Network of Kentucky) System, and I know that it works. In Kentucky, the terms and conditions of protection orders are available to local police on the street, to case workers and to the courts. Moreover, the protection order file has allowed more accurate background checks that have kept guns out of the hands of more than 300 abusive spouses who were restricted from owning hand guns.

To be truly effective, protection orders issued in one state must be enforced in every other state. That was recognized in VAWA's Full Faith and Credit provision. People move easily across state lines. A victim with a protection order in one state must not have to experience violence in another state to receive protection there.

The Department has devised an aggressive strategy to implement the full faith and credit provision. We are funding a pilot project in Kentucky to test interstate and intrastate verification systems for street level enforcement of protection

orders. We have also entered into a cooperative agreement with the Battered Women's Justice Project to create a resource clearinghouse and models on how states are implementing full faith and credit.

The Battered Women's Justice Project will work with Kentucky, as well as with state judges, to develop possible models for standardized forms, policies and mechanisms to assist courts, legislatures, police and advocates in implementing this provision. With their efforts, we are moving toward the day when every state may have a single protection order that every police officer and every court will recognize and enforce.

Jacob Wetterling Act

While not a part of the Violence Against Women Act, the Jacob Wetterling Act is also an effort by Congress and the Administration to prevent sexual assault against women and children. The Wetterling Act encourages states to create registration systems for those convicted of sexual abuse or child molestation. The Department issued final Wetterling Act guidelines and is working closely with the states to help them develop sex offender registration systems that comply with the Act.

Mr. Chairman, Congress last week took several steps to strengthen the Jacob Wetterling Act in passing the community notification requirement of Megan's Law. The President supports Megan's law and will soon sign it into law. Parents and members of the community should have the information they need to provide greater protection for their children.

Victims' Rights

As we work to break the cycle of violence, it is essential that the rights of victims are protected and enhanced. As a result of VAWA, victims of domestic violence and sexual assault crimes have gained several significant rights. Among them are mandatory restitution and the right to address the court at the time of sentencing. All of our U.S. Attorneys have been instructed on these new provisions.

In addition, VAWA protects battered immigrant women and children. The Immigration and Naturalization Service recently published final regulations establishing self-petitioning procedures for immigrant women married to abusive spouses who are U.S. citizens or lawful permanent residents. Abusive spouses can no longer hold their alien spouses captive with threat of deportation.

Advisory Council

Mr. Chairman, this committee knows how important it is that the federal government be a partner with states and communities in the effort to combat sexual assault and domestic violence. We cannot and should not be coming into communities telling local police and prosecutors what to do. But we can provide resources and guidance and information on the kind of programs that can be effective. That is what we have tried to do in the last year.

With this idea of partnership in mind, Health and Human Resources Secretary Donna Shalala and I formed an Advisory Council on Violence Against Women in July of 1995 and have met twice with the 47 members, and a third meeting is planned for this summer. Leaders in their respective fields, they come from law enforcement and health care, business and government, religious organizations and universities, media and sports. With their assistance and know-how, we are exploring new public and private partnerships that can demonstrate that the cooperative model for dealing with violence against women can produce tangible results.

At the recommendation of the Advisory Council, President Clinton directed all federal agencies to begin an Employee Awareness Campaign to address the effects of domestic violence in the workplace. The Justice Department has prepared a resource booklet for employees and we hosted an information fair for our employees. Other departments are establishing similar programs.

Conclusion

Since the passage of the Violence Against Women Act, we have had many months of coordination, cooperation and progress. The federal government's leadership and resources have helped to plant the seeds.

But the federal government does not have all the answers. States have brought new energy and local focus to the problems of domestic violence and sexual assault. We are working together as partners in this historic effort to stem the spread of domestic violence and sexual assault.

In every area of the country we are seeing activities that were not underway two years ago, activities ranging from new specialized prosecution and law enforcement units to expanded services for previously underserved women. Prosecutors have new tools and victims have enhanced protection. We have a long way to go, but we are closer to the goal of reducing, if not eliminating, violence against women.

Mr. Chairman, thank you. I am happy to answer any questions.

The New York Times

Violence Against Women Act Is Upheld by Federal Judge

By JAMES BARRON

For the first time, a Federal District Court judge has upheld the constitutionality of the Violence Against Women Act of 1994, a Federal law that made crimes against the opposite sex a violation of the victim's civil rights.

The judge, Janet Bond Arterton in New Haven, ruled in a case involving a Connecticut woman identified in court papers as Jane Doe. Her husband's lawyers had challenged the constitutionality of the civil rights provision as "an open and sweeping invitation to the Federal Government to intervene almost at will in almost any area of anyone's life."

But the judge, after reviewing the four-year legislative history of the statute and the conclusions that Congressional committees reached before the bill went to a vote, concluded that the Violence Against Women Act was "narrowly tailored and reasonably adopted to accomplish a constitutionally permitted end."

The woman suing under the 1994 law moved out of the couple's home in Darien, Conn., last year and now lives in Riverside, Conn. She said her husband repeatedly threatened to kill her, beat her and threw household objects at her. Her suit said he forced her "to be a 'slave' and perform all manual labor," including "laying out his clothes for his numerous dates with his many girlfriends and mistresses."

The civil rights provision allows women — and men — to file civil suits for crimes against the opposite sex. Lawyers say this gives women more legal options than they had in the past, when their only recourse was to rely on prosecutors who decide whether to file state charges in rape and sexual assault cases.

A civil rights provision is backed in spouse abuse.

Judge Arterton ruled that the Violence Against Women Act does not block those legal remedies for victims of domestic abuse. "It complements them," she wrote, "by recognition of a societal interest in insuring that persons have a civil right to be free from gender-based violence."

Judge Arterton said it was appropriate for Congress to expand protection for victims of domestic violence because the United States House of Representatives had "found that both existing state and Federal criminal laws were inadequate to protect against gender-motivated violence."

Mrs. Doe's lawyer, Deborah S. Chang of Stamford, said the ruling was "a very detailed decision and I think it's important, especially for thousands and thousands of women who've been holding their breaths because of the importance of the statute."

The Justice Department filed a friend-of-the-court brief in support of Mrs. Doe's arguments, as did the the NOW Legal Defense and Education Fund. Julie Goldscheid, a lawyer with the fund, called Judge Arterton's decision "straightforward."

"But to us, Congress was acting well within its authority in enacting this law," she said.

Norman Pattis of New Haven, the husband's lawyer, termed the decision "frightening" because Judge Arterton upheld the idea that domestic violence was covered by the commerce clause of the Constitution. He had tried to liken the Violence Against Women Act to the Gun-Free Zones Act, a 1990 law that made possessing a firearm within 1,000 feet of a school a Federal crime. The Supreme Court held that it was an impermissible violation of the commerce clause.

Enumerating her reasons why the Violence Against Women Act was covered by the commerce clause, Judge Arterton quoted a Senate report that said that "gender-based" crimes prevent women from "full

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participation in the national economy." The report said that to escape abusive spouses, victims of domestic violence often have to quit their jobs and move to quarters they cannot afford. It also said they often face health care expenditures because of the injuries they have sustained.

"The problem with Judge Arterton's decision is it falls prey to the Humpty-Dumpty syndrome: Congress can point at whatever it likes and, voilà, it becomes commerce," Mr. Pattis said. "If that's the case, what's the limit of Federal power?"

Mr. Pattis said he would appeal Judge Arterton's ruling, which cleared the way for a trial on Mrs. Doe's original claims. Her lawsuit asserted that her husband had "systematically and continuously inflicted a violent pattern of physical and mental abuse and cruelty" over their 17-year marriage. It said she lived as a recluse from November 1993 to April 1995, "imprisoned in the house against her will, in continual and agonizing pain, with daily physical and mental torture."

The suit said her husband, identified in court papers as John Doe, had violent outbursts several times a week and had threatened to kill her, shouting that he was going to "bury you." It said he later kept a loaded shotgun in the house and threatened to kill her "on a weekly basis."

Mrs. Doe's complaint contended that Mr. Doe had affairs with at least 50 women and had a longtime relationship with a woman described as his mistress. Mrs. Doe also maintained that her husband had refused to have sex with her since 1982 and had not even kissed her since then.

USA TODAY NATIONLINE

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SPOUSAL ABUSE LAW: A 1994 federal law to help curb domestic violence was upheld in its first test, the Justice Department said. A judge in New Haven, Conn., rejected claims that the Federal Violence Against Women Act exceeds the scope of federal police powers. The ruling came in a civil lawsuit by a Darien woman who accuses her husband of battering her and threatening to kill her with a shotgun. The man's lawyer says the claims are unfounded. The couple, married in 1978, are divorcing.

Judge Upholds Use of Federal Violence Against Women Act in Wife's Lawsuit

Eds: New throughout to UPDATE from quotes from ruling, judge not ruling yet on continued anonymity of case, more details on lawsuit; no pickup.

NEW HAVEN, Conn. (AP) - A federal judge upheld the constitutionality of the Federal Violence Against Women Act today in what the U.S. Justice Department said was the use of the 1994 law by a woman suing her husband.

The woman, named in the lawsuit as Jane Doe, accused her multimillionaire husband of spousal abuse and gender-motivated violence before they separated. U.S. District Judge Janet Bond Arterton allowed the woman to proceed with the lawsuit.

The lawsuit alleged that the husband treated her as a slave, even forcing her to take care of his mistress' poodle and to pick out clothes for his extramarital affairs.

She claimed her husband had violent outbursts four to five times a week, and that she was thrown down stairs, hurled against a wall, kicked, shoved and pushed. She also said that at one time, her husband kept a loaded shotgun in the house and repeatedly threatened her with it.

The lawsuit claimed she suffered permanent physical and mental injuries, including battered woman's syndrome. It sought at least \$50,000 in damages.

The man's attorney, Norman Pattis, called the allegations unfounded. He argued that the law was unconstitutional because it was not consistent with limits on federal police powers.

Arterton ruled that the act does not encroach on traditional areas of state law.

"It complements them by recognition of a societal interest in ensuring that persons have a civil right to be free from gender-based violence," she said.

The U.S. House of Representatives "found that both existing state and federal criminal laws were inadequate to protect against gender-motivated violence," the judge said.

Though not taking sides in the lawsuit, the Justice Department intervened in the case to defend the law.

In her lawsuit, the woman claims she lived as a recluse from November 1993 to April 1995, "imprisoned in the house against her will, in continual and agonizing pain, with daily physical and mental torture."

The couple, who married in 1978 and lived in the wealthy suburb of Darien, are in the process of divorcing.

The woman's request to bring the lawsuit under a pseudonym was granted by the court after her husband consented. But the husband has since asked that their names be used. The judge said she was still reviewing the request.

The woman sought anonymity because of the stigma associated with being a victim of domestic violence, her attorney has said.

Man Let Go by Judge Duckman Pleads Guilty to Assault Charges

By LYNDA RICHARDSON

A Brooklyn man who punched his former girlfriend in the face after his release from jail by a judge who has since come under fire for his handling of domestic violence cases has pleaded guilty to assault.

Maximo Pena, 35, faces at least eight years in prison on assault and criminal contempt charges after admitting in State Supreme Court in Brooklyn on Monday that he had burst into the apartment of Evelyn Molina on Feb. 15, dragged her down two flights of stairs and hit and kicked her.

The Pena case came to light after Judge Lorin Duckman of Brooklyn Criminal Court was criticized earlier this year for his handling of a domestic violence case that had ended in murder. In that case, Judge Duckman had freed a convicted rapist with a history of domestic violence, who then killed his former girlfriend, Galina Komar of Brooklyn, at a Queens car dealership on Feb. 12, and turned the gun on himself. The slaying occurred three weeks after she had sought protection from the courts.

Judge Duckman has been reassigned to Manhattan Civil Court.

Mr. Pena was convicted last July of 11 counts of attacking and harassing his former girlfriend, including hitting her over the head with a bottle. But moments after the jury verdict, Judge Duckman said that the 41 days that Mr. Pena had spent in jail before his trial were enough, according to people familiar with the case who spoke on the condition of anonymity.

Mr. Pena's bail was lowered to \$750 from \$1,000, and he posted bond within hours of his conviction. Five weeks later, Judge Duckman denied a request by prosecutors to send Mr. Pena to state prison for two years. Instead, the judge sentenced Mr. Pena to the time he had already served in jail and to 34 months' probation.

Mr. Pena continued to harass Ms. Molina, culminating in a visit to her apartment in February. Ms. Molina had obtained a protective order prohibiting him from seeing her.

The sentencing date for Mr. Pena is scheduled for June 27.

The New York Times

Violence Against Women Act Is Upheld by Federal Judge

By JAMES BARRON

For the first time, a Federal District Court judge has upheld the constitutionality of the Violence Against Women Act of 1994, a Federal law that made crimes against the opposite sex a violation of the victim's civil rights.

The judge, Janet Bond Arterton in New Haven, ruled in a case involving a Connecticut woman identified in court papers as Jane Doe. Her husband's lawyers had challenged the constitutionality of the civil rights provision as "an open and sweeping invitation to the Federal Government to intervene almost at will in almost any area of anyone's life."

But the judge, after reviewing the four-year legislative history of the statute and the conclusions that Congressional committees reached before the bill went to a vote, concluded that the Violence Against Women Act was "narrowly tailored and reasonably adopted to accomplish a constitutionally permitted end."

The woman suing under the 1994 law moved out of the couple's home in Darien, Conn., last year and now lives in Riverside, Conn. She said her husband repeatedly threatened to kill her, beat her and threw household objects at her. Her suit said he forced her "to be a 'slave' and perform all manual labor," including "laying out his clothes for his numerous dates with his many girlfriends

and mistresses."

The civil rights provision allows women — and men — to file civil suits for crimes against the opposite sex. Lawyers say this gives women more legal options than they had in the past, when their only recourse was to rely on prosecutors who decide whether to file state charges in rape and sexual assault cases.

A civil rights provision is backed in spouse abuse.

Judge Arterton ruled that the Violence Against Women Act does not block those legal remedies for victims of domestic abuse. "It complements them," she wrote, "by recognition of a societal interest in insuring that persons have a civil right to be free from gender-based violence."

Judge Arterton said it was appropriate for Congress to expand protection for victims of domestic violence because the United States House of Representatives had "found that both existing state and Federal criminal laws were inadequate to protect against gender-motivated violence."

Mrs. Doe's lawyer, Deborah S. Chang of Stamford, said the ruling was "a very detailed decision and I think it's important, especially for thousands and thousands of women who've been holding their breaths because of the importance of the statute."

The Justice Department filed a friend-of-the-court brief in support of Mrs. Doe's arguments, as did the the NOW Legal Defense and Education Fund. Julie Goldscheid, a lawyer with the fund, called Judge Arterton's decision "straightforward."

"But to us, Congress was acting well within its authority in enacting this law," she said.

Norman Pattis of New Haven, the husband's lawyer, termed the decision "frightening" because Judge Arterton upheld the idea that domestic violence was covered by the commerce clause of the Constitution. He had tried to liken the Violence Against Women Act to the Gun-Free Zones Act, a 1990 law that made possessing a firearm within 1,000 feet of a school a Federal crime. The Supreme Court held that it was an impermissible violation of the commerce clause.

Enumerating her reasons why the Violence Against Women Act was covered by the commerce clause, Judge Arterton quoted a Senate report that said that "gender-based" crimes prevent women from "full

DATE: 06-20-96

PAGE: B-4

participation in the national economy." The report said that to escape abusive spouses, victims of domestic violence often have to quit their jobs and move to quarters they cannot afford. It also said they often face health care expenditures because of the injuries they have sustained.

"The problem with Judge Arterton's decision is it falls prey to the Humpty-Dumpty syndrome: Congress can point at whatever it likes and, voilà, it becomes commerce," Mr. Pattis said. "If that's the case, what's the limit of Federal power?"

Mr. Pattis said he would appeal Judge Arterton's ruling, which cleared the way for a trial on Mrs. Doe's original claims. Her lawsuit asserted that her husband had "systematically and continuously inflicted a violent pattern of physical and mental abuse and cruelty" over their 17-year marriage. It said she lived as a recluse from November 1993 to April 1995, "imprisoned in the house against her will, in continual and agonizing pain, with daily physical and mental torture."

The suit said her husband, identified in court papers as John Doe, had violent outbursts several times a week and had threatened to kill her, shouting that he was going to "bury you." It said he later kept a loaded shotgun in the house and threatened to kill her "on a weekly basis."

Mrs. Doe's complaint contended that Mr. Doe had affairs with at least 50 women and had a longtime relationship with a woman described as his mistress. Mrs. Doe also maintained that her husband had refused to have sex with her since 1982 and had not even kissed her since then.

Judge Upholds Use of Federal Violence Against Women Act in Wife's Lawsuit

Eds: New throughout to UPDATE from quotes from ruling, judge not ruling yet on continued anonymity of case, more details on lawsuit; no pickup.

NEW HAVEN, Conn. (AP) - A federal judge upheld the constitutionality of the Federal Violence Against Women Act today in what the U.S. Justice Department said was the use of the 1994 law by a woman suing her husband.

The woman, named in the lawsuit as Jane Doe, accused her multimillionaire husband of spousal abuse and gender-motivated violence before they separated. U.S. District Judge Janet Bond Arterton allowed the woman to proceed with the lawsuit.

The lawsuit alleged that the husband treated her as a slave, even forcing her to take care of his mistress' poodle and to pick out clothes for his extramarital affairs.

She claimed her husband had violent outbursts four to five times a week, and that she was thrown down stairs, hurled against a wall, kicked, shoved and pushed. She also said that at one time, her husband kept a loaded shotgun in the house and repeatedly threatened her with it.

The lawsuit claimed she suffered permanent physical and mental injuries, including battered woman's syndrome. It sought at least \$50,000 in damages.

The man's attorney, Norman Pattis, called the allegations unfounded. He argued that the law was unconstitutional because it was not consistent with limits on federal police powers.

Arterton ruled that the act does not encroach on traditional areas of state law.

"It complements them by recognition of a societal interest in ensuring that persons have a civil right to be free from gender-based violence," she said.

The U.S. House of Representatives "found that both existing state and federal criminal laws were inadequate to protect against gender-motivated violence," the judge said.

Though not taking sides in the lawsuit, the Justice Department intervened in the case to defend the law.

In her lawsuit, the woman claims she lived as a recluse from November 1993 to April 1995, "imprisoned in the house against her will, in continual and agonizing pain, with daily physical and mental torture."

The couple, who married in 1978 and lived in the wealthy suburb of Darien, are in the process of divorcing.

The woman's request to bring the lawsuit under a pseudonym was granted by the court after her husband consented. But the husband has since asked that their names be used. The judge said she was still reviewing the request.

The woman sought anonymity because of the stigma associated with being a victim of domestic violence, her attorney has said.



USA TODAY

NATIONLINE

DATE: 06-2PAGE: 3-A

SPOUSAL ABUSE LAW: A 1994 federal law to help curb domestic violence was upheld in its first test, the Justice Department said. A judge in New Haven, Conn., rejected claims that the Federal Violence Against Women Act exceeds the scope of federal police powers. The ruling came in a civil lawsuit by a Darien woman who accuses her husband of battering her and threatening to kill her with a shotgun. The man's lawyer says the claims are unfounded. The couple, married in 1978, are divorcing.

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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics



Violence against Women

A National Crime Victimization Survey Report

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A SPEECH ON DOMESTIC VIOLENCE

Given by

JANET RENO

United States Attorney General

Before the

KENTUCKY GENERAL ASSEMBLY

JOINT SESSION

Kentucky Capitol Building

720 Capital Avenue

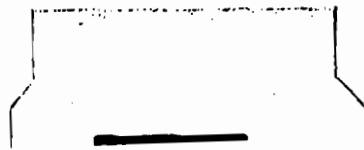
Frankfort, Kentucky

Wednesday, February 21, 1996

2:00 p.m.

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1 Mr. Speaker, Mr. President, Governor Patton, Chief Justice
2 Stephens, Lt. Governor Henry, Attorney General Chandler,
3 Senator Ford, and Representatives Rogers, Baesler,
4 Mazzoli, Ward, United States Attorneys Famularo and Troop,
5 Members of this great General Assembly, Distinguished
6 Representatives from all over Kentucky and the People of
7 the great Commonwealth of Kentucky,

8
9 I can't tell you what an extraordinary
10 privilege it is for me to be here today. My first
11 full-time job in public service was as a staff director on
12 the House Judiciary Committee on the floor of the House of
13 Representatives. I came away from that experience with a
14 profound admiration for legislators who left their law
15 practice, left their jobs, left their families, sometimes
16 for special sessions, to come and attend to the State's
17 business while at the same time maintaining their own
18 livelihood.

19 It is a true example of citizen's
20 government, and to all the people in this great assembly,
21 I can't tell you how much I respect you and admire you for
22 that. I'm privileged to be here today also to let you
23 know what a great respect and admiration I have for all
24 the people of Kentucky who have made sure that Kentucky
25 has taken the lead in addressing one of the most critical

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1 crime problems in this nation today, domestic violence.

2 Your courage and your comprehensive
3 initiative against this crime that extinguishes human life
4 far too often is an example for the rest of the nation. I
5 have come today to further the partnership between the
6 people of the Commonwealth of Kentucky and the Department
7 of Justice. A partnership that was started almost a year
8 ago.

9 When I spoke with your joint task
10 force by telephone conference call -- I remember that call
11 because I hung up just plain excited and very encouraged
12 about what we can do together -- I was encouraged and
13 excited because the task force included every level of
14 government in this state. It included the legislative,
15 executive, and judicial branches.

16 Senator Green, through your
17 leadership, you've brought people together to focus on
18 this issue. You've brought people from around Kentucky,
19 from different disciplines, to focus the scrutiny that's
20 necessary to make people understand why we have to deal
21 with this issue.

22 Governor Patton, you have now
23 formalized the structure with your executive order to
24 establish the Kentucky Council on Domestic Violence, and
25 you have recognized its importance by attaching it

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1 directly to your office. This is such a significant
2 step.

3 Now, police and prosecutors,
4 advocates, doctors, and others with knowledge can come
5 together to address the problem. You have and are making
6 a difference by this thoughtful, comprehensive approach.
7 Your efforts are critical at this time.

8 Ladies and gentlemen, we are never
9 going to end violence on the streets and in the schools of
10 America unless we first end it in our homes. The child
11 who watches his father beat his mother too often comes to
12 accept violence as a way of life.

13 I couldn't imagine a more timely
14 publication of a report than to learn this morning that
15 the American Psychological Association has published a
16 report on violence in the family. And it concludes,
17 fighting between parents can be very harmful even if the
18 children are not the victims of the abuse itself.

19 For the most part, violent behavior is
20 learned, and one of the most potent classrooms is the
21 home. Boys who observe their fathers abusing their
22 mothers seem to be at extreme risk of using violence in
23 their own home as adults. You in Kentucky are leading the
24 way to break that cycle of violence and we must do so.

25 The Department of Justice figures, the

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1 most recent figures, indicate that 29 percent of all
2 violence against women by a lone offender, in 29 percent
3 of those cases, the perpetrator was a husband, ex-husband,
4 boyfriend, or ex-boyfriend. It is everywhere.

5 Doctors and emergency rooms are
6 affected. Your Lt. Governor, Dr. Henry, has spoken out on
7 this issue as are doctors across this nation. The
8 President of the American Medical Association, Dr. Robert
9 McAfee, calls it one of the major public problems that we
10 face. Everyone is affected.

11 The report of today of the American
12 Psychological Association shows the correlation between
13 growing up with violence and poor school behavior and poor
14 school performance. Teachers throughout this Commonwealth
15 and throughout this nation are having to deal directly
16 with the impact of domestic violence as it's felt in the
17 schools.

18 And now, in this past year, I have
19 been asked to speak with counselors for Employee
20 Assistance Programs because the impact of domestic
21 violence in the workplace is being felt in companies large
22 and small across this country. It is not somebody's
23 secret problem anymore. It is a problem that we all must
24 confront. It is not a problem of large urban cities. It
25 is a problem throughout America.

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1 When I go to states with large world
2 communities and I find that domestic violence is the
3 number one crime problem in communities large and small,
4 you understand that it's a problem for all America.
5 Whether it be in Miami, my hometown, or Macon, Iowa who
6 also view it as the most critical crime problem they face,
7 you are not alone in understanding the nature of the
8 problem.

9 But you, though not alone, are taking
10 the lead in developing a comprehensive state effort that
11 can make a difference. Here in Kentucky you have realized
12 how important training can be. What it means to train
13 police officers in how to deal with domestic violence
14 situations, how to calmly, before somebody really gets
15 hurt. How to encourage victims to go forward with
16 prosecution to interrupt the cycle of violence.

17 You know how important it is to train
18 advocates, to train people in the judicial system to be
19 sensitive to this issue. You understand how important it
20 is to provide protection. I understand that in Kentucky a
21 woman is never farther than 50 miles from a battered
22 spouse shelter, and that local law enforcement will drive
23 rural victims to these shelters. That is an extraordinary
24 network that can be duplicated around the nation.

25 A model family court has been

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1 established in Louisville to handle divorce, custody, and
2 domestic violence cases. From my experience in Miami,
3 courts such as this can be instrumental in helping the
4 whole criminal justice system to focus effectively and
5 sensitively on these problems.

6 Protective orders, orders issued by
7 the court which direct a subject to stay away from or
8 limit contact with a victim of domestic violence can do so
9 much to prevent violence or the recurrence of violence.
10 Again, you in Kentucky have taken the leadership, for you
11 have developed a standardized protection order form so
12 that all protection orders in Kentucky follow the same
13 format. I am told by law enforcement that this is
14 extremely helpful.

15 But you have done more, for you have
16 developed a computerized protection order file as part of
17 your Link System. Now, information that protection orders
18 have been issued and their terms and conditions are
19 readily available to all local law enforcement on the
20 front line, to case workers from the Kentucky Department
21 for Social Services, and to pretrial officers in
22 Kentucky's Administrative Office of the Courts.

23 One incidental benefit of these
24 protection orders on the Link System has been the
25 discovery of individuals who are not eligible to buy a

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1 handgun because of their past domestic violence. In
2 certain instances, people noted in domestic violence
3 orders may not possess a handgun while the order is in
4 effect.

5 The Kentucky Link System led to
6 identifying and denying handgun applications of 313
7 prospective purchases over a 12-month period that ended
8 last October. Thus, you can see as you review your work
9 why I was so impressed when I reviewed the efforts with
10 the joint task force last March.

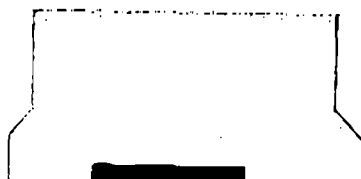
11 At that time I asked how the federal
12 government could support your efforts. How can we be a
13 successful partner with you along the front lines? You
14 asked me to help bring down the state barriers that had
15 made it difficult in a mobile society like ours to enforce
16 orders in domestic violence cases.

17 And I listened because as a former
18 local prosecutor for 15 years I didn't think much of the
19 federal government coming to town and telling me what to
20 do, but I thought they should come to town and listen.
21 And I listened to that task force that day and tried to
22 figure out how we can be supportive and helpful in
23 Washington.

24 People easily move across state
25 lines. You know better than anybody else that Kentucky

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1 borders on seven states making it possible for abusers to
2 frustrate court orders by moving or following a victim
3 just a few miles away into another state. Would it make
4 any difference what you do in Kentucky in developing the
5 best possible system if you couldn't coordinate the states
6 that surround you or the rest of this country?

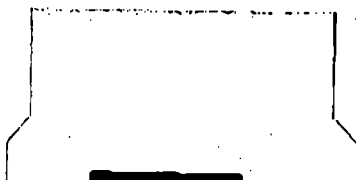
7 Your task force has focused on one of
8 your big problems and you said we want to do something
9 about it. You understood that a protection order obtained
10 by a spouse is no better than the extent to which it can
11 be recognized and enforced wherever the parties may be.

12 You understood how difficult and, at
13 times, even dangerous it is for people to return to
14 another state to have an order amended to adjust to
15 current situations or to have to begin all over again in a
16 new state to obtain the protection they need, protection
17 which may not be available if abuse has not occurred in
18 that state.

19 When I talked to the task force in
20 March I was suddenly in a great position to be able to
21 respond to your call for assistance. We were in the
22 process of implementing the Violence Against Women Act
23 which had been passed by President Clinton and bipartisan
24 majority leadership in Congress. It was a bill focused in
25 major part on legislation directed at domestic violence

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1 and violence against women.

2 The act provides for grants to every
3 state, and Kentucky has already received a down-payment of
4 \$426,000 this past year, a sum of money I understand you
5 are already putting to good advantage in training and in
6 development of a system for assuring the enforcement of
7 protection orders.

8 (APPLAUSE)

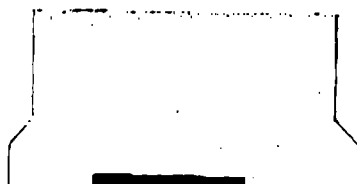
9 A key provision of the act directs
10 that the constitutional concept of full face credit
11 applies to domestic violence orders. Many kinds of civil
12 orders, particularly money judgments, have been the
13 subject of uniform reciprocal enforcement agreement over
14 the years.

15 But something more comprehensive and
16 tailored to the domestic violence problem was needed. And
17 those measures are generally enforced in the first
18 instance by law enforcement officers and not the courts.
19 That is why the procedures that Kentucky is trying to
20 develop are so important.

21 You're establishing mechanisms to let
22 police officers know what they can do when confronted with
23 a situation where a protection order may not have been
24 issued in their jurisdiction and where their authority is
25 not clear to them. When is an order valid? How do you

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1 know whether a particular order is valid?

2 How did the local judge here /in
3 Kentucky determine what a judge in Ohio meant? What if
4 Pennsylvania law provides for protection that doesn't
5 exist under Kentucky law? What if the opposite is true?

6 If a Kentucky court has ordered an
7 abuser to stay out of any county in which the victim
8 resides and the victim moves to another state which does
9 not authorize said order, can the abuser be prosecuted in
10 such state for violating the order?

11 There are many questions, and we were
12 beginning to work through those questions when I had this
13 marvelous phone call and Kentucky said, because of issues
14 like this we would like you to make us the laboratory for
15 solving the problem and developing the best possible
16 system. I was elated.

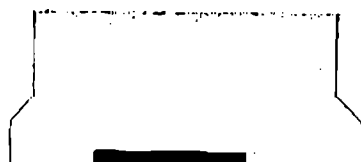
17 We recently gave a special grant to
18 devise that plan, and today I can announce that a
19 cooperative grant between the Department of Justice and
20 Kentucky has been reached. One which will help other
21 states to follow the model Kentucky has developed to make
22 prompt, accurate use of protection orders so that they can
23 mean something instead of just being paper.

24 (APPLAUSE)

25 It is so exciting. It is the

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1 principle, the true principle of federalism at work. It
2 recognizes the sovereignty of 50 states. It is
3 recognizing the link between us all and trying to devise a
4 system that reflects our federalist principle.

5 The agreement will support a regional
6 pilot project to test interstate and intrastate /
7 verification mechanisms for enforcing protection orders.
8 \$220,000 of funding for this project will come from the
9 Justice Department, the Community-Oriented Police Services
10 Office, and the Department of Victims of Crime.

11 I understand also that you have
12 utilized some of the money from the Violence Against Women
13 grant to target the means of assuring a full face credit
14 to protection orders as a priority for funding. Kentucky
15 is such an ideal site for this laboratory because of your
16 Link System and because you've already brought the
17 relevant actors to the table.

18 The Kentucky laboratory project will
19 focus on developing an integrated approach to the
20 enforcement of protection orders from other states and
21 will build upon your success in enforcing Kentucky
22 protection orders within your own state.

23 Often, domestic violence, including
24 protection order enforcement, is a primary reason for
25 contact with police officers. How that contact is handled

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1 has ramifications far beyond the incident itself.

2 Unfortunately, few jurisdictions have adequate information
3 available to the officers on the street about intrastate
4 much less interstate enforcement of protection orders.

5 This information must be readily
6 available and comprehensive in order to obtain optimum
7 results. If a lady moves from Lexington to Louisville and
8 the Louisville officer can't keep track because there is
9 no automation of the Lexington protection order, it's not
10 going to be worth very much.

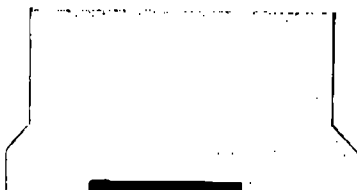
11 We have an opportunity through this
12 historic partnership to make a difference. The Department
13 will work closely with you to construct model procedures
14 for sharing protection order information with surrounding
15 states and to develop a multimedia-based public education
16 campaign and training protocols.

17 The essence of this laboratory is to
18 develop innovative and proactive approaches to continuing
19 crime problems and to establish partnerships to
20 effectively comprehend solutions to crime. We hope that
21 your efforts in making full face credit a reality will
22 serve as a model for other states to follow.

23 The Violence Against Women Act did
24 more. Today, President Clinton announced that a new
25 nationwide 24-hour toll-free domestic violence hotline

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1 will provide immediate crisis intervention to those in
2 need. This hotline was mandated by the act. Again, an
3 example of a bipartisan group coming together imposing
4 common sense terms on a system that can truly begin to
5 eradicate domestic violence.

6 Last month the President, in the State
7 of the Union address, challenged the nation to continue
8 fighting against domestic violence. Congressman Hal
9 Rogers, who chaired the Justice Department's Procreation
10 Subcommittee, is among those in Congress who is leading
11 the effort to direct almost \$170 million in grants this
12 year to develop meaningful and to expand on meaningful
13 domestic violence programs around the country, Kentucky to
14 get its fair share. This will be in addition to the money
15 for the laboratory.

16 (APPLAUSE)

17 Chairman Rogers, I have discovered,
18 cares a lot about good government, and I have been on the
19 receiving end of some of his good government comments. It
20 has been my privilege to work with him on trying to
21 address these issues, again, in a nonpartisan way to make
22 sure that everybody's money is spent as wisely as possible
23 for the benefit of all.

24 The people of Kentucky have been well
25 served both here in the state capital and in the nation's

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1 capital. Senator Ford was one of the first people to meet
2 me. He doesn't remember, I don't think, because he didn't
3 know whether I was going to be Attorney General or not.
4 We had a lot of nominees come up. (Laughter) .

5 But he was one of the people who made
6 me feel most at home. And since then he has been so
7 supportive of our efforts to try and serve the people in
8 the best way possible in terms of community policing
9 initiatives for the state. And it has been my pleasure to
10 work with him.

11 (APPLAUSE)

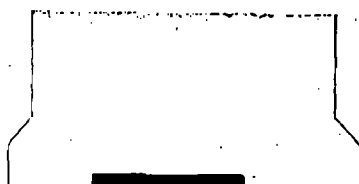
12 Your entire Congressional delegation
13 has been a pleasure to work with. We want to continue to
14 work with the people of Kentucky and your representatives
15 here and in Washington. I applaud your efforts now
16 underway in this Capitol to enact legislation.

17 But among other things, to insure that
18 the punishment of domestic violence fits the crime,
19 particularly with respect to the victims. And that it
20 will protect the community by authorizing conditions of
21 release and establishing an effective victim notification
22 system statewide.

23 I should also mention one other
24 matter, another problem which you as the legislature, I
25 understand, might be addressing. When domestic partners

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1 are forced to cross state lines to escape abuse, often
2 they are put to the choice of protecting themselves at the
3 risk of sacrificing their children's financial
4 well-being. I am referring to the problems that occur
5 when custodial parents who have child support orders move
6 to states that do not recognize those orders.

7 I was responsible for child support
8 collections when I was a prosecutor in Miami, and nothing
9 is more frustrating then for the fellow to move from one
10 place to the next place. And every time he moves you've
11 got to open a new proceeding in that state.

12 In order to insure that full face
13 credit is given to orders from other states, 27 states and
14 the District of Columbia have signed on to the Uniform
15 Interstate Family Support Act. I understand you will be
16 considering the adoption of this important statute in your
17 session this year.

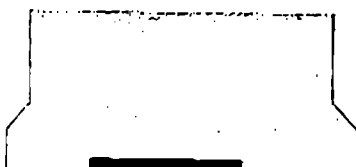
18 This law has greatly expedited
19 interstate child support collection, a matter which we too
20 have made a priority of our U.S. Attorneys under our new
21 federal authority. If you bring a child into this world,
22 you ought to care of it.

23 (APPLAUSE)

24 I look forward to working with
25 Kentucky to develop a system that can insure the

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1 enforcement of state orders across this nation that serve
2 our children well. But let us look beyond these issues to
3 what we can do in a continuing partnership.

4 We will want to see how your
5 Louisville Family Court develops and assist you as you can
6 find us useful and helpful in building the best possible
7 judicial approach to domestic violence in courts
8 throughout the country.

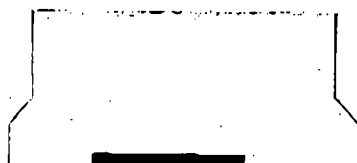
9 But you're a state of many rural
10 counties. What works in Louisville, may not work in the
11 more rural parts of Kentucky. A court which only hears
12 ten criminal cases a week, one of which may be a domestic
13 violence matter, can hardly be expected to devote a
14 special session to domestic violence. But rural victims
15 of domestic abuse are just as real and it hurts just as
16 much. And they deserve the same quality of justice as
17 those in larger cities.

18 How do we deliver these services
19 everywhere? What transportation systems should be in
20 place? What role should the federal government play?
21 What can be done through telecommunications or
22 telemedicine projects? How can we improve the system of
23 shelters throughout the country?

24 These are questions that we would like
25 to address with you so that we may share with other states

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1 and build the best possible system. But what do we do
2 after the police and the prosecutors and the courts do
3 everything right, after the system for protection orders
4 works? What do we do when we get them arrested and then
5 convicted?

6 My experience in Miami showed me that
7 that's the hardest question of all. We look forward to
8 working with you to develop model correctional and
9 diversion programs that can make a difference. Instead of
10 reflecting people back through the system, we have
11 effectively and once and for all interrupted the cycle of
12 violence.

13 (APPLAUSE)

14 Drugs and alcohol are too often the
15 fuel of domestic violence. We must continue our efforts
16 to stem the tide of drugs and deal with the problem of
17 alcohol. The American Psychological Association report
18 points out that both victims and perpetrators of domestic
19 violence tend to abuse alcohol, 20 percent for female
20 victims and 50 percent for male batterers.

21 Let's work together in our partnership
22 in this year to come to identify better means of dealing
23 with the problem of alcohol-generated abuse.

24 Today we face a new and alarming
25 substance. The newest violence-inciting drugs,

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1 methamphetamines. It's cheap, it's easy to make, and it
2 kills. But here in Kentucky you're doing it again. You
3 are taking the lead and you're moving quickly to respond
4 to the challenge.

5 I commend Ray Larson, Commonwealth's
6 Attorney in Lexington, for organizing a 400-person
7 conference yesterday which dealt with the problem of
8 methamphetamine labs here in Kentucky. I was pleased that
9 I was able to speak to the participants by phone, and the
10 Department of Justice is working with local law
11 enforcement throughout the country to seal a comprehensive
12 matter with this new menace so that we don't let it get
13 away from us like crack got away with everyone in 1985.

14 Finally, we must continue our
15 partnership between state and federal officials, between
16 local law enforcement and federal agents, between those
17 involved with programs and through us and all the people
18 to deal with another emerging crime problem, the stark
19 tragedy of youth violence which plagues this nation.

20 In 1985, the incidence of youth
21 violence began to grow dramatically in this country while,
22 at the same time, the number of young people was declining
23 slightly. Since 1992, the number of young people has
24 begun to increase and will do so substantially over the
25 next 20 years.

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1 Unless we turn around this cycle and
2 do something to interrupt it now, we're going to have a
3 lot worse problems down the line. And I think we've got
4 to stand together on the notion of domestic violence to
5 talk about family violence.

6 (APPLAUSE)

7 A 1992 study found that childhood
8 abuse and neglect increases the likelihood of arrest as a
9 juvenile by 53 percent, of arrest as an adult by 38
10 percent, and of committing a violent crime by 38 percent.

11 If we want to deter criminal behavior,
12 we must recognize this linkage, educate society about it,
13 and work to break it. We must intervene early to make
14 sure that abused and neglected children and children
15 exposed to domestic violence do not turn to violence
16 themselves. We must not wait until kids get in trouble
17 and begin to victimize others and themselves. We must
18 interrupt early on.

19 (APPLAUSE)

20 I am very happy that both United
21 States Attorneys Mike Troop from Louisville and Joe
22 Famularo from Lexington are here today, because as I
23 cautioned them when they first came to talk to me as they
24 were being nominated, I stressed to them that I wanted to
25 create a partnership between the Department of Justice and

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1 local and state governments. And I know they have both
2 worked hard on that effort and have done such a good job.
3 And I want them to know how much I appreciate it.

4 (APPLAUSE)

5 In this vain, I want to take a very
6 special moment to recognize Lou Delaface who serves with
7 distinction as Senior Counsel to the Director of the
8 Executive Office for the United States Attorneys in
9 Washington. I asked him to join me today.

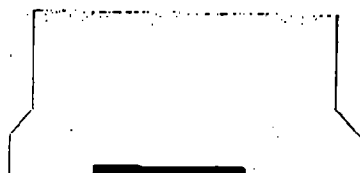
10 Lou Delaface, many of you know, is the
11 man who served for ten years as the United States Attorney
12 in Lexington and before that as a member of this body.
13 What you may not recall is that Lou co-sponsored
14 Kentucky's first domestic violence statute.

15 What you may not know is that when I
16 sit in my conference room in the Attorney General's office
17 in Washington, there's one place I'm always sure of
18 getting a straight answer. He's not afraid to say no to
19 the Attorney General. He's not afraid to come up with
20 creative solutions to difficult problems.

21 Lou's presence symbolizes to me the
22 spirit of public service, the spirit that is in this
23 Chamber, people who come to this great state capital to
24 serve their community and their state. It is the spirit
25 of public service, of local, state, and federal, of

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1 Republicans and Democrats, of volunteers and paid
2 employees, all trying to do the common good.

3 On March 12, I will have been Attorney
4 General for three years. It is the most extraordinary
5 opportunity that any lawyer can have to serve their
6 nation. And I have had the chance to visit many people
7 and places in this great country.

8 I was in Oklahoma City the Sunday
9 after the bombing and watched the people of Oklahoma City
10 galvanize together to speak out against the violence that
11 spawned that blast, to come together to help the victims
12 and their families begin to heal, to speak out to help law
13 enforcement, to work together to bring a community to
14 peace.

15 I then met firefighters in
16 Indianapolis who had gone to Oklahoma City to help in the
17 rescue efforts. In these three years I have met senior
18 citizens who volunteer in hospitals and in kindergartens.

19 I have stood in a little cemetery in
20 the west Texas hills as a border patrol agent, shot while
21 guarding our border, was buried. I have taught a third
22 grade class in Raymond Elementary School in Washington,
23 DC, and talked to kids who were giving me good ideas about
24 conflict resolution.

25 And now I've had this wonderful

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1 opportunity to talk to this great body of lawgivers.
2 We're all people striving to bring peace to our families,
3 our community, and our nation.

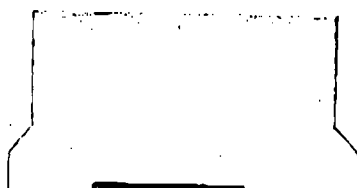
4 From the spirit in this State
5 reflected in so many efforts that you have undertaken with
6 respect to domestic violence, from the spirit that was in
7 that cemetery and in that city, I have only the most
8 optimistic view of what we can do as a nation together to
9 bring peace to us all. Thank you so much for all you do.

10 (APPLAUSE)

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STATE OF KENTUCKY) SS:
COUNTY OF FRANKLIN)

I, BEVERLY D. HAVILAND, the officer
before whom the foregoing speech was given, do hereby
certify that the foregoing speech was taken by me to the
best of my ability and thereafter reduced to typewriting
under my direction.

Beverly D. Haviland
Notary Public in and for the
State of Kentucky at Large

My commission expires: Oct 27, 1998

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Thumbs up and down

Early warning; Rose's road; sweet smell of spring

In the past five months, 106 people who sought to buy handguns in Kentucky were turned down because they were subject to domestic violence restraining orders.



That's 106 arguments in favor of the much-maligned Brady Bill, which requires a waiting period and background check for handgun purchases. It has made life a little safer for the victims of the 106 spouse-abuse suspects.

But state police and U.S. attorneys in Kentucky want to do more than just stop someone under a domestic violence order from buying a handgun. This week, they announced a plan to notify the judges when suspected spouse abusers attempt to buy guns.

The hope expressed by the state law enforcement officials is that judges would call the suspects back into court and consider other charges, such as contempt of court. That should be everyone's hope.

The Brady Bill is doing its part. It is singling out people who should not be walking the streets armed like Green Berets.

Now, Kentucky judges need to use this valuable tool to help protect the victims of spouse abuse.

McClure Road in Clark County, where Senate President John "Eck" Rose lives, was widened under a



\$680,000 state contract. While the work was being done, Rose got 66 acres of land he owned rezoned for residential use. Rose then sold 62 acres of the land to a developer for \$119,802.

But Rose, one of the Democrats

who would be governor, had nothing to do with getting this road widened and improved. Just ask him. "Absolutely not," he says.

Guess it was just another one of those strange coincidences that happen in state government.

What's the big deal with the skunk smell in Louisville?

Our cousins to the west have gone through contortions this past week worrying about a little stink in their town. Smelled like a skunk, residents said.



It sounds like Louisville has lost touch with the wonder and beauty of country life. The citified, mall-loving Louisvillians have forgotten that this time of year, as the sap rises, the noble skunk sets off in search of love and procreation.

The singled-minded male often comes upon obstacles in his quest — a pack of baying hounds or a speeding 1992 Chevy van. The encounters often don't go well for the polecat and he fires back with his own peculiar scent.

(Unlike Chevy vans, dogs come out the loser when they meet the skunk in the field or backyard. A pooch may leave the house barking and full of vim; but after a close brush with Mr. Skunk, he returns watery-eyed, drooling with the force of a fire hose. The remedy, we've found, is a vinegar bath — and a few days in the fresh air.)

Whether the odor of skunk is pleasing or nauseating is a matter of perspective, an olfactory creation of reality. On a cool night, however, with the stars blinking and the air crisp, a waft of skunk smell doesn't bother us at all. Think of it, Louisville, as the scent of adventure, wandering and true love.

Spouse-abuse suspects will be prohibited from purchasing guns

BY ERIC GREGORY

HERALD-LEADER STAFF WRITER

FRANKFORT — If you're the subject of a domestic violence restraining order, and you try to buy a handgun in Kentucky, you could be in bigger trouble.

At a news conference yesterday, Kentucky State Police announced that they will be notifying judges if someone with a restraining order tries to buy a firearm.

State and federal officials hope judges, in turn, will bring that person back into court and consider other charges, such as contempt.

In the last five months, 106 people have been turned down because they had an outstanding restraining order, said Michael Troop, U.S. Attorney for the state's western district.

"We would like to think that many crimes have been deterred," he said.

Kentucky is the only state with

SEE ORDERS, B3

Anti-violence aid

The leader of the new federal Office on Violence Against Women will visit and assist Kentucky in its efforts to combat domestic violence, state Attorney General Chris Cerone said yesterday.

Details of Bonnie Cline's visit to Kentucky have not yet been worked out, Cerone said. She is former attorney general of Iowa.

— *Michael Troop*
Frankfort Bureau

CORRECTIONS

The Herald-Leader corrects all significant errors that are brought to the editors' attention. If you think we have made such an error, please call our newsroom at (606) 231-3200 after 8 a.m. on weekdays and after 3 p.m. on weekends and holidays.

OVER

ORDERS: Police hope system cuts violence

FROM PAGE B1

the technology to do this, Troop said. State police can check a buyer's application with the LINK computer system that compiles domestic violence orders.

"We're ahead of the game," he said. "That sets Kentucky apart from everybody else, because nobody else has the apparatus to do this."

After the news conference, several officials said the notification system would be a positive step. "I am just dumbfounded that that many defendants with an emergency protective order would apply for a gun," said Supreme Court Chief Justice Robert F. Stephens.

Thomas L. Clark, chief judge at Fayette District Court, said such notification would be helpful and he would consider bringing those people back to his court.

Lindsay Campbell, executive assistant with the Kentucky Commission on Women, said: "Any steps that would further protect women would be valuable to the whole state, and we would welcome them."

Under the Brady Law, state police already check a buyer's criminal background. About 2,000 people out of 69,400 applicants have been turned down in the last year for past crimes, said state police Commissioner Jerry Lovitt.

When the Crime Bill was signed into law in October, state police started screening for restraining orders. It is a federal crime — punishable by up to 10 years in prison and a \$10,000 fine — for someone to possess a firearm if they're under a domestic violence order.

Troop and his counterpart in the eastern district, Joseph Fanularo, said they are sending letters to every judge in the state for two reasons:

- To remind them of the new guidelines and to let them know that they can refer violators to federal officials for prosecution under the Crime Bill.

- To let judges know about the notification system. "We want them to know if somebody under their jurisdiction is trying to get a gun," he said.

"Hopefully, they'll bring them back in and ask them, 'What do you need a gun for, and why are you looking to get one?'"

Fanularo said they would not ask judges to include a prohibition against trying to buy a gun in their restraining orders such as domestic violence orders. "I don't think we should be dictating what's in their DVOs."

Agencies receive grants to help combat crime

HERALD LEADER STAFF REPORT

Three agencies have received federal "safe street" grants to continue battling specific crime problems, officials announced yesterday:

- The Louisville Fugitive Task Force, made up of FBI agents and officers from the Jefferson County and Louisville police departments. It received \$32,628.

Since it was formed in January 1993, the task force has arrested 303 fugitives within the Louisville area, said V. Dave Kohl, the FBI special agent in charge of Kentucky.

They also have provided information to other police depart-

ments that has resulted in an additional 114 arrests throughout the country, he said. Eleven people in Jefferson County have been arrested on federal fugitive charges.

- A Covington task force formed in July 1993 to fight violent and drug-related crime in the Jacob Price housing projects. Eighty people have been convicted or pleaded guilty; one is pending trial and four are fugitives, Kohl said.

Meanwhile, complaints of violent crime have been cut in half, he said. The task force was awarded a \$25,800 grant.

- Lexington police received a \$3,306 grant to battle crack cocaine.

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Disarming the violent

A LITTLE-KNOWN part of the 1994 federal crime bill gives judges and police a powerful new weapon against domestic violence, and they should not hesitate to use it.

The new law permits judges to forbid people who are under domestic-violence restraining orders and who are considered potentially dangerous to possess firearms. This enlightened change may not prevent physical abuse, but it does give courts a way to help keep domestic tension from erupting into gunfire. It also provides another way to track dangerous people who try to buy guns.

The ban isn't automatic. To activate it, a judge must find that the person represents a threat to the safety of his or her intimate part-

ner and must also bar that person from engaging in threatening behavior. Attached to the restraining order, the person may not possess firearms. That means they may not purchase firearms and must divest themselves of those they already own.

There is another catch: For the new crime-prevention tool to work, a state must have the computer capability to check the names of people who apply to buy handguns against the names of those under restraining orders. Most states don't have the necessary technology in place, but Kentucky does. Already, as a result, 106 applicants were turned down.

U. S. attorneys are urging state judges to do their part to disarm violent people prone to domestic violence from possessing a firearm. They should listen up.

Keeping firearms out of violence cases pledged

By FRAN ELLERS
Staff Writer

FRANKFORT, Ky. — State and federal agencies are working together to try to keep guns away from people who are prone to domestic violence.

Yesterday the two top federal prosecutors in Kentucky said at a news conference that they will do all they can to enforce a new federal law that makes it a crime for someone under a domestic-violence order to possess a handgun.

And they said they are looking to the state's judges and other agencies for help.

Their comments were part of a report by several state and federal agencies on how they are working together to reduce violent crime, a focus of the U.S. Justice Department's anti-violent crime initiative.

Domestic violence is a particular concern throughout Kentucky, said Joseph Famularo, U.S. attorney for the eastern part of the state.

State police are already checking the backgrounds of people who apply to buy handguns to see if they are under restraining orders for domestic violence. As a result of the checks, 106 applicants were turned down between October 1994 and Feb. 24, said Kentucky State Police

Commissioner Jerry Lovitt.

That's possible because Kentucky has a record of most of those restraining orders on a computer network known as LINK, Lovitt and others said.

Lovitt said state police will notify judges of those handgun applications so they can use the information as they see fit. One option, said Michael Troop, U.S. attorney for Kentucky's Western District, may be for judges to rule that the applicant violated the terms of the restraining order.

Troop and Famularo said they are also asking all district and circuit judges to make sure domestic-violence orders contain the elements that will help them prosecute violations of the federal law against possessing a firearm.

Also yesterday, the FBI reported on other special efforts to fight violent crime in Louisville and Northern Kentucky; there is also an effort in Lexington. All three areas got more federal funding for next year.

David Kohl, special agent in charge of the FBI in Kentucky, said multiagency efforts to find alleged criminals fleeing from police have resulted in more than 300 arrests in the Louisville area — and more than 100 elsewhere — since the efforts began in early 1993.

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PROTECTION: Sheriffs working to correct process

FROM PAGE B3

Scillian was shocked at the numbers. Statewide 27.8 percent of emergency protective orders showed up on LINK, the Law Enforcement Information Network of Kentucky, as not having been served.

Since then, Scillian said, sheriffs have convinced him they are tracking down alleged violators and serving them with the emergency orders. The biggest problem, Scillian said, is in reporting to the computer network that the orders have been served.

State rules leave it up to local officials to decide which office —

sheriff, police or circuit court clerk — is supposed to report when a protective order has been served.

When reporting breaks down, LINK lacks the information that enables police to arrest a violator on the spot.

Non-reporting was the weakness in Magoffin County, said Victoria Doucette, family services supervisor for the state Department for Social Services there.

Despite great progress in enforcing domestic violence laws, Magoffin had the state's fourth-worst service rate, she said.

With technical assistance from Frankfort "we hope we have re-

solved this breakdown," she said.

Doucette said District Judge Terry Jacobs, who took office in January 1994, is an example of how the courts can make a huge difference in the lives of beaten women and their children.

The number of repeat offenders has declined since Jacobs started a no-drop policy, which takes the pressure off victims to decide whether to pursue prosecution of an abusive man. She said the "very powerful message" Jacobs sends from the bench and his court-ordered counseling for violent men already have changed attitudes about domestic violence in Magoffin County.

Protective-order problem getting quick attention

BY JAMIE LUCKE

HERALD-LEADER FRANKFORT BUREAU

FRANKFORT — Sheriffs and other local officials are scrambling to fix breakdowns in the process for carrying out domestic violence protective orders, a legislative task force was told yesterday.

"Sheriffs are talking about this a great deal," said Tom Scillian, president of the Kentucky Sheriffs Association and sheriff in Christian County. "My fax machine is smoking, as a matter of fact."

The action is a response to data the task force on domestic violence released in January showing that in 26 counties, more than half of the emergency protective orders were not served or never showed up as served on the statewide police computer network. Either way, victims are left unprotected.

"Sheriffs are talking about this a great deal. My fax machine is smoking."

TOM SCILLIAN

On Page B3

■ Reno praises Kentucky's domestic violence laws

SEE PROTECTION, B3

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Kentucky may be model for protecting victims

By GIL LAWSON
Staff Writer

FRANKFORT, Ky. — U.S. Attorney General Janet Reno enlisted the help of Kentucky officials yesterday in an effort to improve protection for victims of domestic violence.

At the suggestion of a state legislator, Reno said it would be "an excellent undertaking" for Kentucky to become a "laboratory" to figure out how to transfer domestic-violence protective orders more easily from one state to another.

Reno spoke by telephone to members of the Legislative Task Force on Domestic Violence about the Violence Against Women Act, part of last year's federal crime bill.

One of the sticking points in the legislation is a provision that requires states to recognize domestic-violence orders from other states without the victim being required to return to court.

Kentucky Attorney General Chris Gorman said, based on his office's research, that women with out-of-state orders would have to go to a Kentucky court before the order could be enforced.

Sen. Jeff Green, D-Mayfield, the task force's co-chairman, suggested that Kentucky could serve as a mod-

el for the country if it could work out a way for out-of-state orders to be recognized by its courts.

The issue arose last fall when a woman who moved to Eastern Kentucky from Illinois attempted to have a protective order enforced, said Sherry Carruss, executive director of the Kentucky Domestic Violence Association. She was told it could not be enforced.

Chief Justice Robert Stephens wants to comply with the new law and is working with a committee examining domestic-violence issues to find a temporary solution, a spokeswoman for the court said.

New legislation may be introduced.

Also yesterday, a Louisville police detective told the state legislature that Kentucky's domestic-violence law should be amended to crack down on persistent abusers. Repeat offenders should be treated as misdemeanors, said Chuck Cooper of the Louisville Police Department's domestic violence squad.

He also said it should be easier for officers to make arrests for fourth-degree assault. The law allows an arrest only if the officer believes the suspect is a continuing menace, Cooper said.

Information for this story was also gathered by The Associated Press.

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Kentucky's domestic violence laws 'model for the nation,' Reno says

By JAMIE LUCIE

HERALD-LEADER FRANKFORT BUREAU

FRANKFORT — U.S. Attorney General Janet Reno praised Kentucky's domestic violence laws as "a model for the nation" yesterday and warned that Republicans in Congress are attacking programs designed to help battered women.

Reno spoke by telephone from Washington to a Kentucky legislative task force on domestic violence.

The task force chairman, Sen. Jeff Green, D-Mayfield, volunteered Kentucky as a laboratory to develop procedures for carrying out a new federal law that requires states

to enforce each other's domestic violence court orders.

Enacted last year as part of President Clinton's crime bill, it should allow victims to travel from state to state and remain protected without having to "return to court and revisit the horror," Reno said.

In Kentucky, work is under way on an interim procedure for honoring the out-of-state orders. A committee appointed by Chief Justice Robert Stephens to monitor sex bias in the courts is working on the interim plan.

Referring to the domestic vio-

lence laws Kentucky enacted in 1992, Reno said: "Kentucky's leadership in this effort has just been magnificent."

She also said: "Your vision for what you can do in Kentucky won't be a fantasy without money."

She urged the state to apply for domestic violence grants authorized by the Clinton crime bill, and she warned that some domestic violence funding is under attack. A House subcommittee last week canceled funding for a domestic violence hot line, jeopardizing a project "that could have saved the lives of abused women."

DATE: 5/1/95

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CC: ~~WHEATLEY~~

WHEATLEY

TAYLOR

SCHWARTZ

PENCE

JONES

KIDD

HUBER

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Marking Brady law

Kentucky State Police Commissioner Jerry Lovitt spoke yesterday at the White House during a ceremony marking the one-year anniversary of the Brady handgun control law. Looking on are James Brady, seated, and President Clinton.

Associated Press



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ABA Commission on Domestic Violence

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FAX TRANSMISSION SHEET

Date: June 13, 1996
To: Liz Hyman
Fax: 307-3904
From: Roberta Valente
Re: LSC Stats on DV

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL (202) 662-1744

I am sending you the LSC's one-page handout on domestic violence. Our LSC specialist is not in at the moment, but I've left him a message for more information. We have a lot of contacts with LSC programs across the country which deal with domestic violence cases; if you're interested, we can call them for specific statistics or for individual stories.

Good meeting you the other day. I'm very glad your office is interested in this. We are very concerned about it.

Rob Valente



LEGAL SERVICES CORPORATION

Outline

Legal Services Combats Domestic Violence

- The U.S. Bureau of Justice Statistics reports that over one million women a year are victims of violence by husbands or boyfriends. Domestic violence is a problem at all income levels. Poor families, which frequently lack access to support networks, are especially vulnerable to the vicious cycle of domestic abuse.

- Family law, which includes the representation of victims of domestic violence, is the single largest category of case handled by the 323 local legal services programs across the nation. One out of every three of the 1.7 million cases that legal services programs handle each year concerns family law. In 1993, legal services programs handled over 52,000 cases in which clients sought legal protection from abusive spouses and over 9000 cases involving neglected, abused, and dependent juveniles. Domestic violence was also an issue in many divorces and other types of cases as well.

- Legal services attorneys assist victims of domestic violence in a variety of ways: obtaining orders of protection, child support, and divorces from abusive spouses; representing them in child custody proceedings; assisting them with applications for emergency housing or other benefits that enable them to escape violent situations; and helping them make realistic plans for moving from dependency to self-sufficiency.

o The Cincinnati Legal Aid Society represented a woman who fled to Texas with her three children to escape from her abusive husband. He followed her, beat her up, and held a gun to her head and threatened to kill her. He then snatched the youngest child and went back to Ohio. Working with a legal services program in Texas, the Legal Aid Society was able to help the mother retrieve her child and obtain a divorce, permanent custody, and child support.

o A mother of four children in Arkansas filed for a protective order from her abusive husband, who had threatened to kill her. Although the order was granted, the woman was arrested because she did not have the money to pay \$84 in court costs. A judge ordered her held in jail until a contempt hearing scheduled for two months later. Central Arkansas Legal Services obtained a stay of the contempt order from the state Supreme Court and helped the woman find safe living quarters for herself and her children.

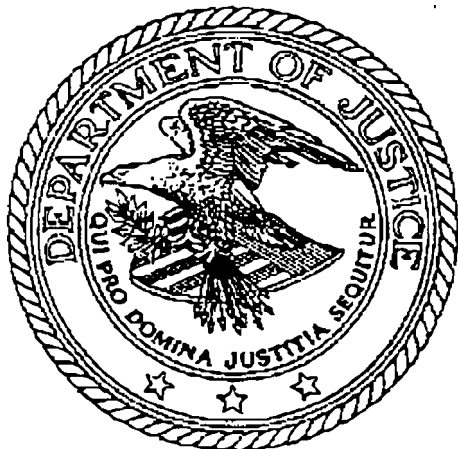
o In Alaska, a young Native Alaskan woman refused to return to her abusive partner's remote village with him. He left, taking their children and refusing to respond to her efforts to contact them. The Alaska Legal Services Corporation obtained the return of the children and an order of permanent custody for the mother. After a state investigation prompted by the legal services attorney, criminal child abuse charges were filed against the father.

- In addition to providing direct representation, legal services programs target domestic violence through community legal education programs on the day-to-day realities of spousal and child abuse and the rights of victims. Legal services advocates frequently serve as founding board members for domestic violence shelters and participate in the creation of law enforcement task forces and other efforts to improve the response of public agencies to violent situations.

- Domestic violence is the top priority of the National Center on Women and Family Law, a national support center funded by the LSC. The Center assists local programs with individual cases and prepares training manuals and community legal education materials on spousal abuse and related topics.

- In Chicago and western Massachusetts, innovative programs targeted at domestic violence have been developed by local legal services programs as part of the National Service Legal Corps, the first national legal initiative funded through the AmeriCorps national service effort.

U.S. Department of Justice



Washington, D.C. 20530

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DATE: 6-13-96TO: Dennis BurkeFAX #: 456-7028 PHONE #: _____# OF PAGES: 3 (INCLUDING COVER)COMMENTS: _____

LEVEL 1 - 5 OF 18 STORIES

Copyright 1995 Bangor Daily News
BANGOR DAILY NEWS (BANGOR, MAINE)

October 24, 1995 Tuesday

LENGTH: 454 words

HEADLINE: Legal Services

BODY:

The citizens of Maine owe a debt of thanks to Sen. Bill Cohen and the Bangor Daily News for their continued support of the Legal Services Corp. and its Maine counterpart, Pine Tree Legal Assistance, in the face of massive proposed funding cuts in the Congress.

As part of a broad appropriations measure, the House of Representatives in late July passed HR 2076, which reduced funding to the LSC by almost one-third. When the Senate took up its own version of the appropriations bill, a concerted effort led by Sen. Phil Gramm of Texas aimed at the elimination of the Legal Services Corp. altogether. For tens of thousands of Maine's citizens living at or below the poverty line, the result, if successful, would have been truly catastrophic.

Access to justice for Maine's poorest citizens depends, to a considerable degree, on continued federal funding for LSC. As Sen. Cohen said on the floor of the U.S. Senate, "if we genuinely aspire to have a system of 'Equal Justice Under Law,' as it is written on the front of the Supreme Court, then our neediest citizens must have access to that system. "

Pine Tree's primary source of funding is the Legal Services Corp. Had the Gramm forces been successful in eliminating LSC, thousands of Maine's citizens would have found the courthouse door barred to them. Victims of domestic violence, of slumlord housing, of consumer fraud, who couldn't afford a lawyer would suddenly be without recourse. The resulting cost to all of Maine's citizens, though indirect, would be staggering.

In a recent editorial, the NEWS voiced its support for continuation of the Legal Services Corp. In his Sept. 29 floor speech, Sen. Cohen mustered support for the Domenici amendment, which restored LSC to the appropriations bill, albeit with new and severe restrictions on the types of services LSC-funded organizations can provide. As Sen. Cohen noted, "we are faced with choices. " An imperfect appropriations bill that allows LSC to continue, albeit in a restricted form, is better than no LSC at all.

Access to justice should not be a partisan issue. No one can seriously question the need to reduce federal spending and to get



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Bangor Daily News, October 24, 1995 Tuesday

our fiscal house in order. Issues like funding for a B-2 bombers, or committing \$ 100 billion to build a space station, can be debated with integrity on both sides of the aisle. Access to justice, however, should not become a bargaining chip in our efforts to balance the budget.

Thanks in no small part to Sen. Cohen and the Bangor Daily News, access to justice for Maine's neediest citizens has, for the time being at least, been preserved.

William B. Devoe
President
Pine Tree Legal Assistance
Bangor

LOAD-DATE: October 24, 1995



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The New York Times

June 30, 1996, Sunday, Late Edition - Final

SECTION: Section 13CN; Page 4; Column 5; Connecticut Weekly Desk

LENGTH: 966 words

HEADLINE: Keeping Legal Help Reachable to the Poor

BYLINE: By MELINDA TUHUS

BODY:

DESPITE fears of restructuring legal services for poor people, a consensus among lawyers in the field seems to be building that, "It's not as bad as we feared it would be."

The backdrop to the changes is a 30-year battle by conservatives to reduce or eliminate support for the Legal Services Corporation, the federally funded Great Society-era umbrella agency that oversees legal help to the poor -- whether it be landlord-tenant disputes, consumer fraud or family issues like domestic violence, child custody and divorce.

Last year Congress voted to slash the corporation's budget by one third, to \$278 million; eliminate specialized projects including those for migrant workers, and prohibit lawyers who receive any income from the corporation from filing class action suits (often used in the past to alter public policy), challenging new welfare laws or lobbying the government on behalf of their clients.

Until last year's changes, Connecticut's legal help for poor people consisted of four agencies: the New Haven Legal Assistance Association, serving New Haven with a branch office in Derby; Neighborhood Legal Services and the Legal Aid Society of Hartford, both serving Hartford, and Connecticut Legal Services, serving the rest of the state.

The new Federal mandate initiated a great debate and a lot of soul-searching among staff attorneys about whether to take the money -- with the strings attached -- or refuse it to maintain their options, albeit with considerably less funding. What they came up with was a compromise, a two-tiered system they hope will allow maximum flexibility.

The directors of the legal help groups pooled their Federal money and created Statewide Legal Services, an entity that is abiding by the restrictions laid down by Congress. Meanwhile, the two Hartford agencies (soon to merge into one) and the New Haven office, with no Federal funding, remain free to file class-action suits and to lobby.

Formerly, clients would walk in or call the offices and be screened to determine what kind of help they needed and how quickly they needed it. Some -- victims of spousal abuse or those threatened with eviction -- were given help



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immediately.

Now, when people contact one of the offices, they talk to a receptionist who gives them a toll-free number for Statewide Legal Services, where they are screened by a central staff. They are often asked to fax or mail in relevant material. If the person is eligible, help is provided either by lawyers at the central office, or the case may be sent back to the office where the initial contact was made.

Glenn Falk, a long-time lawyer in the New Haven office, argued that his office should take the Federal money, even with the strings attached. "There was \$1.5 million for Connecticut that came with restrictions," said Mr. Falk. "That's 30 lawyers' worth of money. That's an awful lot of helping people. I'm not so naive as to think that class action suits are not important -- I sued the New Haven Housing Authority numerous times."

But by taking the money, he felt, attorneys could provide concrete legal help to more poor people while the public policy advocacy pursued through class-action suits and lobbying could be done -- and was being done -- by many other agencies.

Mr. Falk said he feared people who need help would fall through the cracks. He worries especially about illiterate clients who are likely to have a harder time navigating the new system.

Amy Eppler-Epstein, a colleague of Mr. Falk's in the New Haven office, took a completely different view. "I'm really glad we made the choice we did," she said. "It was certainly not without pain. Part of the pain was that a couple of intake screeners were laid off. But I think the telephone screening is beginning to work pretty successfully and better than I was afraid it might."

"We are getting lots of people referred back to us," she continued. "I know some people have not been able to get through on the phone; I also know that, before, people would wait for three hours in our waiting room."

She said that people with mental disabilities or those with complicated paperwork would still be seen in the office rather than being given the toll-free number.

She added that neither the old system nor the new one was perfect; "the frustration with both," she said, "is the lack of resources compared to the problem." But she doubted that more people were falling through the cracks now than under the old system. "I used to get 40 cases a week in the housing unit," she said, "and that's what we get now."

Patricia Kaplan, director of the New Haven office, is even more positive about the changes. Given both the Federal cutbacks and a 50 percent drop in Interest on Lawyers' Trust Accounts funds due to the sluggish economy, she says, "Setting up this new entity was a godsend because it meant I could carve off my intake function, and it can be done more efficiently from a central location. That meant I could keep my advocacy staff of lawyers and paralegals."

Norman Janes, former director of Connecticut Legal Services and now director of the new Statewide Legal Services, calls the new plan "an excellent response to a difficult situation. I call this functional specialization." Funding cuts



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The New York Times, June 30, 1996

over the years have meant a drop in total staff throughout the state from 185 in 1980 to 112 in 1995 to 88 in 1996.

Mr. Janes says the fact that his agency is barred from taking on class action suits is not a problem "because we are part of a network that will get people what they need."

He expects the organization to handle 45,000 to 50,000 clients this year. He adds that it's hard to make an exact comparison with 1995, but that the numbers are very similar. "From 9 to 3 the phones are busy constantly."

LANGUAGE: ENGLISH

LOAD-DATE: June 30, 1996



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Domestic Violence and Child Custody

MARSHA B. LISS

GERALDINE BUTTS STAHLY

The impact of domestic violence on women's lives has been the focus of most of this volume. However, in addition to women, there are others who are affected by domestic violence—children. When children are exposed to domestic violence, their lives are also damaged and disrupted. When the woman makes the decision to leave the batterer, her decision changes the children's environment as well as their relationships with both parents. Although it may seem that the mother's decision to leave will protect her children from further exposure to battering and its effects, the continuing involvement of the batterer in the lives of both the children and their mother may create new problems, exacerbate old problems, and prevent healing of the damage that has already occurred (Bessenyey, 1989; Stahly, 1991). Given that the man's need for power and control is an important component of domestic violence, divorce may actually exacerbate his need to control, as evidenced in bitter and never-ending custody disputes (Chester, 1986; Stahly, 1991). In this chapter we examine what is known about domestic violence as an issue in custody decisions, outline ongoing research in this timely field, and review the types of cases and decisions judges have dealt with so far.

History of the Treatment of Domestic Violence in Custody Cases

Historically, under common law, children were considered the father's property, and upon divorce custody of the children was awarded to him.

Evidence of the father's beating of the mother or the children had no place in any court of law in any jurisdiction and was acknowledged in some circles as a matter of privacy and due course. The home was the man's castle, and abuse of either children or spouse was no one else's business (Aries, 1970). It was only in the late nineteenth century that child abuse was addressed by any modern court. In the twentieth century, industrialized countries developed new philosophies, such as the tender years doctrine, espousing that, all other things being equal (religion, sexual morality, psychological disturbance), custody should be awarded to mothers during the early childhood development period. This philosophy continued until almost the present day. During the 1970s the tender years doctrine began to be questioned, and in 1981 the Supreme Court of Alabama struck down the presumption of the tender years doctrine based on failure to provide equal rights to fathers (*Devine v. Devine*, 1981).

In place of the tender years doctrine and presumption of maternal care, the standard adopted in most states became the "best interests of the child." This standard, criticized by many as vague and lacking in guidance, definition, and parameters, does not require that any special weight be given to the sex of the parent (Chambers, 1984). Either mother or father might be awarded custody.

In recent years, attention has focused on "joint custody," another index of the changing view of the needs of children. In this model, parents share child custody responsibilities after dissolution of the marriage. The literature on joint custody indicates that when it works, it may be the ideal (Kelly & Wallerstein, 1982). In theory, joint custody is designed to afford the child access to continuing involvement by both parents. In California, the increasing number of parents awarded joint custody by the courts shows that it is almost routinely granted in disputed custody cases, generally without consideration of the special circumstances created by domestic violence (Judicial Council Advisory Committee, 1990). A growing body of literature in psychology urges parents to develop joint parenting arrangements following divorce (Hetherington, 1979; Teyber & Hoffman, 1989). However, recent data show that although joint custody works well with cooperative, dissolution-resolved parents with flexible schedules, these success stories may highlight the unusual rather than the normative family. In families that fall short of these characteristics, joint custody seems to foster continuing conflict for parents and children (Wallerstein & Blakeslee, 1989). It is within this framework of the "best interests of the child" and the tensions regarding custody and decision making post-dissolution that we will discuss child custody and domestic violence.

The role of domestic violence within the home has only recently been addressed by litigation and court decision as well as legislation. In the past, many courts would have found such allegations irrelevant to children's

custody determinations; if discounted as mere artifact substantial events in them! *Legal Periodicals* even inc

As of this writing, at le legislation, which may be t sole custody awards. State links between domestic vic tive January 1, 1991, judg 4608) must consider alleg violence in cases of child what extent they must con or his own discretion in ev should also be noted that i a course of several years t neutral language. The legi battered women and abusec rights groups. This step, ne the consideration of family interests of the child." Dis the negative effects of fam ment can be found elsewh

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The Issue

Many writers cite issues c parents, both before and a blamed for not cooperating

Domestic Violence and Child Custody

177

custody determinations; if found relevant at all, they would often be discounted as mere artifacts of the custody dispute process and not as substantial events in themselves. It was not until 1980 that the *Index to Legal Periodicals* even included a listing for "domestic violence."

As of this writing, at least 30 states have enacted domestic violence legislation, which may be the basis for women's turning to the courts for sole custody awards. States are being encouraged to enact more specific links between domestic violence and custody awards. For instance, effective January 1, 1991, judges in California (Civil Code Sections 4600, 4608) must consider allegations and evidence of a history of domestic violence in cases of child custody. However, no directives on how or to what extent they must consider it are provided; each judge must use her or his own discretion in evaluating, or even considering, the evidence. It should also be noted that it took California legislators five attempts over a course of several years to agree on the legislation, in spite of gender-neutral language. The legislation was supported in part by advocates for battered women and abused children; its strongest opponents were fathers' rights groups. This step, not the first of its kind in the nation, incorporates the consideration of family violence as part of the definition of "in the best interests of the child." Discussions of the best interests of the child and the negative effects of family violence on children's growth and development can be found elsewhere in this volume.

Some of the changes in custody determinations are not due solely to the efforts of advocates in the field of domestic violence. Rather, a combination of interests and forces—including the fathers' rights movement, the emergence of changes in women's life-styles and economics, the breakdown of rigid sex roles, and the custody issues related to them all—led to the courts' consideration of other custody patterns. One result has been the opening of judicial minds to aspects of domestic life not previously considered, including allegations of violence. Before this time, allegations of domestic violence or child abuse would not have been raised by attorneys, who were reluctant to bring up what were thought to be irrelevant issues. Paradoxically, the move toward greater sex role equality and equality of treatment by the courts and legislatures has also resulted in a loss of power by women in their traditional domain: At one time, nothing was as certain as the role of the mother in the upbringing of her child.

The Issue of Control and Custody

Many writers cite issues of control as part of the continuing battle between parents, both before and after marital dissolution, and mothers are often blamed for not cooperating and for creating difficulties (Hetherington, 1979;

Kelly & Wallerstein, 1982; Teyber & Hoffman, 1989). Some psychiatrists and, to a lesser extent, psychologists have even taken the position that women who allege abuse ought not to be given custody, because they are actually manipulating the system and are using the allegations because they are "vindictive or delusional" (Gardner, 1989; Green, 1986). Gardner (1989), in fact, goes so far as to recommend that a mother who reports child abuse and believes in her child's report should lose custody and have limited visitation, to be withdrawn if she continues to support the child's unfounded report. These views are alarming, especially at a time when the extent of the epidemic of child abuse is beginning to be acknowledged by our judicial branches, children are finally being listened to and believed, and research is upholding the credibility and validity of children's testimony (Goodman, Bottoms, Herscovici, & Shaver, 1989). Many true reports may be classified as unfounded because of the difficulties inherent in meeting standards of proof when a crime is committed against a child in the family. In the first study to include a large nonclinical sample of parents engaged in custody disputes, the rate of false and unfounded reports was not significantly higher than that found when custody was not an issue (Thoenes & Tjaden, 1990).

Whereas most mothers may be at a disadvantage in custody situations, financially and emotionally, battered women are in an even more disadvantaged position (Chester, 1986). For the mother, the concern is how to report or handle abuse that occurs during custody. According to Gardner and his followers, if she supports her child's allegations she should be denied custody. If she fails to act, she betrays her child's trust and allows the abuse to continue. Further, this quandary applies not only to abuse of the child but to her own abuse as well. The battered woman may not be treated as powerful and effectual compared with the aggressive, more controlling abuser. Walker (1989a) suggests that the woman's fear of and/or anger with her partner may work against her own advocacy in the courtroom. Neither the passive, ineffectual demeanor common to a woman during abuse nor her emerging empowering anger is helpful to her when she presents her case to the court. The controller, who can remain calm yet assertive, unfortunately may be perceived by the court to be a more viable parent.

Often, the court will not consider past domestic violence in a family custody dispute. In addition, if the battering per se is not considered, but the woman's history of attempting to cope with the violence is introduced (e.g., psychological counseling, use of tranquilizers, leaving the home and returning), the batterer may actually appear to be more stable even though in fact he created the destructive environment. Some mothers who are victims may be concerned that if they remove themselves from the abusing

Domestic Violence and Child

situation the father may retaliate if the mother again fails to protect herself from the father's abuse herself. The mother may be left with him on support and visitation, and the child may move from the mother's home to the father's.

The custody decision itself may be a source of conflict with the abusing father. Staying in the home, as has been described, is a major point of the domestic violence man's need to regain or maintain control of his "property." The children are often used as a woman may find herself in a situation where she has no control of the children rather than being terrorized. Threats and actual acts of violence, in fact, statistics from the National Institute of Justice, 1986). The man's focus on the full range of abuse, both reported and unreported. The woman may perceive that law enforcement is needed to fear the loss of custody, but it does not show up on the record.

The woman who has been battered may be intimidated into not reporting the abuse. She is intimidated into not reporting the abuse and may be unable to seek legal retaliation. She may feel that the fear of losing custody or visitation is more important than to assert her interests if she feels this actual danger. The fear of losing custody or later kidnapping by the abuser is a major concern in the abusing relationship. (1986) cites a substantial number of men have sought and won custody of their children, allow their ex-mates to take custody of their children. Project and Neighborhood avenue a mother may pursue custody of her father from contact with her children for limited periods of time, three years. Two issues in this period, legally and in daily

situation the father may retaliate by hurting the children, and therefore the mother again fails to protect her children. If the mother has been the victim of the father's abuse herself, she must now consider the problem in dealing with him on support and visitation issues until her children reach the age of majority and move from the home (Stahly, 1990, 1991).

The custody decision itself does not cut the mother off from involvement with the abusing father. She will continue to find him abusive and intimidating, as has been described elsewhere in this volume. If control is the major point of the domestic violence, separation may actually increase the man's need to regain or reassert his authority position and control his "property." The children and visitation become central control issues. The woman may find herself in a relationship with the battering man in which control of the children rather than physical violence becomes the basis of terrorization. Threats and/or occasions of violence may also continue. In fact, statistics from the National Crime Victims Survey show that the amount of abuse after marital dissolution is even greater than predissolution, with nearly 70% of violence reported postseparation (U.S. Department of Justice, 1986). These statistics are especially noteworthy because they focus on the full range of crimes citizens experience, both reported and unreported. The woman who has been abused and who does not perceive that law enforcement or the courts can help her without her needing to fear the loss of her children may not report the violence, and thus it does not show up on any traditional measure of crime.

The woman who has been continually abused may be so terrorized that she is intimidated into making custody arrangements contrary to her wishes and may be unable to assert her legitimate claims for fear of later retaliation. She may feel it is better to give up some support or property or visitation than to assert herself and her children's best economic interests if she feels this action will increase their physical and psychological danger. The fear of losing custody of her children, legally or through later kidnapping by the abuser, may leave the woman no choice but to stay in the abusing relationship (Stahly, Oursler, & Takano, 1988). Chesler (1986) cites a substantial number of cases in which violent, misogynist men have sought and won custody of their children. Further, some women allow their ex-mates to take custody of their sons in the hope that in this way they might shield their daughters (San Francisco Domestic Violence Project and Neighborhood Law Centers, personal communication). One avenue a mother may pursue is to obtain protective orders restraining the father from contact with her and her home. Usually, however, these orders are for limited periods of time, such as from six months to a maximum of three years. Two issues then emerge: What happens at the end of that period, legally and in daily life? And if the father disregards the order, will

law enforcement really be there to help her eject him from her home and vicinity? Additionally, when the mother tries to protect herself her actions may be construed as interference with the father's visitation rights.

The battered woman is faced with a double bind in her initial decision to leave the situation or stay. If she is the primary target of the man's violence and has no safe shelter for herself and her children, she may perceive only two options: Stay in the violent home or relinquish control of the children to the batterer. The decision she makes initially may eventually lead to her losing her children. She may be perceived by the children as the parent least willing to fight for them; the batterer may suggest to them that she is not interested in their welfare. Children in custody disputes often want to place blame; with the batterer's encouragement, they may blame their mother. When a mother has been terrorized into submission, she may be perceived as the less influential and powerful parent; she may be seen as ineffectual, despite her interests in protecting the children and herself. Ironically, her children, especially her sons, may identify and align themselves with the powerful and aggressive father model. The result of this pattern may be aggression and abuse by sons toward the mother and ultimately other women as well. In a study of the effects of family violence on college students' attitudes toward women, Stahly (1983) found that male students who had observed their fathers battering their mothers held significantly more negative attitudes toward women than other males, including those who had been abused by their own mothers. These misogynist attitudes may ultimately result in failure to establish intimate relationships, thereby perpetuating male dominance and violence.

A contrary pattern may also emerge, in which the children align with the mother for protection from the aggressive father. Following divorce these children may fear visitation as a time when they are unprotected. In this pattern, the mother's actions to protect the children may be counterproductive if the court places credence in the Gardner (1989) "parental alienation" theory and theories that trivialize the father's violence and blame mothers for children's reasonable fears. Even children who do not get caught in the middle of the destructive alliance with either parent may be in a bind. If the father uses visitation as an occasion to abuse the mother further, the children may be put in the untenable position of feeling some responsibility for the continuing abuse and yet wanting some relationship with the father. Does the child now have to give up visitation with dad to protect mom? In a system of supervised and monitored visitation this theoretically would not happen. Unfortunately, many courts trivialize the violence and view supervision as an infringement of a father's rights. Even when courts are persuaded to require supervision, given the dearth of facilities and monitors and the lack of funds available from courts and

institutions to support visitation themselves. The end result is litigation against the woman or transfers

Challenging

There are virtually no published case histories and many articles conjectures about the issue. Case history data, suggests that custodial challenges, "good enough" of the time, often to men children. She further hypothesizes who are most likely to institute the errant mother and retain so

There are no published data by characteristics of the marital history study examined 150 cases from a Southern California district December 1988 (Suchanek & custodial challenge and outcome previous case history data, in misogyny in custodial challenges which violence toward the woman of a restraining order) were significant disputes. These allegedly violent custody of sons than of daughters child and/or spousal support. likely to win a custodial challenge apparently not a factor considered less likely to win than were fathers limitation of this small exploration persistence. A number of anecdotal the battering man in pursuing using legal as well as extralegal among battering men, they might

Threats of kidnapping and/or violence may be significant factors (Stahly et al., 1988). In a study with child custody, in which 94

institutions to support visitation plans, too often the parents must fend for themselves. The end result is that too often the violence continues, either against the woman or transferred to the child directly.

Challenging Custody Decisions

There are virtually no published studies dealing specifically with divorce, custody, and domestic violence. However, there are anecdotal and case histories and many articles, including those discussed above, with conjectures about the issue. Chesler (1986), while presenting primarily case history data, suggests that in a sample of several hundred cases of custodial challenges, "good enough" mothers lost these challenges about 70% of the time, often to men who were abusive of the women and the children. She further hypothesizes that it is abusive, misogynist fathers who are most likely to institute custodial challenges in attempts to punish the errant mother and retain sole control over their offspring.

There are no published data comparing the rates of custodial disputes by characteristics of the marital relationship. However, a recent exploratory study examined 150 randomly selected files of marital dissolution from a Southern California district courthouse between January 1983 and December 1988 (Suchanek & Stahly, 1991). Characteristics predicting custodial challenge and outcome were coded, and findings supported the previous case history data, including the possible role of control and misogyny in custodial challenges by battering men. Dissolution cases in which violence toward the woman had been asserted (usually in support of a restraining order) were significantly more likely to include custody disputes. These allegedly violent fathers were also more likely to fight for custody of sons than of daughters, and were more likely to be in arrears in child and/or spousal support. The notion that violent fathers are more likely to win a custodial challenge was not supported, but the violence was apparently not a factor considered by the court, given that they were no less likely to win than were fathers with no allegations of violence. One limitation of this small exploratory study is the lack of a measure of persistence. A number of anecdotal cases cite the long-term persistence of the battering man in pursuing and harassing the woman (Stahly, 1991), using legal as well as extralegal means. If such persistence is common among battering men, they might win custody ultimately.

Threats of kidnapping and/or custody battles and the continuation of violence may be significant factors in keeping women in violent relationships (Stahly et al., 1988). In a pilot study of battered women's experiences with child custody, in which 94 women participated, batterers' threats to

Table 14.1 Frequency of Custody Problems Reported by Shelters

Problem	Number	%
Batterer threatens child kidnapping	33,852	34
Batterer kidnaps child	10,687	11
Batterer threatens custody action	22,813	23
Batterer files custody action	7,168	7
Batterer wins full custody in spite of evidence of physical abuse of child	2,997	3
Batterer wins full custody in spite of evidence of sexual abuse of child	2,262	2
Batterer wins full custody/no child abuse	1,844	2
Batterer wins joint custody	19,850	20
Batterer wins joint custody in spite of evidence of physical abuse of child	7,881	8
Batterer wins joint custody in spite of evidence of sexual abuse of child	3,682	4
Batterer receives unsupervised visitation in spite of evidence of physical abuse	12,401	12
Batterer receives unsupervised visitation in spite of evidence of sexual abuse	6,970	7
Batterer uses visitation as occasion for verbal abuse of woman	24,719	25
Batterer uses visitation as occasion for physical abuse of woman	9,512	10
Batterer uses threat of kidnapping to force woman to return	21,121	21
Batterer uses threat of custody action to force woman to return	19,236	19
Woman goes into hiding because of court order that fails to protect child	3,881	4
Shelter staff testifies for mother	2,004	2
Shelter staff cites evidence of physical abuse of children by mother	5,833	6
Shelter staff subpoenaed by father	1,143	1
Shelter staff cites evidence of sexual abuse of children by mother	915	1
Shelter staff believes both mother and father are unfit custodial parents	2,655	3

keep the women from leaving included hurting the children (25%), kidnapping the children (25%), and taking the children through a custody action (35%). In discussions in the literature of the reasons women stay in and/or return to violent relationships, the women's fears for their children's safety and well-being have been consistently overlooked. In this sample, 20% of the women reported returning to the batterer at least once because of his threats to hurt or take the children.

Although substantial anecdotal and clinical data are available on the problems battered women are having with child custody, no published survey data have measured the extent of the problem. Stahly (1990) recently conducted a survey of the experiences of shelter staff in order to get a first view of the extent of custodial problems encountered by women seeking shelter services (see Table 14.1). Of the 105 questionnaires distributed to shelters in California, 39 were returned and 37 provided usable data. The shelters reported serving 6,034 women and 8,550 children as residents and 14,637 women and 4,204 children as nonresident clients; they provided telephone hot line counseling to an additional 87,378 women during the one-year period beginning January 1, 1989.

Shelter staff were asked to report information regarding the extent of violence experienced by their clients. In addition to the additional comments added by violence and harassment around of a significant number of batterers reported on by the shelter staff, 3 and 11% of the batterers had a batterers threatened legal custody. Shelter staff, such actions had been women won full custody. Cons 20% were granted joint custody. Batterers who had not directly at less often (1,844) than fathers abusive (2,262). Under these alternative is to flee the jurisdiction knowing 3,881 battered women endangered their children's (and actions and outcomes are likely and is often no longer in contact true occurrence of problems in ings is that there may be a tendency cases, or for such cases to come

Also disturbing in magnitude ignore violence and abuse in cases, the battering man used continue verbal and emotional cases, physical violence continued also to have been overlooked visitation in spite of evidence reported cases) and sexual abuse physical abuse (7,881) and themselves embroiled in custody occasions staff had testified additional 1,143 received subpoena mother. Staff did report that and a small proportion sexually contrasts with the beliefs regarding abusive and 9,557 sexually a staff expressed the belief that

Shelter staff expressed a view tion, even when granted, p

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Shelter staff were asked to reconstruct from their case files and staff logs information regarding the extent of problems with custody and visitation experienced by their clients. According to the data reported as well as additional comments added by respondents, it is apparent that continued violence and harassment around issues of custody and visitation are problems of a significant number of battered women. Of the more than 100,000 women reported on by the shelter staff, 34% had children threatened with kidnapping and 11% of the batterers had actually kidnapped a child. In 23% of cases, batterers threatened legal custody action; in 7% of the cases known to the shelter staff, such actions had been filed; and in 7% of the cases the battered women won full custody. Considering both disputed and undisputed cases, 20% were granted joint custody. Disturbingly, shelter staff reported that batterers who had not directly abused their children actually won full custody less often (1,844) than fathers who were physically (2,997) or sexually abusive (2,262). Under these circumstances, a woman may feel her only alternative is to flee the jurisdiction of the court, and shelter staff reported knowing 3,881 battered women forced into hiding by court orders they felt endangered their children's (and often their own) safety. Since most custody actions and outcomes are likely to occur after the woman has left the shelter and is often no longer in contact, these figures are likely to underestimate the true occurrence of problems in the population. One limitation of these findings is that there may be a tendency for shelter staff to recall the most difficult cases, or for such cases to come to shelter staff's attention.

Also disturbing in magnitude is the tendency of the courts apparently to ignore violence and abuse in orders regarding visitation. In 24% of the cases, the battering man used court-ordered visitation as an occasion to continue verbal and emotional abuse of the woman, and in 10% of the cases, physical violence continued. The best interests of the child seem also to have been overlooked in the courts' granting of unsupervised visitation in spite of evidence of physical abuse of the child (12,401 reported cases) and sexual abuse (6,970), and joint custody in cases of physical abuse (7,831) and sexual abuse (3,682). Shelter staff may find themselves embroiled in custody proceedings; they reported that on 2,004 occasions staff had testified in support of the mother's petition, and an additional 1,143 received subpoenas from the father to testify against the mother. Staff did report that some mothers were physically abusive (5,833) and a small proportion sexually abusive (915) of their children (this contrasts with the beliefs regarding fathers that 21,587 were physically abusive and 9,557 sexually abusive of their children); in 2,655 cases, the staff expressed the belief that neither parent was fit.

Shelter staff expressed a wide range of frustrations. Supervised visitation, even when granted, proved less than satisfactory. A number of

specific problems were cited, including difficulty in finding a trustworthy monitor of visits; the placement of financial responsibility for monitors on mothers; the practice of ordering the mother to monitor visits, thus placing her in physical danger; and the practice of allowing fathers to "veto" monitors suggested by the mother, thus sabotaging the arrangement. In this last situation the judge may order unsupervised visitation because "the parties cannot agree." Even when supervised visitation is satisfactory, few courts continue it beyond a few months, with the father's "good behavior" under supervision taken as evidence that he can now be trusted alone with the children in spite of credible evidence of past physical and/or sexual abuse.

The shelter staff cited other problems as well, such as the economic inequities that allow the father to make a better "self-presentation" in court, the refusal of court personnel and evaluators to take domestic violence seriously, the appointment of psychologists or psychiatrists to evaluate the family who have no understanding of domestic violence and tend to blame the woman, and the refusal of child protective services agencies to respond when allegations of abuse occur within the context of a custody dispute. The criminal and family courts also seem to work at odds with each other. As one shelter worker summed it up:

No cooperation between criminal court and family law—criminal stay-away order overridden by visitation orders. Judges do not have knowledge of domestic violence, its effects on kids, or typical behavior of batterers, restraining order violations not acted upon, lawyers have not a clue as to how to protect women and kids, court psychiatrists continue to treat these cases the same as any other and make orders and recommendations that assure the batterer that he can continue to harass, punish, control and abuse his ex-wife and their kids. Battered women are not believed despite criminal convictions [of the batterers]. Kids are not listened to. Professional experts on domestic violence are blocked from testifying, examining or recommending in court.

Responses by the Courts

Although public and professional reactions to the statistics on domestic violence have focused attention on custody decisions, and legislators have responded with changes in statutes to allow for the admissibility of evidence of domestic violence in custody matters, there is scant mention of domestic violence in published court opinions. The reason for the lack of cases may at first appear perplexing, but it may be related to the fact that fewer cases are being appealed and settlements being reached, so that

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judicial decisions are not have been extremely reluctant visitation totally. A review changes in attitudes of cou

In 1980, the Pennsylvania child was in direct harm. (1980), not only was there parties in the presence o restriction requiring the pr the time the child was pick: courts had changed their at vania courts denied a fath postdissolution visitation c to cite a long pattern of phy abuse of the mother was no the father had entered the r and the child hostage for r violation of a protective or: shot the mother while she intoxicated and therefore s intoxication and his behav strongly disagreed, stating [and] his constant course o his moral deficiency."

In Alabama, in *Sanders* home when the father bea viously sought help from i abuse. The court terminate from prison.

In some states in which d courts have removed child their best interests. Two ca v. *Kimmel* (1986), the moth an abusive stepfather was g and placing him with his ne mother had left the stepfat and the boy against the abu mother allowed the stepfat abusive behaviors. The cou emergency attention in ord:

However, sometimes the domestic violence legislatio

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judicial decisions are not available for discussion. Traditionally, judges have been extremely reluctant to terminate a parent's rights and to prohibit visitation totally. A review of a few recent cases is illustrative of some changes in attitudes of court officers.

In 1980, the Pennsylvania courts refused to limit visitation unless the child was in direct harm. For example, in *Dena Lynn F. v. Harvey H. F.* (1980), not only was there no restriction placed on interaction between the parties in the presence of the child, but the court refused to place a restriction requiring the presence of another adult when the parents met at the time the child was picked up for visitation. However, by 1983 the same courts had changed their attitudes and decisions. In that year, the Pennsylvania courts denied a father visitation in *Hughes v. Hughes* (1983) in a postdissolution visitation case. In this case, the mother's attorney was able to cite a long pattern of physical abuse against the mother. However, mere abuse of the mother was not the only aspect cited by the court. In this case, the father had entered the mother's apartment postseparation and held her and the child hostage for more than eight hours. All that time, he was in violation of a protective order granted the mother. On another occasion he shot the mother while she was holding the child. He claimed that he was intoxicated and therefore since he had not harmed the child directly, his intoxication and his behavior should not be held against him. The court strongly disagreed, stating that "his reckless and wanton disregard . . . [and] his constant course of abuse directed at the child's mother confirms his moral deficiency."

In Alabama, in *Sanders v. Sanders* (1982), two children were in the home when the father beat their mother to death. The mother had previously sought help from a shelter based on the father's long history of abuse. The court terminated the father's parental rights upon his release from prison.

In some states in which domestic violence legislation has been enacted, courts have removed children from abusive environments to safeguard their best interests. Two cases from Minnesota are illustrative. In *Kimmel v. Kimmel* (1986), the mother's failure to protect herself and her child from an abusive stepfather was grounds for removing the child from her custody and placing him with his natural father, who had not sought custody. The mother had left the stepfather and secured a protective order for herself and the boy against the abuse. Contrary to the provisions of the order, the mother allowed the stepfather to return to the home, where he resumed his abusive behaviors. The court found that the child required immediate and emergency attention in order to secure his safety.

However, sometimes the courts do not adhere to the spirit of new domestic violence legislation, as in *Bates v. Bates* (1990). Here, the court

found no reason to invoke provisions of the Arkansas Domestic Abuse Act if the mother had not first exhausted all remedies available at law. The court found that the mother should have sought protection against the father's actual as well as threatened physical abuse and harassment through the prosecuting attorney or on her own by obtaining a peace bond. The court further noted that she should have had the father arrested if his violence was so great. The court concluded that if the mother was too afraid to ask for assistance at law, the Domestic Abuse Act could be of no assistance to her (this attitude is addressed in many chapters in this volume). This court was clearly adopting the very attitudes that the act had been designed to eliminate, and had not yet been educated about the current state of knowledge about domestic violence.

The 1980s saw the beginnings of change in court attitudes and actions in domestic violence in custody cases. Today, visitation may still be seen as a right of both parents and of the child, so that he or she can have a relationship with each of the parents, but this might yield to the welfare or best interests of the child. For many years, the courts evaded the issue of which standard of proof was required to terminate or restrict visitation rights. In *Barron v. Barron* (1982), the New Jersey court articulated the standard as "clear and convincing" evidence. The use of this high-level standard showed the importance of parental relationships, which should be terminated only with "extraordinary proscription." What remains unclear from the cases and statutes cited above is the type of evidence that can be considered sufficient to establish a clear and convincing set of facts. How much abuse, noted by which witnesses, with what type of psychological profiles and effects on children, are all questions yet to be answered by the courts or legislatures. Indeed, the courts appear ready to act *only* when there has been a very long history of abuse that has been documented by medical and shelter staff, and where the child has already been damaged by the abuse between the adult parents. Preventive mental health issues and the impact of development within a violent home are not yet part of these cases. "It seems evident from these few cases that only in the most serious situations will a court completely deny a parent visitation" (Bessenyey, 1989).

Conclusions

Until recently it was assumed that the problems of battered women were primarily problems of empowerment and leaving. Most of the efforts were directed toward these goals. What we have highlighted in this chapter is that in custody decisions the battered woman's vulnerability to the batterer's aggression will continue until the woman's children reach majority. The

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implications for the woman's children are substantial, with the threat to the background. The number and magnitude of the violence and of Justice, 1986).

Some battered women have fled and becoming part of the caught with contradictory evidence it better to force a woman to be jeopardized than to terminate the actions to protect themselves violating court orders. Such cases on the mothers; judges then cannot have to focus on the violence is that these women are cited protective actions, which focus on interests of the children.

Although there are growing effects of domestic violence and two areas remain almost entirely address the special circumstances disputes. The concept of "the right to live in a violence-free harassment from the father. To deal with the divorcing family mother and the effects of such needs are for effective intervention strategies that protect both children rights to the degree it is safe a

implications for the woman's physical well-being and care for the children are substantial, with the threat of violence and intimidation constantly in the background. The number of cases of postseparation violence is evidence of the magnitude and validity of these concerns (U.S. Department of Justice, 1986).

Some battered women have taken recourse in dramatic means, such as fleeing and becoming part of underground networks. The courts then are caught with contradictory evidence and exceedingly difficult decisions. Is it better to force a woman to deal with a batterer even though her safety is jeopardized than to terminate the batterer's parental rights? Some women's actions to protect themselves and their children have resulted in their violating court orders. Such cases prompt courts to focus punitive actions on the mothers; judges then can deal only with disobeyed orders and do not have to focus on the violence and the entire picture. A common result is that these women are cited for contempt and "punished" for their protective actions, which focuses attention on the women and not the best interests of the children.

Although there are growing bodies of research literature detailing the effects of domestic violence and the effects of divorce on children, these two areas remain almost entirely separate. Further research is needed to address the special circumstances of domestic violence in child custody disputes. The concept of "the best interests of the child" must include the right to live in a violence-free environment without continuing threat of harassment from the father. The courts and the array of professionals who deal with the divorcing family must stop trivializing violence against the mother and the effects of such violence on children. The most pressing needs are for effective interventions and alternative custody and visitation strategies that protect both children and parents and preserve all parties' rights to the degree it is safe and reasonable for the mothers and children.

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Adolescents' Exposure to Violence and Associated Symptoms of Psychological Trauma

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Objective.—To examine the extent to which adolescents are exposed to various types of violence as either victims or witnesses, and the association of such exposure with trauma symptoms; specifically, the hypotheses that exposure to violence will have a positive and significant association with depression, anger, anxiety, dissociation, posttraumatic stress, and total trauma symptoms.

Design and Setting.—The study employed a survey design using an anonymous self-report questionnaire administered to students (grades 9 through 12) in six public high schools during the 1992-1993 school year.

Participants.—Sixty-eight percent of the students attending the participating schools during the survey participated in the study ($N=3735$). Ages ranged from 14 to 19 years; 52% were female; and 35% were African American, 33% white, and 23% Hispanic.

Results.—All hypotheses were supported. Multiple regression analyses of the total sample revealed that violence exposure variables (and to a lesser extent, demographic variables) explained a significant portion of variance in all trauma symptom scores, including depression ($R^2=.31$), anger ($R^2=.30$), anxiety ($R^2=.30$), dissociation ($R^2=.23$), posttraumatic stress ($R^2=.31$), and total trauma ($R^2=.37$).

Conclusions.—A significant and consistent association was demonstrated linking violence exposure to trauma symptoms within a diverse sample of high school students. Our findings give evidence of the need to identify, and provide trauma-related services for adolescents who have been exposed to violence.

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VIOLENCE HAS become an undeniable part of the lives of many adolescents living in the United States. Firearm homicide is the second-leading cause of death for all 16- to 19-year-olds.¹ Adolescent males are at particular risk: firearm injuries are the leading cause of death among both African-American and white teenage males.² Although the large majority of adolescents will not become the victims of homicide, many are exposed to other types of violence. In fact, the rate of violent victimization among those 12 to 19 years old is twice that of adults over the age of 25 years.³

Recent surveys have attempted to document the extent of adolescents' ex-

posure to violence. A 1989 national survey of more than 11 000 eighth and 10th graders revealed they had both engaged in and been the victims of violence: 39% of students had been in at least one physical fight within the past year. Students also reported significant exposure to violence in their neighborhoods: 33% had been threatened with bodily harm; 15% had been robbed; and 16% had been attacked. School offered little refuge: 34% of students reported being threatened and 13% reported being attacked at school during the past year.⁴ The National Crime Victimization Survey found that 9% of all secondary school students reported having been victimized by crime in or around their schools over a 6-month period, but only 2% experienced one or more violent crimes.⁵

Studies limited to urban populations paint an even more dismal picture of adolescents' exposure to violence. A 1988 Urban Institute study, which involved interviews with 387 ninth- and 10th-grade males randomly selected from inner-city

Washington, DC, schools, found high rate of victimization: 27% had been attacked, threatened, or robbed by a person with a weapon and 12% had been badly beaten by someone not a member of their household.⁶ A 1992 questionnaire survey of a representative sample of all ninth- to 12th grade students enrolled in New York City public schools yielded similar findings during a single school year, 36% of students reported being threatened with physical harm and 25% of students were involved in a physical fight at home, at school, or in the neighborhood.⁷ Rates of witnessing serious and lethal violence are also alarmingly high. In a study of 246 inner-city adolescents, 42% reported seeing someone shot or knifed and 22% reported seeing someone killed.⁸ Finally, in a national study of gun-related violence in and around inner-city schools in four different states, 23% of students had been victims of gun-related violence.⁹

Despite mounting concern about youth violence and attempts to document its prevalence, little information exists regarding the effects of exposure to violence on the mental health of adolescents. Much of the research done to date has focused on the effects of exposure to war and the impact of such acute trauma as witnessing a sniper attack.¹⁰⁻¹⁷ Relying primarily on clinical-descriptive methods and anecdotal evidence, these studies suggest that exposure to violence is associated with anxiety,¹⁸ posttraumatic stress disorder symptoms,^{19,20} depression,²¹ and aggression.^{22,23}

The mental health and behavioral effects of children's and adolescents' exposure to familial abuse have also been explored. A variety of consequences, similar to the effects on youth exposed to war and sniper attacks, have been described: posttraumatic stress disorder, difficulty controlling anger, aggressive behavior, chronic anxiety, and substance abuse.²⁴⁻²⁸

The few empirical studies conducted to date have focused either on children or on specific subpopulations of adolescents liv-

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ing in high-violence neighborhoods. For example, in a study of 165 children aged 6 to 10 years, reports of being victimized and witnessing violence were significantly associated with reports of emotional distress and depression.¹⁰ A significant relationship was also identified between exposure to violence and posttraumatic stress disorder symptoms in a nonrandom sample of 221 inner-city African-American youths (7 to 18 years old) involved in a federally funded summer program.¹¹ An independent study of urban youth had similar findings: the lifetime incidence of exposure to violent events was 39% among this group, and the rate of posttraumatic stress disorder among exposed youths was 24%.¹²

The documented prevalence of violence exposure among adolescents and the convergence of findings from early studies citing the adverse effects of this exposure indicate a pressing need for further empirical investigation. Understanding the mental health sequelae to violence is essential to developing treatment strategies for violence-exposed youth and may also assist in both primary and secondary violence-prevention efforts.

This study examines the extent to which adolescents are exposed to various types of violence as either victims or witnesses, and the effects of exposure to violence on their mental health. Our study tests the hypotheses that exposure to violence has a positive and significant association with depression, anger, anxiety, dissociation, and posttraumatic stress. Additionally, we hypothesize that exposure to violence will have a positive and significant relationship to overall psychological trauma status (the combination of all trauma symptoms). Therefore, in this study, psychological trauma status is defined as the degree to which adolescents report symptoms of depression, anxiety, posttraumatic stress, dissociation, and/or anger.

METHODS

The study protocol was approved by the University Review Committee for Human Studies of Case Western Reserve University, Cleveland, Ohio. The study employed a survey design using a 25-minute anonymous self-report questionnaire administered to high school students in the 1992-1993 school year during usual school hours. The questionnaire was designed to be understood at the 5th-grade reading level and was pretested on a socioeconomically diverse sample of adolescents. Students were informed that their participation was completely voluntary.

The sampling pool consisted of all students present in six public high schools, grades 9 through 12. Schools included two Cleveland city high schools, one

Cleveland area suburban high school, one small-city high school in northeast Ohio, and two Denver (Colo) city high schools. Students in the Cleveland and Denver city high schools resided predominantly in neighborhoods with lower socioeconomic status. The small-city high school was located in an economically depressed area whose residents, primarily blue-collar workers, were experiencing high rates of unemployment. Students from the suburban school resided in a small upper-middle-class town.

Variables and Instrumentation

Demographic Variables.—Demographic information included age, gender, race/ethnicity, parental composition in home, and educational level of mother and father. Race was categorized into four groups: African American, Hispanic, white, and other. To measure parental composition in home, respondents were asked with whom they lived: mother only, father only, mother and father, or neither mother nor father. This question did not distinguish between biological parents and other parental figures. Respondents were also asked the educational level of their parents, separately for father and mother, on eight response categories ranging from "grade school or less" to "attended graduate or professional school." Parental education was measured by the highest educational level achieved by respondents' father or mother.

Recent Exposure to Physical Violence.—Recent exposure to violence was measured by a 22-item scale designed by the authors. This scale measured five specific acts of violence: threats, slapping/hitting/punching, beatings, knife attacks, and shootings. For the first three types, separate items were designed to capture the site where the violence occurred: at home, at school, or in the neighborhood. Reports on knife attacks and shootings were not site specific. Adolescents were asked to report separately violence they had experienced directly and personally witnessed over the past year. A six-point Likert scale ranging from "never" (a score of 0) to "almost every day" (a score of 5) was used to assess the frequency of exposure to each type of violence.

Past Exposure to Physical Violence.—A 10-item scale was designed to measure past exposure to violence. Adolescents were asked to report specific acts of violence they had experienced directly or personally witnessed while growing up, not including the past year. The same violence categories described above were employed; however, the sites (home, school, neighborhood) were excluded because of the time elapsed between the event and the requested memory recall. A four-point Likert scale ranging from

"never" (a score of 0) to "very often" (a score of 3) was used to assess the frequency of each type of violence.

Sexual Abuse/Assault.—Adolescents were asked if they had been "made to do a sexual act" against their wishes (1) in the past year or (2) "while growing up," not including the past year. Similar questions asked whether they had witnessed someone else being made to perform a sexual act against his or her wishes. The items that measured being the victim or witness of sexual abuse/assault in the past year used the same Likert format as in the recent exposure to violence scale; the items that asked about sexual abuse/assault while growing up used the same Likert construction as in the past exposure to violence scale. Two variables measuring sexual abuse/assault over a subject's lifetime, one for personally experiencing and one for witnessing, were computed by combining and averaging recent and past exposure.

Trauma Symptoms.—Trauma symptoms were measured using the Trauma Symptom Checklist for Children (TSC-C),¹³ developed to assess sequelae of childhood trauma/abuse and written to be understandable to children as young as 8 years. The TSC-C contains 54 items and six subscales: anxiety, depression, posttraumatic stress, dissociation, anger, and sexual concerns; it has been shown to be psychometrically reliable in a number of studies.¹⁴⁻¹⁶ Reported reliability based on Cronbach's α is as follows: anxiety, .85 for nine items; depression, .89 for nine items; posttraumatic stress, .86 for 10 items; dissociation, .83 for 10 items; anger, .84 for nine items; sexual concerns, .68 for 10 items; and total TSC-C, .96 for 54 items.¹⁷ Based on samples of sexually abused children, the TSC-C subscales have been shown to correlate significantly with the Child Behavior Checklist for Children (mean $r=.67$)^{17,18} and with the Children's Depression Inventory (mean $r=.53$),^{14,20} thus demonstrating concurrent validity. Each item is presented in a four-point Likert format ranging from "never" (a score of 0) to "almost all the time" (a score of 3). Scale scores are derived by summing responses to individual items. Requests by school administrators resulted in the removal of all items related to the sexual concerns subscale.

All five subscales used in this study achieved acceptable reliability for this sample, based on Cronbach's α values: anxiety, .82; depression, .86; posttraumatic stress, .87; dissociation, .83; anger, .89; and total TSC-C, .95.

Analysis Plan

Principal Component Analyses.—Before testing the relationships between violence exposure and trauma symptoms,

Table 1.—Students Victimized by and Witnessing Violence Within the Past Year, by Gender

Type of Violence	% of Students							
	Denver (Colo) Central City (n=1265)		Cleveland (Ohio) Central City (n=1228)		Small Ohio City (n=862)		Cleveland Subur (n=379)	
	Female	Male	Female	Male	Female	Male	Female	Male
Students Victimized by Violence								
Threatened at home	26.0	22.7	25.4	23.7	32.2	26.9	13.7	11.0
Threatened at school	38.6	42.4	30.5	34.8	38.9	48.3	12.1	3.0
Threatened in neighborhood	23.4	37.3	29.1	42.9	18.1	36.6	7.4	1.7
Slapped/hit/punched at home	44.1	31.9	47.4	36.1	56.2	30.8	34.2	2.0
Slapped/hit/punched at school	27.2	40.9	22.4	32.5	17.7	37.9	13.7	4.4
Slapped/hit/punched in neighborhood	9.0	24.2	17.6	31.6	11.1	23.7	2.6	1.2
Beaten at home	8.1	5.1	10.4	8.6	9.1	6.3	3.7	3.0
Beaten or mugged at school	5.2	10.4	3.6	9.1	4.0	5.6	0.5	1.0
Beaten or mugged in neighborhood	5.2	10.5	8.8	22.4	4.0	11.5	0.5	3.0
Sexually abused/assaulted	18.2	4.6	18.3	7.0	17.3	3.9	12.1	1.0
Knife attack or stabbing	7.5	14.1	9.1	18.0	3.8	14.9	0	5.0
Shot at or shot	11.9	28.3	10.1	33.4	4.0	18.8	0.5	2.0
Students Witnessing Violence								
Threatened at home	38.5	32.4	47.1	39.2	41.5	34.6	18.8	18.0
Threatened at school	62.6	54.4	79.0	81.8	87.6	88.3	63.7	70.0
Threatened in neighborhood	52.7	61.4	72.9	78.2	62.0	69.9	22.1	28.0
Slapped/hit/punched at home	44.4	33.6	57.7	47.6	52.3	38.3	25.8	20.0
Slapped/hit/punched at school	68.1	89.3	86.0	88.3	93.3	93.2	80.5	81.0
Slapped/hit/punched in neighborhood	49.8	63.4	75.9	82.3	50.6	67.0	18.3	25.0
Beaten at home	16.9	11.7	31.1	23.4	18.6	18.1	4.2	1.0
Beaten or mugged at school	72.8	78.8	74.8	74.7	82.1	81.7	23.7	32.0
Beaten or mugged in neighborhood	35.6	46.6	67.9	72.2	35.8	52.4	5.3	11.0
Sexually abused/assaulted	17.6	16.0	20.0	21.3	19.3	18.1	15.3	8.0
Knife attack or stabbing	30.4	38.1	43.7	46.9	27.9	34.9	6.8	14.0
Shot at or shot	37.1	48.8	48.8	62.2	25.3	35.5	4.7	5.0

we performed separate principal component analyses on the 22 recent exposure to violence items and the 10 past exposure to violence items using varimax rotation as a data-reduction method; that is, we wanted to use as few variable clusters (components) as possible to explain the maximum amount of variance in the violence exposure items. The correlation matrix was examined first to determine whether the data were appropriate for principal component analysis. The Kaiser-Meyer-Olkin (KMO) measure of sampling adequacy (MSA)⁴⁰ was used as the index to determine whether all items shared significant variance (MSA=.60 was used as the criterion). Additionally, the anti-image correlation matrix was examined to determine whether each item shared significant variance with other items. An item with an MSA value less than .60 was deleted from the analysis because of the small amount of shared variance with other items. After the variable clusters were established, reliability tests were performed.

Multiple Regression Analyses.—Subsequent to the above analyses, variable cluster scores were generated for use in multiple regression analyses. Hierarchical multiple regression analyses were conducted on the TSC-C to determine the

effects of students' recent and past exposures to violence on their mental health status, controlling for their demographic attributes. Separate equations were developed for the TSC-C total score and for each of the five subscales: anxiety, depression, stress, dissociation, and anger. For each analysis, seven demographic variables were treated as control variables and entered as an initial block. The demographic variables included age, living arrangement (two-parent household vs non-two-parent household), race, gender, and parental education. The eight response categories for parental education were grouped into three categories, and then two dummy variables, non-high school graduate and college graduate, were created; high school graduate was used as a reference group. Similarly, two dummy variables, Hispanic and white, were created for "race"; African American was treated as a reference group. A second block of variables, composed of scores generated from the variable clusters of the recent exposure to violence and past exposure to violence scales, lifetime victim of sexual abuse/assault score, and lifetime witness to sexual abuse/assault score, was entered into the model to examine the effects of these variables on adolescents' trauma status.

RESULTS

Description of the Sample

A final sample of 3735 students was obtained, representing 68% of the 560 students in all the schools at the time of the survey. The representativeness of our sample was tested by comparing completed questionnaires from each school with the school's overall distribution of students by age, gender, and race. Our sample is representative of each school, with a few exceptions. White students were underrepresented in the small-city, high school in Ohio. In one of the Denver city schools, females were overrepresented and African Americans were underrepresented. In the other Denver city school, Hispanics were underrepresented. However, the above differences between our sample and the sampling population were relatively small—all within 6%.

For the total sample, the mean age was 16 years (SD, 1.2 years; range, 14 to 18 years). Female students composed 52% of the sample. The sample was 35% African American, 33% white, 23% Hispanic, and 9% other. About one in four students (28%) had at least one parent who had graduated from college. Slightly more than half the students (56%) had at least one parent who had graduated from high school but

Table 2.—Principal Component Analysis for Recent and Past Violence Exposure Scale

Component	Variable	Correlation Between Component and Variable	Cronbach's α	Eigenvalue*
Recent Violence Exposure				
Witnessed in neighborhood	Slapped/hit/punched	.78	.87	8.28
	Beaten or mugged	.71		
	Threatened	.69		
Victimized or witnessed at home	Self been slapped	.70	.75	2.10
	Self been threatened	.68		
	Someone else been slapped/hit/punched	.67		
	Self been beaten	.64		
	Someone else been threatened	.62		
	Someone else been beaten	.59		
Witnessed at school	Someone else been threatened	.79	.80	1.75
	Someone else been slapped/hit/punched	.77		
	Someone else been beaten or mugged	.73		
Shooting/knife attack	Self been attacked or stabbed	.68	.70	1.39
	Someone else been shot at or shot	.65		
	Self been shot at or shot	.65		
	Someone else been attacked or stabbed	.63		
Victimized at school or in neighborhood	Slapped/hit/punched at school	.65	.68	1.13
	Slapped/hit/punched in neighborhood	.63		
	Beaten or mugged at school	.60		
	Beaten or mugged in neighborhood	.52		
	Threatened at school	.52		
	Threatened in neighborhood	.51		
Past Violence Exposure				
Witnessed	Someone else been slapped/hit/punched	.82	.80	3.78
	Someone else been threatened	.79		
	Someone else been beaten or mugged	.78		
Shooting/knife attack	Self been shot at or shot	.75	.71	1.41
	Someone else been shot at or shot	.70		
	Self been attacked or stabbed	.68		
	Someone else been attacked or stabbed	.60		
Victimized	Slapped/hit/punched	.78	.66	1.20
	Threatened	.74		
	Beaten or mugged	.68		

*Eigenvalue represents the amount of variance among a scale's variables accounted for by a specific scale component. It is the column sum of squares for a component.

not college. For 16% of students, neither parent had graduated from high school. Fifty-three percent of students were living with both their mother and father.

Univariate Analyses

Overall levels of victimization by violence within the past year were high, particularly among male adolescents in large-city high schools (Table 1). When all sites were considered, 33% to 44% of male adolescents reported being slapped/hit/punched at school, and 3% to 22% reported being beaten or mugged in their own neighborhoods. In addition, 3% to 33% of male adolescents reported being shot at or shot within the preceding year, and 6% to 16% reported being attacked or stabbed with a knife. Rates of victimization of female adolescents by violence within the previous year also varied by school site: slapped/hit/punched at home, 34% to 56%; attacked or stabbed with a knife, 0% to 9%; shot at or shot, 0.5% to 12%; and sexually abused/assaulted, 12% to 17%. With the major exceptions of physical victim-

ization at home and sexual abuse/assault, female adolescents reported lower victimization rates than male adolescents.

Rates of recent witnessing of violence were also high (Table 1). Recent witnessing of violence by male students varied by school site for selected acts: someone else sexually abused/assaulted, 9% to 21%; someone else beaten up or mugged at school, 32% to 82%; someone else beaten up or mugged in the neighborhood, 11% to 72%; someone else attacked or stabbed with a knife, 14% to 46%; and someone else shot at or shot, 5% to 62%. Recent witnessing of violence by female students also varied by school site: someone else sexually abused/assaulted, 15% to 20%; someone else beaten up or mugged at school, 24% to 82%; someone else attacked or stabbed with a knife, 7% to 44%; and someone else shot at or shot, 5% to 49%.

Principal Component Analyses

Recent Exposure to Violence.—Five variable clusters (components) were extracted, and approximately 57% of the

total variance on the 22 items was explained by these variable clusters.

The items constituting each cluster are outlined in Table 2, grouping the items by type of violence, by being a witness or victim, and by the site of violence. The five variable clusters comprised (1) three items that measured being a witness of neighborhood violence, (2) six items that measured being a witness or victim of violence at home, (3) three items that measured being a witness of violence at school, (4) four items that measured being a witness or victim of a shooting or knife attack (none of the questions in this variable cluster were site specific), and (5) three items that measured being a victim of neighborhood or school violence; all five had acceptable reliability.

Past Exposure to Violence.—Three variable clusters were extracted from the 10 items that measured past exposure to violence (Table 2). These three variable clusters explained 64% of the variance among the items. The cluster-

Table 3.—Multiple Regression Analysis for Trauma Symptom Checklist for Children Total Scale and Subscale Scores

	Variance Explained (R^2), by Scale					
	Total Scale	Anxiety	Depression	Posttraumatic Stress	Dissociation	Anger
Demographic variables	.08	.10	.12	.09	.04	.07
Violence exposure variables	.29	.20	.19	.22	.20	.27
Total adjusted R^2	.37	.30	.31	.31	.23	.34

ing of items was consistent with the results from the recent exposure to violence index. The three variable clusters comprised (1) three items that measured being a witness of past violence, (2) four items that measured past exposure to very serious violence (being a witness or victim of a shooting or knife attack) and (3) three items that measured being a victim of past violence; all had an acceptable Cronbach's α values.

Computation of Variable Cluster/Component Scores.—Based on the results of the principal component analyses, eight variable cluster scores were created (three for past violence exposure and five for recent violence exposure). To avoid multicollinearity in subsequent regression analyses, correlations between pairs of variable cluster scores were examined. Only recent exposure to shooting and knife attack and past exposure to shooting and knife attack were found to be highly correlated ($r=.62$); therefore, an average score computed as a measure of "lifetime" exposure to shooting and knife attack was used in the following regression analyses.

Multiple Regression Analyses

Through multiple regression analyses, the relationship between violence exposure and overall trauma symptoms (measured by total TSC-C score) was assessed for students across school sites. After controlling for demographic variables, violence exposure variables explained a significant proportion of variance in the total TSC-C score and in each subscale score. The variance explained by violence exposure variables was 29% for the total TSC-C score and ranged from 19% to 27% across the symptom subscales (Table 3). Thus, violence exposure was a salient factor in predicting trauma symptoms; the greater the violence exposure, the higher the scores for total trauma symptoms and for each symptom subscale.

The relative importance of variables in predicting trauma symptom status was determined by comparing standardized regression coefficients, B weights. Because of the large sample size, relatively small B weights ($\beta < 0.10$) achieved statistical significance. Since B weights of this magnitude are considered weak, only significant values ($B \geq 0.10$) will be reported.

Gender was the only significant and powerful contributor within the demographic variables block, with results indicating that female students had higher scores on the total TSC-C ($B=-0.26$, $P<.01$) and on the anxiety ($B=-0.32$, $P<.01$), depression ($B=-0.31$, $P<.01$), posttraumatic stress ($B=-0.25$, $P<.01$), dissociation ($B=-0.16$, $P<.01$), and anger ($B=-0.11$, $P<.01$) subscales. The most important violence exposure variable clusters, as judged by their standard regression coefficients across TSC-C subscales, were being a witness or victim of violence at home (B range, 0.16 to 0.23; $P<.01$); being threatened, slapped/hit/punched, and/or beaten or mugged in the past (B range, 0.14 to 0.18; $P<.01$); and being the victim of sexual abuse/assault (B range, 0.08 to 0.20; $P<.01$). A notable exception was the anger subscale, for which exposure (witness or victim) to a shooting or knife attack ($B=0.21$, $P<.01$) and being a witness of past violence ($B=0.21$, $P<.01$) were additional important covariates.

COMMENT

The data indicate that adolescents in this study had been exposed to considerable levels of violence. Adolescent males from large-city schools had the greatest levels of victimization and witnessing severe violence, such as stabbings and shootings; however, adolescent males from the small-city school also evidenced substantial exposure to severe violence. While suburban youths had relatively low exposure to severe violence, boys from this site had high exposure to lesser forms of violence in school. With few exceptions, exposure to violence at home was greater for female than male adolescents, and the same was true for witnessing and being the victim of sexual abuse/assault. Female gender was the strongest demographic predictor of trauma symptoms.

The data also disclosed reliable statistical associations between exposure to violence and trauma symptoms. Each of the six initial hypotheses was supported: violence exposure had a positive and significant independent association with depression, anger, anxiety, dissociation, posttraumatic stress, and total trauma symptoms.

Certain types of violence exposure were highly associated with specific categories of trauma symptoms. Having been a recent witness or victim of home

violence; having been sexually abuse assaulted; and having been a past victim of threats, slaps/hits/punches, or beatings or muggings were strongly associated with total TSC-C score and with four of the five subscale scores: anxiety, dissociation, stress, and depression. Important predictors of anger included having been a recent victim or witness of home violence; having been a witness or victim of a knifing or shooting; and having been a past witness to threats, slaps/hits/punches, or beatings or mugging. It should be noted that because of school-related constraints, sexual abuse/assault was operationalized by use of a single item rather than multiple items, which would have been a more rigorous method.

In this study, we found that substantial percentages of adolescents had been exposed to violence as either victims or witnesses, and such exposure was reliably associated with psychological trauma. Numerous clinical studies and reports suggest that repeated exposure to violence during childhood can result in serious developmental and emotional sequelae.^{18,27,41-43} Previous reports have linked stress, depression, and/or anxiety to school failure,^{44,45} reduced interest in play,⁴⁶ and suicidal ideation.⁴⁶ Studies have also documented the negative effects of stress and anger on children's health status.^{47,48} Most recently, symptoms of depression and hopelessness were found to be associated with self-reported use of violence within a sample of urban black adolescents.⁴⁹

Given the above, physicians and other health care professionals should be trained to screen adolescents for violence exposure as part of routine health care visits. When seeing adolescents with physical injuries in acute care settings, health care professionals should also discern how the trauma occurred; in particular, they need to be sensitive to the needs of adolescents victimized by interpersonal violence. Such screening should also occur in other settings, such as school guidance offices and community mental health centers. Furthermore, basic mental health services designed to address violence-related trauma symptoms should be readily available to all adolescents who need them, as such services are integral to the well-being of our children.

While our study was limited by the

geographic scope from which the sample was drawn and provided correlational rather than causal inferences, it nonetheless represents one of the largest and most in-depth empirical investigations to date of the relationship between violence exposure and trauma symptoms. The results of our study support and extend the findings of previous empirical studies demonstrating a relationship between violence exposure and symptoms of psychological distress.^{30,32} This relationship would be further elucidated by prospective, longitudinal studies of children and adolescents and by samples

representative of diverse locations.

As public awareness and concern over violence grow, the opportunity exists to establish a broad and diverse research agenda to gain information about youth violence. The centerpiece of such an agenda could be an ongoing national study to monitor continuously the violence exposure of our youth. A comparable effort has been conducted on an annual basis since 1975 to monitor drug use among this nation's youth³³; it has served to disseminate valuable information used to establish drug-related policies and programs. We must consider

exposure to violence a public health epidemic worthy of our most comprehensive and well-reasoned efforts.

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FIVE WAYS TO FIGHT DOMESTIC VIOLENCE

1) Know What Domestic Violence Is.

When spouses, intimate partners, or dates use physical violence, threats, emotional abuse, harrassment, or stalking to control the behavior of their partners, they are committing domestic violence.

2) Develop a Safety Plan.

If you, a relative, a friend, or a neighbor are experiencing domestic violence, think about ways to make yourself safer, including a safe place to go to once you leave your home.

3) Get Help Immediately.

If you are being battered -- or you know that a relative, friend, or neighbor is being battered by a spouse or intimate partner -- call the police or 911 right away for help, if you can safely get to a phone.

4) Exercise Your Legal Rights.

Anyone experiencing domestic violence in one of the fifty states, Puerto Rico, or the District of Columbia has the right to go to court and petition for an order of protection.

5) Get Help For Your Family So That The Violence Will Stop.

Look in the phone book for the number of your state or local domestic violence coalition or crisis hotline to help find the resources needed to break free of domestic violence.

CURRENT PROJECTS:

- * **Multidisciplinary Blueprint** outlining model domestic violence programs throughout the country that participate in community coordinated efforts to eradicate domestic violence.
- * **Children's video** addressing the impact of domestic violence on children.
- * **Lawyer's Manual** providing information and tools that lawyers need when addressing domestic violence in their practices.
- * **Programming for the Midyear and Annual ABA meetings** to alert members to the latest developments in the field.
- * **Regional Conferences on Family Violence** in conjunction with the American Medical Association.

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COMMISSION ON DOMESTIC VIOLENCE

MAKING DOMESTIC VIOLENCE EVERYBODY'S BUSINESS

Lawyers, doctors, judges, teachers, police officers, military officers, victim advocates, psychologists, and leaders in the media and business communities working together to end the violence.

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DOMESTIC VIOLENCE

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BUSINESS

Recently, the nation has been awakened to the fact that, every year, millions of women are abused by men who supposedly "love" them.

"They are run over by cars and trucks. They have their teeth knocked out with hammers. They are stabbed with screw drivers, ice picks, and knives. They are beaten, choked, and strangled. They are beaten in public. They are beaten in the privacy of their own homes, often in front of their children." Sarah Buel, Norfolk County District Attorney's Office, Quincy, MA

Domestic violence is now recognized as one of the leading causes of injury to women and a problem requiring increasing intervention by victim service programs, courts, social service agencies, health care providers, and the police.

"It's easy for busy people to think that because they're not directly involved in domestic violence cases they're not really affected by them. As a nation however, we can't afford to have homes that are not havens." ABA President Roberta Cooper Ramo

The legal and law enforcement systems have been struggling to end domestic violence. Victim service programs have made great strides in providing shelter and transitional services to victims of domestic violence and their children, but the demand continues to grow. Society pays a huge price as domestic violence continues.

The broad-ranging effects of this epidemic cost business \$4 billion a year in absenteeism, reduced productivity, and reduced safety in the workplace. Yet too often the victims-- rather than the perpetrators--pay the price.

"Business forces employees to live a schizophrenic existence. Victims cannot reveal the secrets of family violence for fear of termination and being labeled as a detriment to management." Jim Hardeman, Director, Employee Assistance, Polaroid Corporation

Children are victims of domestic violence, too. Witnessing domestic violence, children develop cognitive, behavioral, developmental and emotional problems. Their ability to succeed in school and to become effectively functioning members of society is impaired.

"Families that are filled with domestic violence are crime factories, turning out violent offenders that we see in the criminal justice system year after year after year after year." Sergeant Mark Wynn, Metropolitan Police Department, Nashville, TN

Domestic violence affects everyone. Every time we blame a victim instead of holding a batterer accountable, every time we say it's not our business, we add a little more to the cost domestic violence.

"Every woman that we're talking about who is assaulted by her partner or raped--that woman is somebody's sister, somebody's daughter, somebody's mother, somebody's friend." Jackson Katz, Mentors in Violence Prevention, Northeastern University, Boston, MA

We all have an interest in--and responsibility for--ending domestic violence. As a result, many communities are searching for the model which will effectively end this epidemic.

"Government can't do it alone. We must work with leaders in communities to change societal perceptions and to spread the message consistently that violence against women is unacceptable." Bonnie Campbell, Associate Attorney General, Violence Against Women Act Office, U.S. Department of Justice

The American Bar Commission on Domestic Violence has joined together doctors, lawyers, judges, teachers, police officers, military officers, victim advocates, psychologists, and leaders in the media and business communities and government to combat the national epidemic of domestic violence. The Commission is dedicated to developing community-based programs and national resources which will effectively address domestic violence.

Protecting the Children in Custody Disputes When One Parent Abuses the Other

by Joan Zorza

I. Introduction

Domestic violence hurts children, both physically and emotionally. And the violence may not end even after the parties separate; indeed, separation may actually provide fathers with more opportunities to hurt their children. It is a myth that women most often win contested custody disputes; in fact, fathers who fight win either sole or joint custody a majority of the time. And, in part due to bias in the law and the courts, abusive fathers win custody disputes at least as often as nonabusive fathers. This article discusses these issues and suggests ways to protect mothers and their children better from abusive fathers in custody disputes.¹

II. Spousal Violence: Men Abusing Women

Spousal violence is overwhelmingly caused by men who batter and abuse their current and former female partners. Women are overwhelmingly the partners that are psychologically terrorized and physically injured by this abuse.² The men who batter and psychologically terrorize their wives and intimate partners do so to dominate, control, and punish them. In contrast, when women use seemingly abusive tactics against their partners, they are almost always trying to escape or defend themselves and their children, and their male partners seldom experience psychological terror.³

¹ This article is based on the author's written testimony before the U.S. Commission on Child and Family Welfare in April 1995.

² Russell P. Dobash et al., *The Myth of Sexual Symmetry in Marital Violence*, 39 SOC. PROBS. 71, 74-75 (1992), noting that women constitute well over 90 percent of all spousal assault victims; Tina Busey, *Women Defendants and Reactive Survival Syndrome*, 1 CATALYST 6 (Winter 1993), noting that over 95 percent of women referred into batterer treatment programs by the criminal justice system are either self-defending victims or were wrongfully accused by their abusive husbands. Although abuse can occur in same-sex couples or, rarely, by women against their male partners, this is not to imply that abuse perpetrated by females is not less harmful or is justified.

³ Dobash et al., *supra* note 2; Mildred Daley Pagelow, *Adult Victims of Domestic Violence*, 7 J. INTERPERSONAL VIOLENCE 109 (1992); L. Kevin Hamberger et al., *The Intended Function of Domestic Violence Is Different for Arrested Male and Female Perpetrators*, FAM. VIOLENCE & SEXUAL ASSAULT BULL., NOS. 3-4 1994, at 40-44; Daniel G. Saunders, *Wife Abuse, Husband Abuse or Mutual Combat*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 90-113 (Kersti Yllö & Michele Bograd eds., 1988).

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A. Being Female Is What Puts Women at Risk of Abuse

Recent research has shown that whether a woman will be battered depends upon whether her partner is abusive, not on any characteristics unique to her.⁴ Studies comparing abused women with nonabused women in intimate relationships fail to find any signifi-

There is no profile of a battered woman.

cant differences until after the women are beaten. In other words, there is no profile of a battered woman.⁵ Most battered women will recover from the effects of repeated traumatic abuse after they are in a violence-free atmosphere, particularly if they are supported by a domestic violence program, or by a counselor knowledgeable about domestic abuse, or by social, family, and work relationships.⁶

Women who have been abused should not participate with their abusers in any couples or family counseling, as this only increases the violence.⁷ The American Medical Association considers couples therapy or family therapy inappropriate in domestic violence cases.⁸ This is true regardless of whether the violence is physical, psychological, sexu-

al, or economic.⁹ Psychological abuse may be the most damaging of all types.¹⁰

B. Abusers Remain Abusive

In contrast to their victims, most men who abuse their current partners previously abused their former partners—93 percent of men in treatment for battering and who have had prior relationships are known to have abused their former partners.¹¹ Most will go on to beat any successive partners—over half of men “successfully” treated for battering are known to continue their physical violence against any new partners, and virtually all “successfully” treated abusers continue using psychological violence.¹² Consistent with these findings, recent research on men who batter and terrorize their female partners suggests that not only do these men lack the ability to have any perspective other than their own, but also very many of them have character disorders¹³ and criminal tendencies. Massachusetts, the first state to legislate a statewide registry of its orders of protection, has found that 70 percent of all batterers against whom protective orders are entered have prior criminal records.¹⁴

Men who batter do so because it is generally a low-risk, highly effective tactic

⁴ LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 10–11 (1984).

⁵ *Id.* at 7; Reneta Vaselle-Augenstein & Annette Ehrlich, *Male Batterers: Evidence for Psychopathology*, in *INTIMATE VIOLENCE: INTERDISCIPLINARY PERSPECTIVES* 144 (Emilio C. Viano ed., 1992).

⁶ WALKER, *supra* note 4, at 125.

⁷ C. U. Lindquist et al., *Evaluation of a Community Violence Treatment Program: A Pilot Study*, 3 *BEHAVIORAL COUNSELING & COMMUNITY INTERVENTION* 73–90 (1985); J. Harris, *Counseling Violent Couples Using Walker's Model*, 23 *PSYCHOTHERAPY* 613–21 (1986); J.W. Taylor, *Structured Conjoint Therapy for Spouse Abuse Cases*, 65 *SOC. CASEWORK* 11–18 (1984).

⁸ The American Medical Association's model domestic violence protocol, *DIAGNOSIS AND TREATMENT GUIDELINES ON DOMESTIC VIOLENCE* (1992), states on p. 12: “Couples’ counseling or family intervention is generally contraindicated in the presence of domestic violence. Attempts to implement family therapy in the presence of ongoing violence may increase the risk of serious harm. *The first concern must be for the safety of the woman and her children.*”

⁹ MARY ANN DUTTON, *EMPOWERING AND HEALING THE BATTERED WOMAN: A MODEL FOR ASSESSMENT AND INTERVENTION* 7–31 (1992); JEFFREY L. EDLESON & RICHARD M. TOLMAN, *INTERVENTION FOR MEN WHO BATTER: AN ECOLOGICAL APPROACH* 2–7 (1992).

¹⁰ EDLESON & TOLMAN, *supra* note 9, at 7.

¹¹ WALKER, *supra* note 4, at 7.

¹² DANIEL JAY SONKIN ET AL., *THE MALE BATTERER: A TREATMENT APPROACH* 35 (1985).

¹³ Vaselle-Augenstein & Ehrlich, *supra* note 5, at 140–48.

¹⁴ Conversations with Donald Cochran, Commissioner of Probation, Commonwealth of Massachusetts (1994–95).

that, at least in the short run, gets them what they want.¹⁵ Their battering is actually intentional, deliberate, and usually premeditated; it is not a "loss of control."¹⁶ Most of society still treats domestic violence as a private matter, best ignored. Battering is believed to be the least reported crime, and most law enforcement officers are considerably more lenient when a male batters his partner than when one stranger batters another. Therefore, abusers use abuse because it works and they can get away with it.

C. Abuse Escalates When the Parties Separate

Unfortunately, abusive men do not stop their violent behavior after they and their partners separate. Although domestic violence generally escalates over time in frequency, intensity, and duration,¹⁷ it almost always escalates when the batterer discovers or believes that the victim is about to leave him or actually has left him.¹⁸ Divorced and separated women report being battered 14 times as often as women still living with their abusers, and they account for 75 percent of all battered women killed by their past or present male partners.¹⁹

III. Domestic Violence and Children

Men who abuse pose many dangers to their children. Over half of all men who

beat their female intimate partners deliberately beat their children.²⁰ Furthermore, many abusers inadvertently hurt their children as a result of their reckless violence directed at their partners, without regard for the children's safety.²¹ The youngest children sustain the most serious injuries, such as concussions and broken bones.²² But adolescent and teen

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sons, who almost always intervene to try to protect their mothers, are also frequently hurt.²³ Many wife abusers also sexually abuse their children.²⁴ At least half of the country's 350,000 child abductions every year occur in the context of domestic violence, most of them perpetrated by abusive fathers.²⁵ These abductions are as traumatic to children as when strangers abduct them; children abducted by abusive parents frequently evidence posttraumatic stress disorder as a result of the kidnapping.²⁶

Even when the children are not physically injured, they are usually severely psychologically injured by witnessing their fathers abuse their moth-

¹⁵ ELLEN PENCE & MICHAEL PAYMAR, EDUCATION GROUPS FOR MEN WHO BATTER: THE DULUTH MODEL 2-4 (1993).

¹⁶ James Pateck, *Why Do Men Batter Their Wives?* in FEMINIST PERSPECTIVES, *supra* note 3, at 152-53. Since the abuse is not caused by a lack of control, most of the anger-based batterer treatment and education programs cannot be effective.

¹⁷ NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE, BUREAU OF JUSTICE STATISTICS, DOMESTIC VIOLENCE STATISTICS 12 (1989).

¹⁸ WALKER, *supra* note 4, at 25-26.

¹⁹ BUREAU OF JUSTICE STATISTICS, FEMALE VICTIMS OF VIOLENT CRIME 5 (Jan. 1991).

²⁰ WALKER, *supra* note 4, at 59; Lee H. Bowker et al., *On the Relationship Between Wife Beating and Child Abuse*, in FEMINIST PERSPECTIVES, *supra* note 3, at 158, 164.

²¹ MARIA ROY, CHILDREN IN THE CROSSFIRE 89-90 (1988).

²² *Id.*

²³ *Id.* at 92, noting that 62 percent of sons over the age of 14 were battered in a 36-month study of families in which there was wife beating; Elaine Hibberman & Kit Munson, *Sixty Battered Women*, 2 VICTIMOLOGY: AN INT'L J. 462 (1977-78).

²⁴ Bowker et al., *supra* note 20, at 164; LEE ANN HOFF, BATTERED WOMEN AS SURVIVORS 240 (1990); ROY, *supra* note 20, at 57.

²⁵ GEOFFREY L. GRIFF & REBECCA L. HEGAR, WHEN PARENTS KIDNAP 4 (1992).

²⁶ *Id.* at 205-6.

ers.²⁷ Moreover, the abusers force these child witnesses to become part of the conspiracy of covering up the violence.²⁸ Most child witnesses painfully learn that disclosure only gives their abusers another chance to further victimize them or their mothers.²⁹ Sons who witness their mothers being abused are at increased risk of growing up to become woman abusers themselves³⁰ or to commit violent crimes.³¹

The harm caused to children living in abusive homes is known to be far greater than the harm caused to children by their parents' divorce.

Furthermore, children's lives are often disrupted by household moves because of the violence.³² Half of all homeless women and children in America are fleeing domestic violence,³³ which also costs the children considerable loss of school time.³⁴

Abused mothers who are suffering from the cumulative stress of their own victimization are at risk of neglecting or even abusing their children.³⁵ Women generally perpetrate less child abuse as measured both in frequency or severity than do the men who batter their female partners; fathers perpetrate about three times as much actual abuse (although mothers are often held accountable, since many child protective service programs focus solely on mothers as possible child abusers).³⁶ Children's Hospital in Boston has found that, regardless of which parent is abusing a child, the abuse virtually always ends if the father is removed from the home and the woman is protected from him.³⁷

The harm caused to children living in abusive homes is known to be far greater than the harm caused to children by their parents' divorce.³⁸ All children who witness domestic violence are at serious risk of developing psychological

²⁷ PETER G. JAFFE ET AL., CHILDREN OF BATTERED WOMEN 32-75 (1990); Howard Davidson, The Impact of Domestic Violence on Children: A Report of the American Bar Association 1-2, 14-15 (Aug. 1994) [hereinafter ABA Report].

²⁸ LENORE E. WALKER, THE BATTERED WOMAN 149-50 (1979).

²⁹ Peter G. Jaffe, *Special Challenges in Custody & Visitation Dispute Resolution*, prepared for THE FAMILY VIOLENCE PREVENTION FUND, CHILDREN OF DOMESTIC VIOLENCE: THE SILENT VICTIMS PROJECT (1995).

³⁰ Gerald T. Hotaling & David B. Sugarman, *An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge*, VIOLENCE & VICTIMS, No. 2, 1988, at 1, 11.

³¹ JAFFE, *supra* note 27, at 59.

³² Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 421, 426 (1991).

³³ Elizabeth Schneider, *Legal Reform Efforts for Battered Women: Past, Present, and Future* 7 (prepared for the Ford Foundation, June 1990).

³⁴ ROY, *supra* note 21, at 89-90.

³⁵ Carole Echlin & Larry Marshall, *Child Protection Services for Children of Battered Women: Practice and Controversy*, in ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN 170, 173 (Einat Peled et al. eds., 1995). See also JUDITH LEWIS HERMAN, TRAUMA AND RECOVERY 114 (1992), noting that, contrary to the popular notion of a "generational cycle of violence," most female survivors of child abuse neither abuse nor neglect their children.

³⁶ Evan Stark & Anne Flitcraft, *Violence Among Intimates: An Epidemiological Review*, in HANDBOOK ON FAMILY VIOLENCE 293-318 (Vincent B. Van Hasselt et al. eds., 1988); Evan Stark & Anne Flitcraft, *Spouse Abuse*, in VIOLENCE IN AMERICA: A PUBLIC HEALTH APPROACH 123, 142-43 (Mark L. Rosenberg & Mary Ann Fenley eds., 1991), also noting that it is surprising that battering fathers perpetrate three times as much of the abuse since they spend little time with the children compared to the mothers.

³⁷ SUSAN SCHECHTER & LISA TIESZEN GRAY, HEALTH CARE SERVICES FOR BATTERED WOMEN AND THEIR ABUSED CHILDREN: A MANUAL ABOUT AWAKE (1992).

³⁸ SARA McLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS 11, 98 (1994); FRANK F. FURSTENBERG, JR. & ANDREW J. CHERLIN, DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART 64, 71-72, 75 (1991).

trauma, including numerous psychological symptoms and syndromes, from earliest infancy throughout childhood.³⁹ Posttraumatic stress disorder is quite common.⁴⁰ So great is the harm to children who witness domestic violence that they actually do better in domestic violence shelters, especially the shelters that have special programs for child witnesses, than they do at home.⁴¹

After separation, many abusers discover that using the children is the best way to hurt their former partners.⁴² Five percent of abusive fathers threaten during visitation to kill the mother,⁴³ 34 percent threaten to kidnap their children (and 11 percent actually do abduct them);⁴⁴ and 25 percent threaten to hurt their children.⁴⁵ Their success in demoralizing the mothers cannot be ignored, as 20 percent of battered women return to their batterers at least once because of the abusive fathers' threats to take or hurt their children.⁴⁶

Abusive men are also far less likely than nonabusive men to pay child support.⁴⁷

Furthermore, abusive fathers are far more likely to fight for custody of their children.⁴⁸ This is so even though few abusive men were previously involved in caring for the children or taking any other adult responsibility during the marriage.⁴⁹

IV. Fathers in Contested Custody Disputes

Despite men's claims that fathers are discriminated against in custody disputes, in actuality fathers who fight for custody in America win sole or at least joint custody in 70 percent of these contests.⁵⁰ As many state court gender bias studies have concluded, fathers often win because mothers are held to a far higher standard. In addition, since women's concerns are trivialized, mothers are believed less often than men.⁵¹ Many factors favor

³⁹ William Arroyo & Spencer Eth, *Assessment Following Violence—Witnessing Trauma*, in ENDING THE CYCLE OF VIOLENCE, *supra* note 35, at 28–32.

⁴⁰ *Id.* at 29.

⁴¹ Based on numerous conversations with domestic violence advocates across the country and on the experiences of the 2,000 battered women the author has represented. It is not uncommon for a teacher, unaware that a child is in a battered woman's shelter, to send home a note asking what wonderful change has come over the child or commenting that for the first time the child is paying attention, not falling asleep in class, not fighting with the other children, or, in other ways, acting much calmer or happier.

⁴² Marsha B. Liss & Geraldine Butts Stahly, *Domestic Violence and Child Custody*, in BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE 175, 179, 181 (Marsali Hansen & Michele Harway eds., 1993).

⁴³ JAFFE, *supra* note 27, at 109.

⁴⁴ Liss & Stahly, *supra* note 42, at 183.

⁴⁵ *Id.* at 182–83.

⁴⁶ *Id.* at 181.

⁴⁷ *Id.*; MILDRED DALEY PAGELOW, FAMILY VIOLENCE 311 (1984); WALKER, *supra* note 4, at 146; WALKER, *supra* note 28, at 139–40.

⁴⁸ Liss & Stahly, *supra* note 42, at 181–183; Martha McMahon & Ellen Pence, *Doing More Harm Than Good? Some Cautions on Visitation Centers*, in ENDING THE CYCLE OF VIOLENCE, *supra* note 35, at 186, 187.

⁴⁹ CATHERINE KIRKWOOD, LEAVING ABUSIVE PARTNERS 54–55 (1993); EINAT PELED & DIANE DAVIS, GROUPWORK WITH CHILDREN OF BATTERED WOMEN: A PRACTITIONER'S MANUAL 8 (1995).

⁵⁰ RUTH I. ABRAMS & JOHN M. GREANEY, REPORT OF THE GENDER BIAS STUDY OF THE SUPREME JUDICIAL COURT [OF MASSACHUSETTS] 62–63 (1989), also citing similar findings from California and the entire nation.

⁵¹ *Id.*; GENDER AND JUSTICE IN THE COURTS: A REPORT OF THE SUPREME COURT OF GEORGIA BY THE COMMISSION ON GENDER BIAS IN THE JUDICIAL SYSTEM 227–40 & n.6 (Aug. 1991), citing similar gender bias findings by the Arizona Coalition on Minorities and Women in the Law, Colorado Gender Bias Task Force, Florida Gender Bias Task Force, Maryland Special Joint Committee on Gender Bias in the Courts, Michigan Task Force in Gender Issues in the Court, and the New Jersey Supreme Court Task Force on Women in the Courts, including the finding that women are held to a much higher standard of conduct than men.

fathers over mothers in custody fights. Although every state recognizes the best-interests-of-the-child standard in making custody determinations, few states except West Virginia consider that most children have a strong preference for continuity with their primary care giver.⁵² (Domestic violence, the only other custody factor that generally favors mothers, is discussed in the next section.)

In contrast, virtually all the factors that courts consider with regard to stability and economics favor men. Men still

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have greater access to better jobs, salaries, and perquisites; are more likely to have substantial assets; are more likely to obtain free services (most typically from their mothers or new female partners) to help them care for their children; and are more likely to reap the economic consequences of women's having forgone career opportunities to raise their children, whether by choice, socialization, or discrimination or forced on them (usually by their male partners).⁵³ Proposed changes in the welfare system⁵⁴ will only exacerbate these financial inequities, especially since, traditionally, fathers have seldom been penalized for not paying child support or for not paying it on time.

Courts simply do not hold fathers responsible for obvious foreseeable economic deprivations that their nonsupport

and late support payments cause: evictions, costs to reconnect shut-off utilities, homelessness, moving expenses, interest on late credit payments. Few courts award or require fathers to pay interest costs or the mothers' legal fees to pursue these payments, and despite federal law many courts still reduce arrearages when fathers fall behind on support payments. Many states do not allow courts to make any negative inference in a custody case against a parent who does not pay child support although able to do so.⁵⁵ Amazingly, many dissolution courts, which in every state have equity powers, actually penalize the mother of a dead-beat partner in the custody dispute by considering her less stable financially, effectively holding her responsible for the father's failure to pay court-ordered support. If women and their children are to be denied or permanently pushed off welfare after a limited time, as proposed welfare changes portend,⁵⁶ deadbeat fathers will actually be further rewarded in custody disputes for driving their female partners into (or further into) debt,⁵⁷ hardly the intention of the welfare proposals. Under these proposed changes, if the estranged male husband or partner raped or had consensual sex with his current or former wife or partner while she is receiving welfare and impregnated her, their new child might never be eligible for public assistance, even if the father paid no support.⁵⁸ Yet it remains difficult for women to acknowledge or report marital rape and for police, prosecutors, courts, and administrative agencies to believe that a

⁵² Joan Zorza, *Using the Law to Protect Battered Women and Their Children*, 27 CLEARINGHOUSE REV. 1437, 1439 (Apr. 1994).

⁵³ See, e.g., *Porter v. Porter*, 274 N.W.2d 235 (N.D. 1979); Hoff, *supra* note 24, at 221, noting that "women do two-thirds of the world's work, earn only one-tenth of the world's income, and own less than one-hundredth of the world's property."

⁵⁴ See, e.g., H.R. 4, 104th Cong., 1st Sess. (1994).

⁵⁵ Ironically, this inference is almost always permissible when the state is moving to terminate that parent's rights, even though the standard in a termination proceeding should arguably be much higher than in a best-interests-of-the-child custody determination between two presumptively fit parents.

⁵⁶ See H.R. 4, 104th Cong., 1st Sess. (1994).

⁵⁷ But see *Dempsey v. Dempsey*, 296 N.W.2d 813 (Mich. 1980), for a reversal of a decision that penalized the mother in a custody case for being poorer on the theory that the trial court can always equalize the financial discrepancy between parents by awarding more child support, alimony, or a greater share of the marital assets.

⁵⁸ See H.R. 4, 104th Cong., 1st Sess. (1994).

woman was raped by her husband or partner.⁵⁹

Most custody disputes are sent to mediation, a process that generally favors men and harms women.⁶⁰ It may be that custody is just so important to mothers compared to fathers (on average) that it is not possible to mediate custody disputes.⁶¹ Mediation assumes that the spoils of a relationship are somehow large enough that a fair division is possible. Yet, for many mothers, keeping custody is far more important than everything else combined. This makes the whole mediation process seem unfair to mothers.

V. Custody for Abusive and Non-abusive Fathers

Given that abusive fathers are so likely to fight for custody, it is surprising that a larger proportion of batterers than nonbatterers actually win custody.⁶² At least 39 states, the District of Columbia, and the Virgin Islands have statutes requiring courts to consider at least domestic violence in custody determinations;⁶³ every state has case law allowing courts to consider domestic violence

in custody disputes;⁶⁴ and the Congress unanimously passed a resolution calling on every state to enact a presumption that batterers not obtain sole or joint legal or physical custody but that they receive at most supervised visitation.⁶⁵ Both the National Council of Juvenile and Family Court Judges⁶⁶ and the American Bar Association's report to its president⁶⁷ recommend passage of similar legislation.

A. Most Professionals Lack Knowledge About Domestic Violence

Unfortunately, most judges and mental health professionals (including those who do custody evaluations) lack training in, or deny or trivialize, the seriousness of domestic violence. Many wrongly believe that abuse is provoked, consensual, or mutual or that it ends when the parties have separated. Some who recognize the effects on the parents incorrectly believe that the abuse does not adversely affect the children.⁶⁸ Dr. Peter G. Jaffe, executive director of the London (Ontario) Family Court Clinic and one of the world's experts on domestic violence and child custody, explains:

⁵⁹ DIANA E.H. RUSSELL, *RAPE IN MARRIAGE* 39, 87 (1990), noting that 14 percent of ever-married women are raped by their spouses. Even if some proposed welfare changes would not penalize children born of a rape, as noted in the text, it is unlikely that the rape could be proved.

⁶⁰ Penelope E. Bryan, *Killing Us Softly: Divorce Mediation and the Politics of Power*, 40 BUFF. L. REV. 441-523 (1992); MARY PAT TREUTHART & LAURIE WOODS, *MEDIATION—A GUIDE FOR ADVOCATES AND ATTORNEYS REPRESENTING BATTERED WOMEN* (1990); Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545-1610 (1991).

⁶¹ From conversations with the wardens of and social workers at a number of prisons, it is clear that custody is the greatest deprivation felt by women inmates who are mothers, but only a relatively minor loss felt by male inmates who are fathers, many of whom fail to list it at all when asked what they miss about their freedom. Battered women are particularly likely to have nothing but custody to mediate because often their abusers have destroyed the furniture, wasted or hidden the assets, and threatened never to pay child support. Battered women may also have been told or concluded that their partners want custody mainly to keep controlling them, to hurt the children, or to deprive them of what is dearest to them.

⁶² McMahon & Pence, *supra* note 48, at 187.

⁶³ NATIONAL CENTER ON WOMEN AND FAMILY LAW, *STATE CUSTODY LAWS WITH RESPECT TO DOMESTIC VIOLENCE* (July 1995) (Item No. 131).

⁶⁴ Author's conversation with Janet R. Fink, Deputy Counsel to the New York State Office of Court Administration (Mar. 1995), who researched the matter in connection with mandatory statewide training on domestic violence for all of the state's judges.

⁶⁵ H.R. Con. Res. 172, 101st Cong., 2d Sess. (1990).

⁶⁶ ADVISORY COMM. OF THE CONRAD N. HILTON FOUNDATION MODEL CODE PROJECT OF THE FAMILY VIOLENCE PROJECT, *MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE* §§ 401-6 (1994) [hereinafter MODEL CODE].

⁶⁷ ABA Report, *supra* note 27, at 15.

⁶⁸ JAFFE, *supra* note 27, at 108; Jaffe, *supra* note 29; Liss & Stahly, *supra* note 42, at 183, 184.

Even mental health professionals, who should have benefited from several decades of research on domestic violence, still believe that as many as one in eight women are magnifying violence as a ploy in custody disputes (Johnston & Campbell, 1993). In my experience of over 20 years of completing custody and visitation assessments, the real problems lie in overlooking violence and most women under-reporting out of embarrassment, humiliation, and lack of trust for legal and mental health professionals.⁶⁹

Virtually missing from court records, reports, and transcripts is evidence of the marital rapes that at least 59 percent of battered women experience, usually repeatedly and more brutally than stranger rapes and about 10 percent of which occur in front of their children.⁷⁰

Equally little acknowledged by judges and mental health professionals is the fact that batterers regularly deny, minimize, or blame the victim or circumstances for their violence, or lie about it.⁷¹ Batterers often manipulate the police and courts for

their personal advantage or to hurt their victims, for example, by falsely reporting (or having a relative report) that a child is missing or abused (usually blaming the victim or the victim's new partner) or that the victim physically attacked the abuser.⁷² Studies of divorced men, whether or not abusive, have found that they greatly devalue their former wives and that they characterize them, but not themselves or their current partners, in highly negative and deviant terms.⁷³

Furthermore, by the time battered women go to court, they are finally aware of their anger at the unfairness of what their abusers have done to them and their children and comprehend the real dangers they and their children faced and still face, particularly since the danger probably will have increased and will have been redirected more at the children. The court's desire to "smooth things over" acts further to victimize the battered woman.⁷⁴ The professionals involved in custody disputes, who often lack any real knowledge of domestic violence,⁷⁵ frequently accept many gender bias notions that devalue women's concerns.⁷⁶ They therefore may believe that

⁶⁹ Jaffe, *supra* note 29 (citing J.R. Johnston & L.E.G. Campbell, *Parent-Child Relationships in Domestic Violence Families Disputing Custody*, 31 FAM. & CONCILIATION CTS. REV. 282-98 (1993)).

⁷⁰ WALKER, *supra* note 4, at 48; Jacquelyn Campbell, Community Nursing Department, Wayne State University College of Nursing, Nursing Assessment for Risk of Homicide with Battered Women (1986).

⁷¹ David Adams, *Identifying the Assaultive Husband in Court: You Be the Judge*, BOSTON BAR J., July-Aug. 1989, at 23-24; PENCE & PAYMAR, *supra* note 15, at 152, 158; EDLESON & TOLMAN, *supra* note 9, at 31, 34; Susan Schechter & Lisa Gray, *A Framework for Understanding and Empowering Battered Women*, in ABUSE AND VICTIMIZATION ACROSS THE LIFE SPAN 242 (Martha Straus ed., 1988).

⁷² Adams, *supra* note 71; PENCE & PAYMAR, *supra* note 15, at 152; EDLESON & TOLMAN, *supra* note 9, at 34; Schechter & Gray, *supra* note 71, at 242.

⁷³ David Schuldborg & Shan Guisinger, *Divorced Fathers Describe Their Former Wives: Devaluation and Contrast*, in WOMEN AND DIVORCE/MEN AND DIVORCE: GENDER DIFFERENCES IN SEPARATION, DIVORCE, AND REMARRIAGE 61-87 (Sandra S. Volgy ed., 1991).

⁷⁴ JAFFE, *supra* note 27, at 108.

⁷⁵ The late Marshall D. Rosman, who headed the American Medical Association's Department of Mental Health, informed me that a survey of all American medical schools in the 1990s showed that only half of them included any reference to any aspect of family violence in their four-year curriculums. Even those schools that did discuss family violence averaged less than 20 minutes on the topic (with the vast majority of the time devoted to child abuse, followed by elder abuse, and only rarely, if at all, spouse abuse) and relegated the subject to an elective taken by 20 or fewer students a year. And, if anything, social work and psychology students were even less likely to be taught anything about spouse abuse. No wonder our professionals are so uninformed about domestic violence.

⁷⁶ See, e.g., Paula J. Caplan & Ian Hall-McCorquodale, *Mother-Blaming in Major Clinical Journals*, 55 AM. J. ORTHOPSYCHIATRY 345-53 (1985), for a survey of all of the major clinical psychological journals that found that both lay people and mental health professionals characterized mothers negatively and blamed them, but not fathers, for whatever went wrong in their offspring.

battered women in custody disputes are being petty, angry, or vindictive, particularly when such women raise questions about whether their abusers may be physically or sexually abusing their children.⁷⁷ Batterers who physically or sexually abuse their children are more likely to win full or joint custody than abusive fathers who have never physically or sexually abused a child.⁷⁸ Although it is widely believed that women frequently make false accusations that children are being sexually abused in contested custody cases, in fact such allegations are raised in only 2 percent of all custody cases and are as likely to be true when custody is in dispute as at other times. Even when allegations of child abuse cannot be substantiated, they are usually made in good faith. But because the myths are so widely believed, many child protective service agencies fail to investigate any incest allegations made during the pendency of a custody dispute.⁷⁹

B. Mediation Endangers Battered Women

Mediation puts battered women at great risk.⁸⁰ Recognizing this, the laws of at least 20 states restrict or prohibit mediation in cases of family violence.⁸¹ For mediation to be fair, both parties must have equal bargaining power, something that is not possible when one party uses violence or threats of violence to dominate the other. The fear and powerlessness that the victim feels simply cannot be compensated for by even the most skilled mediator.

Furthermore, abusers seldom come to the bargaining table intending to fight fairly. Abusers may use what the women

say in mediation against them later; large numbers of women report being battered after attending mediation or couples counseling sessions with their abusers. Some abusers use the mediation process to manipulate their mediators to win yet another ally. Yet few mediators would let a woman raise past wrongs to win favor. The mediator would probably tell a woman trying the same tactic that the parties were there to look to the future, not at what happened in the past. Because men's concerns are seen as more important (e.g., a father's allegations that the mother drank, used drugs, had a lover, attempted suicide, or neglected the children, actions which, if true, may have been at his instigation⁸² or as relatively healthy coping tactics in the context of his terrorism⁸³), the man's allegations may well be used to discredit and control his female partner through the mediation process. In contrast, the woman's complaints, assuming she is not too frightened even to raise them, are likely to be disbelieved or dismissed as irrelevant, manipulative, or petty.

Some abusers refuse to bargain in good faith. The abuser may make the best bargain that he can strike at the time, never intending that he be bound by it, but outraged if his female partner violates it. Then, each time that he violates it or perceives that she has, the case is sent back to mediation where each successive "agreement" is yet more favorable to him—an unfair, unproductive, and circular process.

The assumption that future behavior will be different and as agreed upon in the mediation process is simply not true when there is domestic violence. At the

⁷⁷ Bowker, *supra* note 20, at 164; Hoff, *supra* note 24, at 240; Roy, *supra* note 21, at 57.

⁷⁸ Liss & Stahly, *supra* note 42, at 183.

⁷⁹ J. Melbourne McGraw & Holly A. Smith, *Child Sexual Abuse Allegations Amidst Divorce and Custody Proceedings: Refining the Validation Process*, 1 J. CHILD SEXUAL ABUSE 49, 51; Nancy Theonnes & P. Tjaden, *The Extent, Nature and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes*, 14 CHILD ABUSE & NEGLECT 151-63 (1990).

⁸⁰ Bryan, *supra* note 60; TREUTHART & WOODS, *supra* note 59; Grillo, *supra* note 59.

⁸¹ NATIONAL CENTER ON WOMEN AND FAMILY LAW, INC., STATE LAWS EXEMPTING BATTERED WOMEN FROM MEDIATION (Aug. 1992) (Item No. 86); BARBARA J. HART, STATE CODES ON DOMESTIC VIOLENCE 37-38 (1992).

⁸² A number of battered women have told me that their abusers have forced them to have sex with others or to use drugs (e.g., by pointing a gun at their or a child's head to gain their compliance) to have something to use against them later on.

⁸³ See, e.g., DUTTON, *supra* note 9, especially 59-64; HERMAN, *supra* note 35.

time of mediation, the violence is most likely to be escalating and taking yet new forms, usually involving the children. In not allowing the victim to acknowledge the abuse that has already occurred, mediation fails to validate the victim for what she has been through or to hold the abuser accountable for what he has done. Both of these steps are necessary before either party can heal. Nor does mediation allow for realistic planning for the victim's and children's safety.⁸⁴

In addition, many battered women, and indeed some mothers, particularly those caring for young children and not working outside the home, are so caught up in living moment-by-moment or day-by-day that they simply cannot step back to reflect on what their long-term needs are. The mediation process has proved ill adapted to recognize or deal with this problem.⁸⁵

C. Friendly Parent Provisions Penalize Battered Women

So called friendly parent provisions in statutes or case law favor awarding custody to the parent who will foster the better relationship between the child and the other parent. Yet these provisions have the effect of negating or even overriding domestic violence considerations and of further victimizing the battered woman. Few courts even ask a mother why she may be discouraging the father's access to the children. Even if she manages to explain that she believes that she or her children are at risk, she will proba-

bly be disbelieved or her concerns ignored. Every abused mother walks a tightrope. On the one hand, she must protect her children at the risk of the state's removing them or her being criminally prosecuted if she fails to protect them. On the other hand, she risks losing custody to her abuser if she protects her children by restricting the abuser's access to them. Friendly parent provisions punish her and the children if she even raises concerns about his fitness or parenting ability (or, in many states, if she opposes joint custody) because her very concern can be used as a weapon against her to deny her custody. Friendly parent provisions actually encourage abusers to continue to use the children as pawns in custody fights because even false allegations that a father was denied access to the children frequently result in the abuser's winning custody. Thus, friendly parent provisions, rather than being the benevolent facilitator of better parenting, actually have the likely effect of rewarding the less fit parent with sole custody.⁸⁶

The need for friendly parent provisions is often justified by the popularly espoused parental alienation syndrome. But if the court credits Richard Gardner's parental alienation theory and his related "Sex Abuse Legitimacy Scale," which have never been subjected to peer review or accepted within the scientific community,⁸⁷ the mother may be denied visitation as well.

The ultimate "unfriendly" behavior is to remove the children from the noncus-

⁸⁴ See, e.g., HERMAN, *supra* note 35, at 158 ("traumatic syndromes are normal human responses to extreme circumstances") and 155 (two requirements necessary for the trauma victim's recovery are establishment of safety, and remembrance and mourning).

⁸⁵ One easy solution would be to give the custodial parent a certain number of "get out of jail cards" each year that would allow her (presumably when used with good-faith advance notice) to cancel or change a certain number of visitations, so that, for instance, her children could attend her sister's wedding or the custodial parent and her children could spend three weeks together uninterrupted on vacation. This is precisely what reasonable parents do anyway, what the mediation process is ideally trying to promote, rather than the legalistic "pound of flesh" approach that visitation arrangements often become.

⁸⁶ Joanne Schulman & Valerie Pitt, *Second Thoughts on Joint Custody: Analysis of Legislation and Its Impact for Women and Children*, 12 GOLDEN GATE U. L. REV. 538, 551 (1982).

⁸⁷ Lucy Berliner & Jon R. Conte, *Sexual Abuse Evaluations: Conceptual and Empirical Obstacles*, 17 CHILD ABUSE & NEGLECT 111-29 (1993); JOHN E.B. MYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT 296-97 (2d ed. 1992); Dr. Richard Gardner, *Witness for the Defense*, UPDATE, Feb. 1992, at 2. Note that in *Daubert v. Merrell Dow Pharmaceuticals*, 113 S. Ct. 2786 (1993), in order to be admissible, scientific evidence must have been tested, subjected to peer review, have a known error rate, and be widely accepted within the scientific community.

todial parent's access, usually by going into hiding or fleeing the jurisdiction with the children. If the mother is so frightened by the abuser's actions or threats that she flees the country with her children, she can raise as a complete affirmative defense that she was fleeing "an incident or pattern of domestic violence."⁸⁸ But she has no equivalent statutory defense in most states if she flees but remains within the country's borders.

Well-intentioned efforts to promote better parenting through the use of friendly parent provisions and court orders providing that neither parent should disparage the other parent in front of the children have the unintentional results of keeping the abuse secret, reinforcing the abuser's right to perpetuate the violence, not holding the abuser responsible for his abuse (the first necessary step before he can recover),⁸⁹ further victimizing the abused parent and greatly increasing the chance that the children will be permanently psychologically abused and become abusers as adults.⁹⁰

The National Center on Women and Family Law is often told that the same courts that frequently deny women custody and even visitation for being "unfriendly" parents have never declared a father "unfriendly," even when he alienates the children or regularly denies the mother access.⁹¹ It is hardly surprising that father's rights groups strongly favor both joint custody and friendly parent provisions.

D. That Joint Custody Is Best for Children Is a Myth

The first studies that examined joint custody arrangements suggested that joint custody was very promising, large-

ly because they studied a highly unusual, select group of parents who insisted on sharing custody even when it was not legal to do so. That these parents generally were far more cooperative encouraged proponents of joint custody to hope that joint custody orders would create more amicable parents and children. Based on the apparent success of the first studies, California became the first state to enact a presumption in favor of joint custody. Yet, as more families started sharing custody, it became clear that the experiment was not a success. Ultimately, California rescinded its joint custody preference after realizing that it was not the easy solution to divorce and separation.

The main arguments advanced in favor of joint custody are that, as a result of joint custody, children do better, fathers are more involved with their children, child support is paid more willingly, the parents cooperate better, the number of children abducted by the noncustodial parent is decreased, and court time, especially the number of contempt citations, is reduced. Yet not one of these rationalizations has proved to be true. And, as California discovered, what may sound fair and even work reasonably well for some parents (particularly the fathers) may be a disaster for the children.⁹² After separation, fathers tend to fade from their children's lives, even when they have joint custody and are strongly encouraged to stay involved.⁹³ Not only do separated fathers have less physical contact with their children, but also they become less altruistic over time, less likely to pay child support, and further likely to disengage from their children.⁹⁴

⁸⁸ 18 U.S.C. § 1204(c)(2).

⁸⁹ EDWARD W. GONDOLF, *MEN WHO BATTER: AN INTEGRATED APPROACH FOR STOPPING WIFE ABUSE* 123 (1985).

⁹⁰ Janice Humphreys, *Children of Battered Women*, in *NURSING CARE OF SURVIVORS OF FAMILY VIOLENCE* 107, 119 (Jacquelyn Campbell & Janice Humphreys eds., 1993).

⁹¹ Joan Zorza, "Friendly Parent" Provisions in Custody Determinations, 26 *CLEARINGHOUSE REV.* 921, 924 (Dec. 1992).

⁹² See, e.g., David Sheff, *If It's Tuesday, It Must Be Dad's House*, *N.Y. TIMES MAGAZINE*, Mar. 26, 1995, at 64-65.

⁹³ FURSTENBERG & CHERLIN, *supra* note 38, at 112.

⁹⁴ McLANAHAN & SANDEFUR, *supra* note 38, at 26.

Use of the term "joint custody" results in lower child support awards,⁹⁵ but even those much lower amounts are no more likely to be paid.⁹⁶ Studies in Wisconsin showed that joint legal custody did not result in better compliance with payments.⁹⁷ Joint physical custody arrangements do not result in the children's being better adjusted.⁹⁸ A number of studies have found that the frequency of contact with fathers is unrelated to the children's adjustment after divorce.⁹⁹ Joint legal custody does not increase the father's compliance with child support orders, does not result in his assuming greater child-rearing responsibilities, and does not increase the amount of time he spends visiting with the children, his involvement in decision making about his children, or the degree of cooperation between the parents.¹⁰⁰ In addition, joint custody does not reduce the risk of parental abduction because fathers who have more frequent visitation with their children are more likely to abduct them. They do so as the most effective way to hurt the children's mother.¹⁰¹

Joint custody does not work when it is imposed on parents over the objections of one or both parents. When joint custody is imposed by the courts, it is probably the worst possible arrangement for the children.¹⁰² Children in

imposed joint custody do poorly and are more depressed and disturbed than children in sole custody.¹⁰³ And even when parents genuinely chose joint custody, the children are no better off.¹⁰⁴ Indeed, the negative effects of divorce or single parenting are not reduced or eliminated if children have considerable contact with the noncustodial parent.¹⁰⁵

But however bad joint custody is when parents argue about their differences, when one parent is abusing or terrorizing the other parent the arrangement becomes an absolute nightmare for the victimized parent and, often, for the children. Like couples counseling and mediation, joint custody, whether legal or physical, gives the abuser license to continue abusing his victim. It is likely to endanger the abused parent and any children in the family.¹⁰⁶

E. Incorporating Safety Concerns for Women and Children Is Needed

The unwillingness of most courts to provide real safety for women and children forces some mothers to conclude that they have no choice but to give up their children to their abusers for their own and their children's survival. Sometimes courts leave battered women so vulnerable to future violence that the court interprets the women's resultant stressed-out behavior as unfit or inad-

⁹⁵ Fifty-four percent of what was awarded when "sole" custody orders were made for economically similar individuals. Nancy D. Polikoff, *Joint Custody: Only by Agreement of the Parties*, WOMEN'S ADVOC., 1987, at 3.

⁹⁶ *Id.*

⁹⁷ FURSTENBERG & CHERLIN, *supra* note 38, at 74.

⁹⁸ *Id.* at 75.

⁹⁹ *Id.* at 107.

¹⁰⁰ *Id.* at 74, 107, 113.

¹⁰¹ Rebecca L. Hegar & Geoffrey L. Grief, *Abduction of Children by Their Parents: A Survey of the Problem*, 36 SOC. WORK 421, 423-24 (1991).

¹⁰² FURSTENBERG & CHERLIN, *supra* note 38, at 43; Susan Steinman, *Joint Custody: What We Know, What We Have Yet to Learn, and the Judicial and Legislative Implications*, 16 U.C. DAVIS L. REV. 739 (1988); Shirley A. Reece, *Joint Custody: A Cautious View*, 16 U.C. DAVIS L. REV. 775 (1988); Sheila J. Kuehl, *Against Joint Custody: A Dissent to the General Bullmoose Theory*, 27 FAM. & CONCILIATION CTS. REV. 37 (Dec. 1987); Gina Kolata, *The Children of Divorce: Joint Custody Is Found to Offer Little Benefit*, N.Y. TIMES, Mar. 31, 1988, at B13.

¹⁰³ Kolata, *supra* note 102; Kuehl, *supra* note 102; Polikoff, *supra* note 95.

¹⁰⁴ Polikoff, *supra* note 95.

¹⁰⁵ McLANAHAN & SANDEFUR, *supra* note 38, at 6-7.

¹⁰⁶ Polikoff, *supra* note 95.

quate parenting. Similarly, precisely because abusers very likely have psychopathologies that enable them to appear calm, charming, and in control, courts may see them as the better parents and give them custody.

Courts that award joint physical or legal custody or "reasonable visitation" to batterers or fail to acknowledge the safety concerns of battered women and their children give batterers license to continue their abuse and control. Even supervised visitation, if not provided by those truly knowledgeable about domestic violence and able to protect (which few family members can do), will not fully protect most battered women and their children.

In extreme cases, courts should allow battered women and their children to relocate and even change their identities if they want to do so as the only way they perceive to be safe. At a minimum, battered women should be allowed to keep their whereabouts confidential so that their abusers cannot locate them.¹⁰⁷ However, despite a recent recognition that domestic violence should be a concern in relocation decisions,¹⁰⁸ courts are particularly hostile to mothers seeking to relocate, as gender-bias studies in many states have found.¹⁰⁹ Another practice that hurts battered women and their children is the issuance of mutual orders of protection, whether pursuant to domestic violence, custody, matrimonial, or other causes of action. A mutual protection order puts the victim in greater danger than having no order at all because it gives the police no guidance on enforcement. When a law enforcement officer believes that a mutual order has

been violated, the officer either does nothing or arrests both parties. In addition, when a court issues a mutual order, the court trivializes the violence by blaming the victim for what is solely the perpetrator's fault. This sends a message to everyone (including the children) that both parties are to blame. This message is therapeutically counterproductive to the victim, the abuser, and the children. It also usually denies due process to the victim because in most cases the abuser will not have

Battered women should be allowed to keep their whereabouts confidential so that their abusers cannot locate them.

filed for his order and served her in advance with notice of his allegations, making it virtually impossible for her to defend against any last-minute claim that she was abusive or any assumption that mutual orders should be issued. Furthermore, a mutual order gives the abuser another tool to use against the victim by enabling him to allege to police and the court that the victim violated the order. For these reasons, courts should avoid issuing mutual orders except where there are cross- or counter-complaints; both parties prove that they were abused and not acting in self-defense; there is a likelihood that the abuse against each party will continue if the order is not issued; and the order is sufficiently clear that both parties and the police will know how the order is to be enforced at all times.

The practice of issuing mutual orders of protection against the petitioner has been criticized in many states'

¹⁰⁷ See, e.g., MASS. GEN. L. ch. 209A, § 8, and CAL. CIV. PROC. CODE § 545 for state statutes providing for restriction of address information in court pleadings; the Violence Against Women Act, Pub. L. No. 103-322, §§ 40281, 40508, 30003, 108 Stat. 1938, 1950, 2099, restricting access to postal box and change of address information, and motor vehicle records; N.J. STAT. ANN. § 2C:25-26(c); WASH. REV. CODE ANN. §§ 26.04, 29.01.155, 40.24, 42.17.310, 42.17.311 (establishing the Washington State Address Confidentiality Program).

¹⁰⁸ See, e.g., *Mize v. Mize*, 621 So. 2d 417 (Fla. 1993); ABA Report, *supra* note 27, at 34-35; MODEL CODE, *supra* note 66, at §§ 402-3, recommending that state statutes provide that when there is domestic violence there should be a presumption that the custodial parent should be free to reside within or without the state with the children, and that the absence or relocation of a parent because of domestic violence should not be a factor that weighs against a parent in a custody determination.

¹⁰⁹ See, e.g., ABRAMS & GREANEY, *supra* note 50, at 68-69.

gender-bias studies¹¹⁰ and by virtually every court that has decided the legality of such orders.¹¹¹ Recognizing the illegality of these mutual protective orders, the Congress, in enacting legislation requiring every state and tribal court to honor and enforce those protective orders issued by courts of other states and tribes, specifically exempted mutual orders from its full-faith-and-credit mandate.¹¹²

VI. Some Cautions About Giving Custody to Fathers

Fathers generally have higher incomes than mothers, but children living with single fathers do not do better than those living with single mothers. Although sons have the same high school dropout rates whether living with single mothers or single fathers, daughters living with single fathers have a 37 percent chance of becoming teenage mothers, contrasted with a 30 percent chance if they live with single mothers. Since these rates do not take into account the likely income differences between the parents' households, and income differences account for approximately half of the detrimental effect of single parenting, it is likely that children would do far better living with mothers who have the same incomes as fathers.¹¹³ These facts indicate that the popular belief that children do better living with fathers than mothers is not true.

Perhaps a more sensible custody solution might be to equalize the eco-

nommic differences after separation and divorce by setting child support award amounts considerably higher so that single mothers will be able to parent far more effectively, particularly as there are indications that fathers are, in fact, able to afford to pay considerably higher amounts.¹¹⁴ It is also possible that we have been looking at the problem the wrong way. Men who do not pay child support tend to stop visiting their children.¹¹⁵ Rather than trying to increase child support by giving men more visitation, we may need to order fathers to pay higher child support amounts so that they will visit.

VII. Conclusion

In a number of cultures, family violence does not exist. In these nonviolent cultures, family life is characterized by cooperation, commitment, sharing, and equality; there is no double standard about premarital sex for men and women; both husbands and wives do work (though not necessarily the same work) that is highly valued by the culture and for which each is compensated; wives have some control over the fruits of the family labor; marriage is monogamous; husbands and wives share living quarters (i.e., sleep together and not in separate quarters); there are no menstrual taboos; wives can divorce their husbands as easily as their husbands can divorce them (although divorce is actually very rare in these

¹¹⁰ *Id.* at 93-95, 97; SHEILA J. KUEHL, ACHIEVING EQUAL JUSTICE FOR VICTIMS OF DOMESTIC VIOLENCE: THE REPORT OF THE JUDICIAL COUNCIL ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS ON DOMESTIC VIOLENCE (1990); *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 1 (1986-87); *Minnesota Supreme Court Task Force for Gender Fairness in the Courts*, 15 WM. MITCHELL L. REV. 7 (1987); and Lynne H. Schafran, *Documenting Gender Bias in the Courts: The Task Force Approach*, 70 JUDICATURE 5 (1987). See also Joan Zorza, *Women Battering: High Costs and the State of the Law*, 28 CLEARINGHOUSE REV. 383, 392-94 (1994).

¹¹¹ See, e.g., *Jones v. Justices West Roxbury Dist. Ct.*, No. SJ-93-009 (Mass. Sup. Jud. Ct. Mar. 24, 1993) (Clearinghouse No. 49,001); *Heard v. Heard*, 614 A.2d 255 (Pa. Super. Ct. 1992) (Clearinghouse No. 47,773); *Kobey v. Morton*, 278 Cal. Rptr. 530 (Ct. App. 1991), *reh'g denied and opinion modified* (Mar. 19, 1991); *Antonellis v. Justices of the Brighton Dist. Ct.*, No. SJ-89-950 (Mass. Sup. Jud. Ct. Jan. 10, 1990) (Clearinghouse No. 45,417); *Deacon v. Landers*, 587 N.E.2d 395 (Ohio Ct. App. 1990) (Clearinghouse No. 48,818); *FitzGerald v. FitzGerald*, 406 N.W.2d 52 (Minn. Ct. App. 1987) (Clearinghouse No. 42,516).

¹¹² 18 U.S.C. §§ 2265-66 (1995).

¹¹³ McLANAHAN & SANDEFUR, *supra* note 38, at 72.

¹¹⁴ FURSTENBERG, *supra* note 38, at 57.

¹¹⁵ *Id.*

cultures); and if a woman is beaten, the entire community immediately intervenes, taking her side (which means that any potential abuser would gain nothing from his abuse).¹¹⁶

Anthropologists have found that physical abuse of husbands never occurs in any culture unless wife-beating is present, and that husband beating is always far less serious than wife beating.¹¹⁷

However, in violent cultures abusive men learn that they have little to risk from their abuse and often much to gain. If nothing else, their violence enables them to win every argument, feel important, and obtain compliance with whatever they want from their victims. Abusers rationally decide whether to batter, using a cost-benefit analysis.¹¹⁸ To end the violence, society's only hope is to make it too costly for abusers. It is very likely that, by encouraging fathers to fight their partners for custody of their children, rather than to have egalitarian, cooperative, close, committed relationships, we are encouraging family violence and eliminating the positive effects of domestic violence statutes and other efforts to end family violence. At a minimum we should be spending more time studying nonviolent cultures to learn more about how family violence can be eliminated.

But even in our violent culture, many people are basically reasonable, even when they are going through a divorce. Reasonable people, even when

undergoing the pain of a separation and breakdown of a marriage, want to and mostly are able to cooperate reasonably well in their parenting for the sake of their children. Custody fights are rare among reasonable people. Both parents want the children to continue their involvement with the other parent. And while they probably feel some sadness at having to give up some time with the children, most reasonable parents who were not the primary care givers feel strongly that their children should continue living with the parent who has been their main care giver. Just as we need to study nonviolent cultures, we need to study the people who are reasonable.

As for the combative parents, we should not increase the danger and vulnerability of those who are already victimized by forcing them to continue submitting to their abusers' contact and control over them and their children, under such benevolent-sounding guises as mediation, couples counseling, parent education, joint custody, or shared parenting. Parenting programs that encourage shared parenting and minimize the reality of abuse and the need for protection will not help the victims, the children, or even abusers. For the sake of the children, we must protect victims of domestic violence from further abuse and allow them and their abusers to heal. If we do not do so, the cycle of violence will repeat itself endlessly, generation after generation.

¹¹⁶ DAVID LEVINSON, *FAMILY VIOLENCE IN CROSS-CULTURAL PERSPECTIVES* 103-4 (1989), noting such societies as the Lapps, Central Thai, and Bushmen.

¹¹⁷ *Id.* at 31.

¹¹⁸ David Adams, *Treatment Models of Men Who Batter: A Profeminist Analysis in FEMINIST PERSPECTIVES*, *supra* note 3, at 176, 181.