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WIFE ABUSE: THE FAILURE OF LEGAL REMEDIES

INTRODUCTION

In a time of expanded and clarified rights for women, principles retained from the common law are denying wives an effective recourse to legal remedies for injuries inflicted by their husbands.¹ The principle of interspousal immunity continues to dominate various areas of the law when marital status is involved. The result is that legal remedies are unavailable to battered wives due to the sole fact of their marital status. Thus, a woman who is kicked, choked, shot at, hit with a steel pipe, or even beaten while pregnant, will likely receive only superficial acknowledgement from the law if her husband is the offender.

Obviously, some degree of touching is consented to in marriage. Likewise, marital disputes can be expected to occur. But, although some courts have acknowledged that a touching between spouses can take on the character of an intentional assault, the question arises: when does the touching go beyond the sphere of the private marital relation and become subject to legal cognizance?

The law has consistently required more than a mere rap on the knuckles to justify an intrusion into the marital relationship. This requirement implicitly recognizes a certain threshold of violence as a private matter between spouses. The acceptance of a degree of violence and the absence of clearly delineated criteria to determine when legal bounds are breached are major factors contributing to the unresponsiveness of the law toward battered wives.

A wife's marital vows certainly do not imply her consent to physical beatings.² Yet, rather than attempting to correct any abuses occurring within the marital relation, the law adheres to

1. Although this comment deals specifically with *wife* abuse, there have also been abused husbands. In *Foster v. Withrow*, 20 Ga. 26, 39 S.E.2d 466 (1946), the court upheld the right of a husband who was in fear of physical attack to obtain a peace bond to restrain his wife. Generally, however, a husband's situation does not involve the same social and legal problems as a woman's; he is usually physically dominant and in a better financial position to seek separation of the relationship. See notes 17-24 and accompanying text *infra*.

2. Balanced against the notion that a wife consents by remaining with a husband who beats her, is the fact that many women have neither a place to go nor the means to enable them to leave. Emergency shelters for battered women and their children are available in many countries and states. The rapid growth of such facilities illustrates that, given a workable alterna-

the strict limitations placed on legal actions between spouses. In addition, cultural biases, formalized into public policy considerations, have militated against the wife taking any legal action other than divorce against her husband.

The common law treated the husband and wife as one identity upon marriage.³ The wife's property interests were merged with the husband's, who was required to be joined in all lawsuits involving his wife. He, therefore, felt that he had the right to discipline her in order to ensure that her actions did not involve him in any legal problems.⁴ This reasoning was so prevalent that there was doubt as to whether the wife could bring a criminal action against her spouse,⁵ although the courts eventually did accept the principle that beatings could constitute a criminal act against the wife.⁶ Still, husbands appealed these convictions for assault and battery, relying solely on the fact of the marital relation, illustrating their disbelief at not being able to beat their wives.⁷

Based upon a policy of avoiding involvement in so-called "marriage squabbles," the police, the prosecutors, and the courts continue to stress reconciliation before instituting other measures. For instance, a wife who is beaten by her husband may petition the New York Family Court for an order of protection which is intended to protect the wife and to allow the parties an opportunity to reach a possible reconciliation. If another

tive, battered wives will leave an abusive husband. *See* Symposium, *Where to Get Help*, 5 *Ms MAGAZINE* 95-98 (1976).

3. 1 W. BLACKSTONE, COMMENTARIES *442 (Cooley ed. 1899). The wife's legal existence was so incorporated into the husband's that Blackstone said she performed everything under his wing, protection, and cover.

4. *Id.* at *444.

5. A husband had the right to moderately discipline his wife, *id.* at *444-45; *Bradley v. State*, 2 *Miss.* (1 Walker) 73 (1824) (a husband could chastise his wife with a whip no larger than his thumb), *overruled*, *Harris v. State*, 71 *Miss.* 462, 14 *So.* 266 (1893). *Cf.* *State v. Oliver*, 70 *N.C.* 60 (1874) (a husband was not guilty of assault and battery when he struck his wife with a stick the size of his finger; however, although there is no right to whip one's wife, in order to preserve domestic harmony the courts will not become involved unless the injury is permanent or malicious). *See also* *State v. Rhodes*, 61 *N.C.* 453 (1868) (unless there is a gross abuse, the court will protect the "family government," since any amount of violence would not compare to the evils arising from publicity).

6. *See, e.g.*, *Commonwealth v. McAfee*, 108 *Mass.* 458 (1871) (in trial of husband whose wife died after he beat her, the court held that the beating was unlawful, because it was not one of the rights conferred in marriage); *Harris v. State*, 71 *Miss.* 462, 14 *So.* 266 (1893) (husband has no right to chastise his wife); *State v. Dowell*, 106 *N.C.* 722, 11 *S.E.* 525 (1890) (husband cannot assault his wife).

7. *See, e.g.*, *State v. Dowell*, 106 *N.C.* 722, 11 *S.E.* 525 (1890) (husband was convicted of assault with intent to rape after he forced a man to have sexual intercourse with his wife at gunpoint; defendant appealed solely on the grounds that he was married to the victim).

act of violence occurs and the wife shows the police the order, the police can then arrest the husband. However, the arrest is for contempt only; it is not for the commission of any substantive offense.⁸

The disdain with which the law looks on these incidents is exemplified by the Court of Domestic Relations of Chicago, Illinois. Located in police headquarters, the courtroom is old, large, and unkept. This noisy and chaotic courtroom is the setting where many family-related matters are heard. Few attorneys are present, and the complainant and defendant rarely speak. Half of the cases involving assault and battery are quickly disposed of with a peace bond,⁹ and most of the rest are either dismissed or continued.¹⁰ A battered wife seeking legal help in this courtroom may wonder what remedy the law can provide her, while her husband, on the other hand, may view the lack of serious sanction as an indication that he may abuse his wife without apprehension of adverse legal consequences.

Even though these efforts may fail to reconcile the parties, most state codes do not contain a particular statute proscribing wife beating.¹¹ Attempts are therefore made to invoke traditional areas of the criminal law, but the sensitivity to the marital relationship induces the police and prosecutors to minimize their enforcement.¹² This lack of response by the criminal justice system has encouraged a search for alternative solutions.

Divorce is the most obvious and frequently suggested alternative. In fact, the availability of divorce as a remedy justifies to

8. N.Y. FAM. CT. ACT (29A) §§ 842, 846 (McKinney Supp. 1977). The day after being beaten with a steel pipe and waiting three hours for the police, a woman went to the New York Family Court and obtained an order of protection which she was told would give the police authority to arrest if her husband beat her again. N.Y. Times, June 14, 1976, § 1, at 1, col. 4.

9. See note 104 *infra*.

10. Parnas, *Judicial Response to Intra-Family Violence*, 54 MINN. L. REV. 585, 586-611 (1969-1970) [hereinafter cited as *Judicial Response*].

11. See, e.g., GA. CODE ANN. § 26-1305, Commentary at 101 (1972) (a specific wife beating statute was repealed, with the intent that the area be covered instead by the general law). But see CAL. PENAL CODE § 273d (West 1970 & Supp. 1978) (wife beating has been made a felony).

See also ILL. REV. STAT. ch. 69, § 25 (1977) and 35 PA. CONS. STAT. §§ 10181-10190 (1977). These statutes are limited to injunctive relief. They have the advantage of furthering public policy by not requiring that the parties have already filed for divorce or separate maintenance, thus affording temporary relief and keeping reconciliation in the forefront without adding the pressure of forced dissolution proceedings. Their disadvantages are that the hearing requirements will cause delay and the protection may be difficult to obtain. The statutory remedy, contempt, may be an additional time consuming and costly procedure, further diluting the relief offered. For a criticism of the Pennsylvania statute, see 4 FAM. L. REP. (BNA) 2203-04 (Feb. 7, 1978).

12. See note 77 and accompanying text *infra*.

many courts the nonexistence of other remedies.¹³ Divorce, however, is not a complete remedy to the battered wife. For example, many states forbid either of the divorced parties to institute a tort action after the divorce decree, thus allowing injuries received to remain uncompensated.

This comment discusses the remedies which the legal system is either proferring or neglecting, and examines the feasibility and desirability of divorce, criminal prosecution, and tort actions as remedies for wife beating. The evaluation of each of these alternatives is based on a two-fold effect: the immediate effect on the individual in need of legal assistance, and the deterrent effect on society as a whole. Finally, this comment offers suggestions for formulating effective legal responses to this problem.

DIVORCE

Filings for divorce in Cook County, Illinois, rose from 18,000 to 28,000 between 1964 and 1974 — an increase of 64%.¹⁴ Since divorce is becoming more common, both legally and socially, it appears as a quick solution to end one's marital disputes.¹⁵ It may, therefore, be the first solution a battered woman will consider when she decides that she is unable to endure any further physical abuse.¹⁶

Often, divorce is not a satisfactory solution, with many women failing to realize the potential problems and consequences.¹⁷ Social, psychological, and financial problems arising

13. See, e.g., *Wright v. Daniels*, 164 N.W.2d 180 (Iowa 1969); *Peters v. Peters*, 42 Iowa 182 (1875); *Keister v. Keister*, 123 Va. 157, 96 S.E. 315 (1918).

14. S. ROTHENBERG & M. BARNES, *THE LEGAL STATUS OF HOMEMAKERS IN ILLINOIS* 13 (Gov't Printing Off. 1977) [hereinafter cited as ROTHENBERG & BARNES].

15. Levine, *Marital Cruelty, New Wine in Old Bottles*, 2 *FAM. L.Q.* 296 (1968). Levine notes that 94% of the cases reaching final decree in California were uncontested. A Wisconsin judge estimated that 90% were uncontested in his state. *Id.* at 296.

16. Because women are raised to believe that they must make their husbands happy, psychological pressures restrain them from leaving their marriages. Because they feel responsible for the beatings, they may wait years for their husbands to change, and become ashamed before they seek divorce. Gingold, *Most American Violence Happens In the Home*, 5 *MS MAGAZINE* 51-52 (1976).

Attorneys surveyed in the San Francisco area feel that wives seek dissolution when they reach their threshold of suffering. Truninger, *Marital Violence: The Legal Solutions*, 23 *HASTINGS L.J.* 259, 274-75 (1971) [hereinafter cited as Truninger].

17. Many women do not know that they may not be entitled to alimony, that their husbands may default on the payments, and that the payments may be a small amount. See generally ROTHENBERG & BARNES, *supra* note 14, at iv, 14-15; Truninger, *supra* note 16, at 261.

from lack of support can overwhelm an ex-homemaker.¹⁸ In general, the majority of women are still economically dependent on their husbands,¹⁹ and after a divorce, a wife's economic position usually declines.²⁰ Only a small minority of women are entitled to or can collect alimony.²¹ Furthermore, those states in which no-fault legislation has been enacted offer little hope of monetary assistance where the principle of interspousal immunity has been retained.²²

After divorce, a woman whose only employment experience consists of housekeeping may be left on her own without any financial assistance. If she lives in poverty, she may be prevented from receiving any relief through a divorce because her husband may have chosen to desert her as opposed to paying the legal expenses of a divorce.²³ Either way, basic problems as acquiring a job, and simultaneously caring for the children are obstacles that a wife will suddenly have to face.²⁴

Grounds for Divorce

Wives trying to escape marital violence often claim physical cruelty as a ground for divorce. Physical cruelty generally consists of repeated acts of physical violence that produce bodily harm, endanger life and limb, or raise a reasonable apprehen-

18. A survey of recipients of aid to families with dependent children in seven states found that many fathers were not under any court order to pay child support; that the amount supposed to be paid had little relationship to the father's ability to pay; and that less than half of the amounts were being collected. See Griffiths, *Preface to ROTHENBERG & BARNES*, *supra* note 14, at v.

19. *E.g.*, 57% of all women in Illinois are not members of the labor force. The mean income of Illinois families headed by women is \$7,176 compared to \$12,338 for men. ROTHENBERG & BARNES, *supra* note 14, at 1.

20. A 1972 nationwide survey came to this conclusion in a study of 133 couples divorced since 1968 and based on status after alimony and child support payments were made. See Griffiths, *Preface to ROTHENBERG & BARNES*, *supra* note 14, at iv.

21. *Id.* A poll of 1,522 women conducted in Sept., 1975, indicated that only 14% of divorced wives were entitled to alimony and only 46% of those entitled collected it regularly.

22. This factor has been cited as a major stumbling block to passage of no-fault legislation in some states. Schwartz, *The Serious Marital Offender: Tort Law as a Solution*, 6 FAM. L.Q. 219, 220 (1972).

23. See Nagel & Weitzman, *Women as Litigants*, 23 HASTINGS L.J. 171, 188 (1971).

24. New York, Illinois, and California have passed bills establishing "multipurpose service centers for displaced homemakers," expressly recognizing that these women are at a disadvantage, and need training and other services in order to enjoy economic independence and security. CAL. GOV'T CODE §§ 7320-7335 (West Supp. 1978); ILL. REV. STAT. ch. 23, §§ 3451-3457 (1977); N.Y. LAB. LAW, art. 23-B (McKinney Supp. 1977).

sion of bodily harm.²⁵ Some states distinguish between a single violent act and repeated acts or a course of wrongful conduct.²⁶ Mere threats or a bad temper is insufficient to establish cruelty, because the underlying rationale of the allegation is that the instinct for self-preservation becomes incompatible with the marriage state.²⁷ However, this standard has gradually become less stringent so that a spouse need not be in fear for her life.²⁸

In order to establish physical cruelty, the petitioner must prove that a sufficient degree of violence was inflicted. The courts have denied divorce decrees where the quality of the violence was not deemed severe enough²⁹ or the proof not sufficiently convincing.³⁰ From a quantitative evaluation, a single outrageous act of violence may suffice to satisfy most state statutes,³¹ while in other states, a divorce will still be denied.³²

Even though a wife may no longer covet living with a husband who has abused her, or may not desire to continue living in fear that he will strike her again, she cannot yet obtain a divorce. This predicament is one step further back than the New York order of protection: not only will the police wait until the second

25. *E.g.*, *Curran v. Curran*, 19 Ill. 2d 164, 166 N.E.2d 13 (1960); *Wesselhoeft v. Wesselhoeft*, 369 Ill. 419, 17 N.E.2d 56 (1938).

26. *E.g.*, the Illinois statute requiring "extreme and repeated cruelty" has consistently been interpreted by the courts to mean at least two acts of violence. Divorce Act of Mar. 10, 1874, ch. 40, § 1 ILL. REV. STAT. 420 (1874) (current version at ILL. REV. STAT. ch. 40, § 401(2) (1977)). *Thyls v. Thyls*, 21 Ill. 2d 192, 171 N.E.2d 779 (1961); *Kempski v. Kempinski*, 333 Ill. App. 331, 77 N.E.2d 344 (1948); *Mikkelson v. Mikkelson*, 339 Ill. App. 366 (1926).

27. *See Moore v. Moore*, 362 Ill. 177, 199 N.E. 98 (1936); *Trenchard v. Trenchard*, 245 Ill. 313, 92 N.E. 243 (1910).

28. The modern view is that two acts of cruelty are sufficient to establish grounds for divorce without showing that they were so aggravated as to endanger life or limb. *See, e.g.*, *Knox v. Knox*, 31 Ill. App. 3d 816, 820-21, 334 N.E.2d 891, 895 (1975) (citing *Collinet v. Collinet*, 31 Ill. App. 2d 72, 77, 175 N.E.2d 659, 666 (1961)); *Farah v. Farah*, 25 Ill. App. 3d 481, 490, 323 N.E.2d 361, 367 (1975).

29. *E.g.*, *Godwin v. Godwin*, 245 S.C. 370, 140 S.E.2d 593 (1965) (court held that husband merely slapped wife and that he was not totally without provocation).

30. *E.g.*, *Crowder v. Crowder*, 246 S.C. 299, 143 S.E.2d 580 (1965) (although wife had been kicked while pregnant, and had been beaten on numerous occasions, the divorce was denied because the court failed to find sufficient proof of serious violence in evidence which consisted of only a nominal amount of bruises).

31. *E.g.*, *Crabtree v. Crabtree*, 154 Ark. 401, 242 S.W. 804 (1922) (when wife attacked husband with five inch razor and slashed his neck, face, arms and back, the court granted the divorce, reasoning that an extremely violent act without provocation endangers life and raises an inference that it will be repeated).

32. In Illinois, a single act of violence is not considered an act of repeated cruelty which satisfies the statute. *Godfrey v. Godfrey*, 284 Ill. App. 297, 1 N.E.2d 777 (1936); *Kline v. Kline*, 104 Ill. App. 274 (1902). *See cases cited in note 25 supra.*

beating in order to make an arrest, but the wife must wait until the second beating in order to flee. If she leaves without suitable grounds for divorce, her husband can then sue her for divorce on the ground of desertion, which may prevent her from receiving any alimony. If she remains, a divorce will not be granted if there is too great a time lapse between the violent acts alleged.³³ Furthermore, the violent conduct must be unprovoked; if not, the divorce will again be denied. Besides these factors, the presence of children will influence the court to refuse granting the divorce in order to preserve the family status. Consistent with public policy, the courts delineate these standards with the assumption that reconciliation between the spouses remains a possibility.³⁴

An Effort to Mitigate the Divorce Impetus—Reconciliation

Because many divorce judges have realized that divorce is often not what the parties desire, they have attached reconciliation services to the divorce procedures.³⁵ In a crisis situation, one may seek a divorce simply because it is the apparent solution. However, since the wife's initial action was taken during a time of emotional stress, the possibility of alternative courses of action can easily be overlooked.³⁶ By including the assistance of a counselor or social welfare organization, sufficient time may elapse to enable the parties' emotional state to recede and consequently, allow them an opportunity for a more rational response.³⁷

The consequences of pursuing the public policy of preserving marriages may be extreme. Courts' attempts at reconciliation in fault-based states may actually further disharmony, rather than marital tranquility. Because of the principle that a

33. See, e.g., *Shorediche v. Shorediche*, 115 Ill. 102, 3 N.E. 736 (1885) (the divorce was denied because eight years elapsed between the acts of cruelty); N.Y. TIMES, June 14, 1976, § 1, at 1, col. 4 (a four year lapse was deemed too long by a trial court in N.Y. and the appellate division upheld the decision).

34. See, e.g., *Heffernan v. Heffernan*, 27 Wis. 2d 307, 134 N.W.2d 439 (1965) (outlining the standards for finding cruelty and adding that in applying them, the court would be cognizant of public policy).

35. Impetus from a divorce court judge helped to create the reconciliation court in Los Angeles, Calif., where the rate of reconciliation was 73.4% in 1968. Bodenheimer, *New Approaches of Psychiatry: Implications for Divorce Reform*, 1970 UTAH L. REV. 191, 197-201.

36. *Id.* at 196 n.35. An emergency psychiatric team in Denver has expanded its services and now meets with couples and their attorneys after a crisis situation to see if an alternative solution to divorce can be found.

37. The objective of the psychiatric unit counselors is to strive to keep the marriage together. *Id.*; but see Truninger, *supra* note 16, at 275 (many attorneys see counseling as ineffective because of the lack of time spent with the counselor and lack of motivation of one or both spouses).

party guilty of misconduct cannot sue an innocent party for divorce, a complainant may not obtain a divorce if she has materially contributed toward the ground of which she complains.³⁸ Thus, two equally blameworthy parties are ordered to continue their marriage, and in doing so, the court indirectly sanctions violent and abusive behavior.³⁹

An Unacceptable Remedy

Grounds for divorce are often ill-defined and unpredictable.⁴⁰ Even if granted, a divorce is hardly a positive solution for the parties, the children, and society. As a remedy for violence, it contravenes the public policy of upholding the marital relation by offering the most immediate, though perhaps not permanent, escape from violence.⁴¹

In some decisions, the courts have stated that a woman's remedy is sufficient in a divorce or criminal court without the addition of a tort action. The reasoning of these cases presumes that the divorce court will take into account the violent behavior when determining a property settlement.⁴² This view, however, ignores the statutory purpose of alimony. Alimony is offered

38. *E.g.*, *Garret v. Garret*, 252 Ill. 318, 96 N.E. 882 (1911).

39. Schwartz, *The Serious Marital Offender: Tort Law as a Solution*, 6 *FAM. L.Q.* 219 (1972). Although the new Illinois divorce law is still based on fault, certain aspects, such as the defense of recrimination, have been abolished to provide for more amicable settlements of disputes. *ILL. REV. STAT.* ch. 40, § 403(c) (1977).

40. Levine, *Marital Cruelty: New Wine in Old Bottles*, 2 *FAM. L.Q.* 296 (1968).

41. After two years of constant beatings in which she went to the hospital seven times but was afraid to tell the doctors that her husband beat her, Patricia Dockery Evans obtained a separation and filed for divorce. When her husband learned of the pending proceedings, he went to her apartment, beat her with a chain and shot at her. Mrs. Evans finally felt she could no longer stand the beatings and shot and killed her husband. She was sent to prison. Greene, *Free Battered Wife Who Killed?* *Chicago Sun-Times*, Oct. 11, 1977, at 3, col. 1. Mrs. Evans was granted executive clemency by the Governor of Illinois on December 13, 1977. Greene, *Help to Battered Wife Who Killed*, *Chicago Sun-Times*, Dec. 13, 1977, at 4, col. 1.

The superintendent of the Cook County Jail's Women's Center stated that 40% of the women held on homicide charges in 1976 had been repeatedly battered by the men they were charged with killing. Of the 132 women admitted in 1976 charged with murder or manslaughter, 53 were alleged to have killed their husbands or boyfriends, who had beaten them over an extended period of time. *Chicago Tribune*, Dec. 19, 1977, § 1, at 3, col. 1.

42. *See, e.g.*, *Thompson v. Thompson*, 218 U.S. 611 (1910); *Bandfield v. Bandfield*, 117 Mich. 80, 75 N.W. 287 (1898) (tort compensation denied, because the divorce court would take into account the actions of the husband and do justice by settling his property with the wife). *Cf.* *Johnson v. Johnson*, 201 Ala. 41, 77 So. 335 (1917) (remedy in divorce is illusory and inadequate).

not to punish husbands;⁴³ rather, it is awarded to provide relief to a spouse lacking sufficient income after divorce.⁴⁴ Accordingly, the inquiry should be directed toward need alone. Though divorce should remain an accessible alternative for women to free themselves from destructive relationships, its effectiveness is only speculative since it cannot fully compensate women for injuries received, nor will it prevent further violence.

Separate Maintenance and Support

Perhaps a compromise between divorce and enduring irreconcilable differences can be reached with the use of separate maintenance and support.⁴⁵ The Illinois courts have held that a wife is not bound to live with her husband if his conduct renders her life miserable or unendurable.⁴⁶ The cruelty need not endanger her life, but like divorce, it must be extreme and repeated.⁴⁷ To be entitled to support payments in Illinois, a petitioner must satisfy three statutory requirements: that the parties be living apart, that the petitioner's conduct did not materially contribute to the grounds of the petition, and that the separation is not voluntarily agreed to by the parties.⁴⁸

Separate maintenance has two purposes. The first is to prevent a hasty divorce; the second is to provide support to a spouse who is not at fault in the disintegration of the marriage and who does not choose to sue for divorce.⁴⁹ Public policy dictates that no encouragement be given to living apart,⁵⁰ and for this reason, the grounds on which a divorce or separate mainte-

43. In *Mosier v. Carney*, 376 Mich. 532, 546-47, 138 N.W.2d 343, 346 (1965), the court states that the argument for divorce as a remedy is legally faulty in suggesting that alimony may be awarded to compensate a tortious injury which has not impaired the spouse's ability to work. Alimony is a device solely to provide support, not to compensate injuries.

44. See, e.g., ILL. REV. STAT. ch. 40, § 504 (1977).

45. E.g., *id.* § 402.

46. See, e.g., *Abraham v. Abraham*, 403 Ill. 312, 86 N.E.2d 224 (1949); *Johnson v. Johnson*, 125 Ill. 510, 16 N.E. 891 (1888); *Wahle v. Wahle*, 71 Ill. 510 (1874).

47. *Holmstedt v. Holmstedt*, 383 Ill. 290, 49 N.E.2d 25 (1943); *Kohn v. Kohn*, 337 Ill. App. 391, 86 N.E.2d 833 (1949).

48. *Johnson v. Johnson*, 125 Ill. 510, 16 N.E. 891 (1888); *Matthews v. Matthews*, 36 Ill. App. 3d 508, 344 N.E.2d 21 (1976); *Glover v. Glover*, 132 Ill. App. 2d 284, 268 N.E.2d 218 (1971) (a material contribution is one which substantially disrupts the home by a failure of duty or misconduct).

49. *Graham v. Graham*, 44 Ill. App. 3d 519, 358 N.E.2d 308 (1976); *Reese v. Reese*, 2 Ill. App. 3d 1054, 278 N.E.2d 122 (1971); *Hilliard v. Hilliard*, 25 Ill. App. 2d 468, 167 N.E.2d 451 (1960) (although an award of separate maintenance may seem unfair because there is no time limitation, it would be unfair to the wife to have a divorce proceeding forced upon her); *Schneider v. Schneider*, 312 Ill. App. 59, 37 N.E.2d 911 (1941).

50. *Johnson v. Johnson*, 125 Ill. 510, 515, 16 N.E. 891, 892 (1888).

nance action can be based are limited.⁵¹ As in divorce, there is also a provision for reconciliation,⁵² and hence, separation can be a helpful step while evaluating the future of a marriage. An action for separate maintenance will not prevent a subsequent divorce.⁵³

The Illinois separate maintenance statute also offers temporary relief to ensure the wife's protection during separation. A petitioner may ask the court for a temporary injunction to prevent further violence.⁵⁴ One commentator has noted, however, that although a domestic relations judge grants numerous injunctions, he will rarely receive a request for a contempt hearing.⁵⁵ The enforcement of an injunction is too slow to be helpful during an emergency situation, even though it may have been temporarily effective.⁵⁶

Under the Illinois Crime Victim Compensation Act,⁵⁷ some compensation may still be available to a wife who is separated if she sustains injuries costing over \$200.00. However, this law is relatively new, and it remains to be seen how the courts will apply it, and whether or not battered wives will benefit from it.⁵⁸ Although arrest and conviction are not required under the Act, applicants must cooperate fully with law enforcement officials. As the following discussion will demonstrate, such cooperation may be rare if not futile.

51. *Reese v. Reese*, 2 Ill. App. 3d 1054, 278 N.E.2d 122 (1971) (although the husband argued that after a four year separation there was no chance of reconciliation, the court denied his cross-complaint for divorce and granted separate maintenance).

52. *See, e.g.*, ILL. REV. STAT. ch. 40, § 404 (1977).

53. *Reese v. Reese*, 2 Ill. App. 3d 1054, 278 N.E.2d 122 (1971).

54. ILL. REV. STAT. ch. 40, § 501(a)(2)(iii) (1977).

55. Truninger, *supra* note 16, at 274. In addition, those orders which are obtained are of limited value because the police are hesitant to enforce them.

56. *Id.*; *cf.* N.Y. Times, Nov. 13, 1976, § 1, at 10, col. 3 (a novel approach was instituted by one Indiana judge who appoints battered wives as their husband's probation officer. This method has the advantage of speed because, when the abuse occurs, the wife calls the judge, who sends the police. Probation is then revoked and the husband is arrested. Counseling is mandatory, and jail sentences are served on weekends.)

57. ILL. REV. STAT. ch. 70, §§ 71-84 (1977).

58. *See* Lamborn, *The Scope of Programs for Governmental Compensation of Victims of Crime*, 1973 U. ILL. L.F. 21, 84-87 (a discussion of restrictions found in various compensation acts which may preclude spouses from recovering; compensation is often denied for the same reasons used to justify interspousal tort immunity).

CRIMINAL PROSECUTION

Statutory Wife Abuse

Some states have made spouse beating a special statutory criminal offense.⁵⁹ The California statute, for instance, has been interpreted in light of the state's overriding interest in marriage. Rather than use this policy as a reason for avoiding decision, the court has stated that the state's interest in deterring crimes which would primarily disrupt marriage, is greater than its interest in other classes of crimes. A California appellate court has reasoned that the deterrent effect of the prescribed punishment on interspousal violence might preserve a marriage.⁶⁰

In practice, these statutes may be ineffective due to social pressures that can cause a wife to delay getting medical attention, and thereby losing evidence necessary for a conviction under the act.⁶¹ In most states, prosecutions are based on assault and battery misdemeanors that require either the act to be committed within the police officer's presence or the complainant to sign a warrant.⁶² At a minimum, police can usually charge an offender with the misdemeanor of disorderly conduct, which does not require evidence of physical abuse.⁶³

On their face, these provisions provide for prosecution and for protection. They are rarely invoked, however, since authorities have reasoned that wife beating does not require a strictly criminal label. This rationale treats wife beating differently from behavior that is traditionally labeled criminal,⁶⁴ and believes that the criminal process is not designed or equipped to

59. See, e.g., CAL. PENAL CODE § 273d (West 1970 & Supp. 1978) (willful infliction of bodily injury upon a spouse is a felony).

60. *People v. Cameron*, 53 Cal. App. 3d 786, 126 Cal. Rptr. 44 (1975). The court prefaced the facts of the beating by stating that they were unremarkable: the husband woke his wife by twisting her breast, and then proceeded to slap and kick her, to throw her off the bed, and then beat her until he broke her nose and mutilated her ear.

61. Truninger, *supra* note 16, at 263-64. Cf. B. WARRIOR, WIFE BEATING 2 (2d ed. 1976). Many husbands beat their wives in places not visible to others, such as the stomach. If the husband beats her face, the wife will often stay home, because the sense of shame is so strong, particularly among middle class women.

62. See generally W. LAFAVE, ARREST 121 n.65 (ABF Series 1965); Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543, 573 n.63 (1960) [hereinafter cited as GOLDSTEIN].

63. See Truninger, *supra* note 16, at 264.

64. Field & Field, *Marital Violence and the Criminal Process*, 47 SOC. SCI. REV. 221 (1973) [hereinafter cited as Field]; Parnas, *Police Discretion and Diversion of Incidents of Intra-Family Violence*, 36 LAW & CONTEMP. PROB. 539, 542 (1971) [hereinafter cited as *Police Discretion*]. In explaining this reasoning, Parnas limited his discussion to minor incidents without se-

handle these situations. Raymond I. Parnas, the most prolific commentator on wife abuse, noted that a dismissal is a poor response from the courts but that the resources available to the courts make alternative dispositions difficult.⁶⁵

Yet, marital squabbles can lead to unarguably criminal behavior. In 1975, one-fourth of all murders committed nationwide involved family members; one-half of these involved husband and wife.⁶⁶ The view that domestic violence is not strictly criminal and the tolerance of inadequate measures to cope with it, choose to ignore the serious criminal nature and potential of such behavior.

The Police Response—Diversion

Notwithstanding the high incidence of serious crime in the home, the police and prosecutors prefer a practice of diversion from the criminal process.⁶⁷ The police use their discretion in order to channel potential cases from the criminal process that it could theoretically handle.⁶⁸ Diversion from the criminal process can occur short of conviction, prosecution, and even arrest.⁶⁹

The disturbing aspect of the practice is that it may be misapplied in this context; family disputes are not always the harmless and socially innocuous offenses which the diversion process normally screens.⁷⁰ Diversion is practiced in family violence cases, because such violence is relatively commonplace.⁷¹ Even though interspousal violence occurs among all classes, police in-

rious threats or injuries and argued that the closer the relationship between the parties, the less anti-social the behavior.

65. *Judicial Response*, *supra* note 10, at 596 n.53.

66. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORT FOR THE UNITED STATES 9 (1967) [hereinafter cited as UNIFORM CRIME REPORT] (The wife was the victim in 52% of the cases). Cf. Jackson, *In Search of Equal Protection for Battered Wives* (1975) (unpublished), cited in ROTHENBERG & BARNES, *supra* note 14, at 29 n.23. (The Kansas City Police Dep't found that in 85% of family homicides, the police had been called to intervene at least once and in 50% at least five times).

67. See generally Goldstein, *supra* note 62, at 573-80.

68. Brakel, *Diversion from the Criminal Process: Informal Discretion, Motivation and Formalization*, 48 DEN. L.J. 211, 213 (1971) [hereinafter cited as Brakel]. See also Vandall, *Training to Meet the Police Function*, 1971 WIS. L. REV. 547, 549 (discretion grows out of the flexibility of the legislated system, which allows priority to be given to more serious crimes).

69. Brakel, *supra* note 68, at 213.

70. *Id.* at 223.

71. *Id.* See also B. WARRIOR, WIFE BEATING 4 (2d ed. 1976). In Atlanta, 60% of all calls received during the night shift are domestic disturbance calls. In Boston, these calls average 45 a day, or 18,000 a year. In Boston City Hospital, approximately 70% of the assault victims in the emergency room are battered wives.

volvement is mainly requested by the poor and uneducated.⁷² The crisis atmosphere of these calls presents a great source of danger to policemen, who may even end up being attacked by the wife.⁷³

Police training in domestic disturbances nonetheless, is generally insufficient.⁷⁴ Policemen are trained to do little more than to use common sense to calm the parties and to avoid arrest.⁷⁵ They use their discretion and minimize the response in order to divert the situation away from any possible criminal action.⁷⁶ Police officers may ask the husband to leave for awhile,

72. See Parnas, *The Police Response to the Domestic Disturbance*, 1967 WIS. L. REV. 914, 914 [hereinafter cited as *Police Response*]; Field, *supra* note 64, at 221; accord, Gingold, *Most American Violence Happens in the Home*, 5 MS MAGAZINE 51, 52 (1976). The County Council of Montgomery County, Md., one of the country's wealthiest counties, estimated 650 marital assaults in a one-year period and recommended the establishment of a shelter home for battered wives in the county.

73. UNIFORM CRIME REPORT, *supra* note 66, at 223-43. Between 1966 and 1975, 1,023 police officers were killed during the commission of felonious activity. Of these, 157 were killed while answering domestic disturbance calls. Twenty officers were killed answering domestic disturbance calls in 1975. A nationwide total of 44,867 police officers were assaulted in 1975. The largest group, 28%, or 12,755 officers assaulted, were responding to domestic disturbance calls. *Id.* at 231. "In disturbance calls involving personal, family and business disputes, the responding officer frequently becomes the target for all the antagonists."

74. *Police Response*, *supra* note 72, at 921. Statistics of police casualties may be stressed to police cadets, even though their training to quell domestic disturbances may have been only one hour long. UNIFORM CRIME REPORT, *supra* note 66, at 231:

The high incidence of assaults in [family, friend or business] circumstances should serve as a warning for greater alertness on the part of all patrol personnel. The officer must avoid becoming complacent in his pursuit of any type of law enforcement activity. The police administrator or command officer should consider procedures to afford the responding officer the fullest possible support in all activities no matter how menial or routine.

The lack of initiative in upgrading police training and abilities is illustrated by the technique of the Community Intervention Service Program in Chicago. Calls to police in certain districts are monitored and a member of the Dep't of Human Resources is dispatched to the scene. Although the purpose of the program—to provide immediate social services rather than merely make future referrals—is a step toward offering the parties substantial intervention, it places the policeman's role at an even greater distance from dealing with the disputes and further characterizes the violence as non-criminal behavior. See Patrol Division Notice 76-9 (Feb. 17, 1976).

75. Chicago Police Dep't, Training Bulletin: Disturbance Calls (1971). The training bulletin simply states that calls can be handled with common sense and courtesy, advising officers to avoid letting the situation become aggravated. The bulletin does not state, however, what to do if the situation does become aggravated, or what to do if they arrive at a situation which has already "mushroomed." Cf. Chicago Police Superintendent, James E. O'Grady, has issued an order to all patrolmen to arrest a husband if the wife is seriously injured or unable to sign a complaint. Chicago Tribune, Sept. 2, 1978, § 1, at 3, col. 3.

76. Brakel, *supra* note 68, at 213. See note 74 *supra*; CHICAGO POLICE

refer the parties to a social agency or family court, or advise the wife to get a warrant on the following day.⁷⁷

Police are especially anxious to screen out victims who will be unwilling to prosecute. They will not make an arrest that they feel will fruitlessly burden the system.⁷⁸ Police may test the willingness of a victim by asking her to go to the district attorney for a warrant so that the time lapse will give her a chance to calm down. If she perseveres, she will be actively discouraged by the prosecutors and further discouraged by the tedious procedure of returning to court for motion hearings.⁷⁹ Diversion became so widely practiced in New York that the legislature had to amend the Family Court Act to make it clear that criminal justice officials should neither prevent nor discourage victims from pursuing appropriate criminal sanctions.⁸⁰

DEPT, ANNUAL STATISTICAL SUMMARY 6 (1976) (The attitude that wife beating is not criminal is flatly stated in the Chicago Police Dep't's evaluation of the Community Intervention Service Program: "Recognizing that many citizen calls for assistance are not crime-related" the police dep't expanded the program because it found that the ability of the social workers to take over was invaluable, allowing police officers to return to "street patrol and other crime-related duties.") Cf. The Superintendent has reiterated that officers are to arrest the husband if warranted by the situation. Unless the wife is seriously injured as to be unable to sign a complaint, the police are to continue to advise the victim that she can later sign a complaint or call the Dep't of Human Resources. Chicago Tribune, Sept. 2, 1978, § 1, at 3, col. 3.

77. *Police Response*, *supra* note 72, at 930-42. Parnas states that one of the reasons behind the non-arrest policy is the belief that the victim doesn't want the offender arrested but has called the police merely to scare the offender into behaving. Police also keep in mind that the victim may not be able to afford the consequences of having the husband arrested and that the arrest may even further aggravate the situation.

But these beliefs have become so prominent as to allow police to avoid dealing with a violent situation. A woman in New York, for example, was being choked by her husband in the presence of a screaming child and neighbor who had called the police. The police pried the husband's hands off of the wife's neck and told her to calm down. In refusing her request that her husband be arrested the police said that it was just a marriage matter and that they couldn't do anything. N.Y. Times, Dec. 8, 1976, § 2, at 2, col. 3.

78. W. LAFAVE, ARREST 122 (ABF Series 1965) (even if the victim is willing to prosecute at the time of the incident, police will not arrest if they feel she will not follow through). Cf. Goldstein, *supra* note 62, at 574-75 (police are anxious to reduce the pressures of their workload); Hall, *The Role of the Victim in the Prosecution and Disposition of a Criminal Case*, 28 VAND. L. REV. 931, 939-41 (1975).

79. Brakel, *supra* note 68, at 229-30.

80. N.Y. FAM. CT. ACT (29A) §§ 812.1, 812.3 (McKinney Supp. 1978) in pertinent part provide:

§ 812.1. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute . . . an assault or attempted assault between spouses.

§ 812.3. No official designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a peti-

The question is thus raised whether a victim's willingness to prosecute a criminal assault should be relevant to the exercise of police discretion.⁸¹ Unfortunately, as indicated by the number of interspousal homicides, the violent character has so predominated the relationship that the parties are no longer able to work out their problems without outside help.⁸² Even those women who have followed the court's recommendations and tried reconciliation or even divorce may still become assault victims. If the police will not give them serious protection, how has the law served at all as a remedy?

Prosecution

Very few marital assault arrests survive the prosecutor's screening process. "If the victim does not die, the chances that the criminal process will deal seriously with the offender are slight."⁸³ District Attorney offices in many states employ elaborate screening processes⁸⁴ that seem to discourage victims from prosecuting rather than supporting women who are victimized by crime in their homes.⁸⁵ For example, in 1966, out of 7,500 wo-

tion or sign a complaint under this article from having access to any court.

A class action suit had previously been filed charging police and family court officials with failing to arrest or give wives assistance as prescribed by the statute. Fifty-nine women filed affidavits. N.Y. Times, June 12, 1977, § 1, at 48, col. 3. In an out-of-court agreement between N.Y. police and courts and 12 battered wives, the police are to follow the same procedures when a felonious assault is committed as with non-married parties, and arrest the husband. 47 U.S.L.W. 2034-35 (Jul. 18, 1978). Cf. *United States v. Harrison*, 461 F.2d 1209 (D.C. Cir. 1972) (in which the court held that the district attorney must give the family court notice of intent to prosecute, so that the case can be moved to family court if feasible. Failure to notify will result in criminal charges being dropped).

81. Goldstein wonders whether, since a policeman has his own value system, he can be given such broad discretion and still sufficiently respond to the community. Goldstein, *supra* note 62, at 576. Brakel, *supra* note 68, at 222 (Minimal intervention is particularly notable in high crime areas, which Brakel interprets as a reluctance to use overburdened resources in what is viewed as an unmanageable situation).

82. Brakel, *supra* note 68, at 223. See study cited in note 73 *supra*; Chicago Tribune, Dec. 19, 1977, § 1, at 3, col. 1. According to Candace Wayne, supervising attorney for the Legal Center for Battered Women, the wife will commonly receive a worse beating after the police leave.

83. Field, *supra* note 64, at 225; *accord*, Goldstein, *supra* note 62, at 574 n.64.

84. For descriptions of various offices, such as Detroit's Misdemeanor Complaint Bureau, which shuffles victims between detectives and assistant district attorneys see F. MILLER, PROSECUTION 266-71 (ABF Series 1969); *Police Response*, *supra* note 72, at 945-48; Parnas, *Prosecutorial & Judicial Handling of Family Violence*, 9 CRIM. L. BULL. 733, 736-41 (1973) [hereinafter cited as *Family Violence*].

85. Unlike serious felonies involving unrelated parties, if the district attorney doesn't believe the facts justify charging the husband with a crimi-

men who sought warrants in Washington, D.C., less than 200 received them.⁸⁶ The success of the diversion tactic is reflected in the small number of cases that actually go to trial.⁸⁷

Nonetheless, these diversionary tactics have been defended on the grounds that the victim refuses to actively participate in the prosecution, that the police and prosecutors are reluctant to tax the system with cases where the victim will refuse to testify, and that the family will be deprived of a subsisting income should the husband be incarcerated.⁸⁸ Still, these reasons fail to offset the bureaucratic practicality that the quantity of incidents dictates that each official response be minimal.⁸⁹ It would indeed take a determined wife to prosecute her husband when, in doing so, she also must deal with a hesitant prosecutor whose actions serve as a catalyst toward fulfilling the prediction that battered wives are half-hearted complainants. This result is evidenced by the records of Chicago's Court of Domestic Relations, where over half of the cases are dismissed at complainant's request or because she failed to appear.⁹⁰

Other jurisdictions have attempted to remedy this situation by resolving cases before they reach the court. Many district attorney offices give an informal "hearing" to the victim⁹¹ to placate the wife's desire for official action and perhaps threaten the offender.⁹² Assistant district attorneys and detectives with training in counseling or domestic disturbances are often specif-

nal offense, he will drop the case no matter how adamantly the wife persists. He will even encourage her to calm down and think it over. Hall, *The Role of the Victim in the Prosecution and Disposition of a Criminal Case*, 28 VAND. L. REV. 931, 949 (1975).

86. Field, *supra* note 64, at 232. At the Detroit Misdemeanor Bureau during the first 10 months of 1970, only 323 warrants were issued out of the 5,057 that were requested. See also *Family Violence*, *supra* note 84, at 740.

87. Of a sampling of cases in Washington, D.C., Field found that only one of the 225 felony assault cases at trial involved spouses, and in that one the defendant was acquitted. Field, *supra* note 64, at 225.

88. *E.g., id.* at 225. After eight years as common law husband and wife, the husband pressed a hot iron on the wife's face, which left a permanent scar. Two years earlier he served 180 days for cutting her with a knife. Three witnesses were eager to testify, and the charge sent to the grand jury was a felony. But five months later, the wife refused to prosecute, and the case was dropped.

89. Brakel, *supra* note 68, at 224; Goldstein, *supra* note 62, at 574 (police feel inconvenienced with extra work accompanying arrest without being adequately compensated for their time). See also note 81 *supra*.

90. *Judicial Response*, *supra* note 10, at 594-611. The "go home" disposition is similar to the treatment of arrested drunks, but such disposition fails to reflect that someone other than the offender is endangered. *Id.* at 596 n.53.

91. See note 84 and accompanying text *supra*.

92. *Family Violence*, *supra* note 84, at 737. Cf. Field, *supra* note 64, at 233 (district attorneys have gone so far as to tell ignorant parties that they are henceforth divorced).

ically assigned so that reconciliation can be worked out and consequently, the case can be diverted from the courts.⁹³ In other cities, the police are urged to make referrals to neighborhood counseling centers, which work in conjunction with prosecutors to settle marital disputes.⁹⁴

No matter how well-meaning such responses may be, and whether or not there is an arrest or a temporary reconciliation, these measures offer only a temporary reprieve from violence;⁹⁵ assault or homicide can still follow.⁹⁶ Though police officers and district attorneys who are trained in counseling principles are better equipped to handle these disputes, it is still questionable whether their assistance is anything more than a temporary measure.⁹⁷ The more resolute determination should lie in the utilization of the domestic relations courts.

Domestic Relations Court

The domestic relations or family courts have been a controversial response to the hesitancy of the criminal court system to hear cases and dole out punishment.⁹⁸ The traditional role of the courts is to find facts and apply the law to those facts. How-

93. See note 84 and accompanying text *supra*. An evaluation of these practices is discussed in *Police Discretion*, *supra* note 64, at 558.

94. *Family Violence*, *supra* note 84, at 740-47. Cf. *Police Discretion*, *supra* note 64, at 549-53. Police in the Family Crisis Intervention Unit in N.Y. assumed more initiative when they became disenchanted with the social welfare agencies which they considered too rigid.

95. Field, *supra* note 64, at 230; *Police Response*, *supra* note 72, at 940-42.

96. A battered wife said that she could no longer stand her divorced husband's beatings and set him on fire while he was asleep. Chicago Tribune, Sept. 11, 1977, § 1, at 22, col. 1. At trial, the defense contended that the wife had been battered for so long that if she tried to flee, her husband would find her and beat or kill her. The wife also testified that she was no longer mentally able to cope with the beatings. She was acquitted by reason of temporary insanity. *State v. Hughes*, Chicago Tribune, Nov. 4, 1977, § 1, at 3, col. 1 (Cir. Ct. Mich. Nov. 3, 1977).

A Chicago woman was freed after the state's attorney decided that the murder of her husband was justifiable homicide. Her husband had beaten her and had then told her that if she didn't shoot him, he would shoot her. She said she had taken all she could from him and shot him three times. Chicago Tribune, Nov. 7, 1977, § 1, at 2, col. 1.

97. See Bard & Berkowitz, *A Community Psychology Consultation Program in Police Family Crisis Intervention: Preliminary Impressions*, 15 INT'L J. OF SOC. PSYCH. 209, 214 (1969); Bard & Zacker, *The Prevention of Family Violence: Dilemmas of Community Intervention*, 33 J. OF MARR. & FAM. 677, 679 (1971).

98. In addition to keeping cases out of the criminal courts, family courts can also utilize counseling to avoid subsequent criminal prosecution. *Police Discretion*, *supra* note 64, at 562. See N.Y. Times, June 14, 1976, § 1, at 1, col. 4 (in keeping with the statutory motive of reconciliation in family courts, of 7,237 cases of abuse, only 34 resulted in a sentence to a work house or prison in 1974).

ever, domestic relations cases may not be suitable to this approach since, by the time a case reaches the court, the facts are generally not in dispute and there is often no serious question of guilt or innocence.⁹⁹

The purpose of the domestic relations courts is to reconcile, not to punish, the parties.¹⁰⁰ For example, family court jurisdiction in Washington, D.C., has been construed to confer a wide range of powers to rehabilitate offenders rather than punish them.¹⁰¹ The aim of the family court acts is to avoid stigmatizing the offender by cutting him off from his job and family.¹⁰²

Still, the domestic relations courts may be no more effective than a visit by the police, because the attempts at reconciliation often fail for two reasons. First, the parties will often not appear in court, resulting in the dismissal of the case.¹⁰³ Thus, not only have punitive sanctions been avoided, but in fact, no action at all has been taken. Second, since the normal judicial disposition as a fine or imprisonment may inflame the situation, many courts have resorted to the use of peace bonds to dispose of these cases.¹⁰⁴ This bond is utilized because it will presumably not aggravate the situation and it serves as an expedient resolution.¹⁰⁵ The degree of seriousness with which the judicial system looks upon the peace bond, however, can best be illustrated by describing what occurs upon issuance of the bond: the offender does not know the amount of the bond, does not place a bond, and does not sign a form stating that he is bound.¹⁰⁶

99. Field, *supra* note 64, at 235; *Judicial Response*, *supra* note 10, at 597, 642.

100. See, e.g., N.Y. FAM. CT. ACT (29A) § 812.2(c) (McKinney Supp. 1977).

101. Washington, D.C., Court Reorganization Act, D.C. CODE §§ 16-1000-1003 (1973); *United States v. Harrison*, 461 F.2d 1209 (D.C. Cir. 1972).

102. *United States v. Harrison*, 461 F.2d 1209 (D.C. Cir. 1972).

103. See note 90 and accompanying text *supra*.

104. See *Police Discretion*, *supra* note 64, at 563 (peace bonds are "utterly improper although well-motivated"); *People ex rel. Smith v. Baylock*, 357 Ill. 23, 191 N.E. 206 (1934). Peace bonds are generally statutory, although based on common law, and allow the court as a matter of prevention to order the defendant to place a bond against a future breach of the peace.

105. Domestic relation judges have acknowledged that the peace bond is a sham procedure, but feel that it is nonetheless effective. Since neither the police nor the judges feel that they have the capacity, or inclination, to deal with causes of the problems, they give inconsistent and lackluster performances. Parnas, *Responses of Some Relevant Community Resources to Intra-Family Violence*, 44 IND. L.J. 159, 162 (1968-1969).

106. *Judicial Response*, *supra* note 10, at 600-05 (analysis of the peace bond procedure).

The author personally observed the Chicago Court of Domestic Relations: the windows were all open, although situated on a busy street; a telephone near the bench kept ringing, and the assistant state's attorney held conferences with the parties when called and then turned to the judge to dispose of the case. In addition to the judge and district attorney, sur-

Although some jurisdictions may have more dignified domestic court proceedings with labyrinth-like screening, counseling, and reconciliation procedures, their dispositions are equally superficial. These proceedings generally consist of a lecture warning the offender that he will be treated more harshly the next time or probation may be arranged.¹⁰⁷

Finally, reliance on the process of reconciliation is no longer the appropriate legal response when the parties have become physically hostile. The physical safety of the wife and not just the preservation of the marital relationship is at stake. Reconciliation connotes estranged parties working toward mutual understanding. Understanding why a husband beats her, however, will not protect the wife. The domestic relations courts must, therefore, be centered on strong judicial dispositions in order to control the behavior of the husband and thus protect the wife.

Ineffectiveness of the Criminal Court System

Strengthening the referral and counseling resources of the family courts may be a workable alternative for those couples willing and able to cooperate.¹⁰⁸ But for others, the diversionary process is unsatisfactory. The official avoidance of arrest minimizes the character of the act, rather than recognizing the violent and criminal character of the husband.¹⁰⁹ Thus the vic-

rounding the bench were a public defender, assistant attorney general, three bailiffs, one police officer and four clerks. There were no attempts to call the courtroom to order.

107. See *Family Violence*, *supra* note 84, at 749-50; *Judicial Response*, *supra* note 10, at 598-99, 621-32. Only 2% of the N.Y. family court cases were disposed of by the encouraging alternative of post-hearing probation, which Parnas attributed to lack of staff. On the other hand, enough staff were available in order to institute a two-fold pre-trial screening and referral procedure.

108. See *Judicial Response*, *supra* note 10, at 753-56 for extensive recommendations stressing social science and counseling techniques. The special training of N.Y. police in family problems and counseling techniques may help discretion to be exercised soundly. See also Brakel, *supra* note 68, at 234.

109. Truninger, *supra* note 16, at 272. See *Librizzi v. Chisholm*, 55 App. Div. 2d 954, 391 N.Y.S.2d 154 (1977). Appellant had been charged with first degree assault for stabbing his wife in the back with a knife, causing her serious injury and hospitalization. The case was transferred to the family court, but there the appellant was advised that, on the basis of the severity of the injury, he would be transferred back to criminal court. The appellate court held that the family court had abused its discretion in waiving its jurisdiction simply on the basis of the severity of the injury. The court stressed that family court is not simply for trivial matters, but that the important factor to consider is the reasonable opportunity for reconciliation and preservation of the family.

The act was thus treated merely as an incident of the marital relationship, and apparently the possibility of reconciliation can outweigh any degree of severity.

tim's safety is balanced against the negative effects attending the imprisonment of the husband although the wife, by pursuing legal sanctions, has already made this determination.¹¹⁰ Though appearing to stand on the public policy of preserving domestic harmony, courts and prosecutors are ignoring the fact that when the level of violence extends to the point of physical beatings, there is little harmony left to preserve.¹¹¹

A minority of courts do take into account the relative physical weakness of most women compared to men.¹¹² Under the California wife beating statute, the court has recognized that the circumstances of the crime make abused women a separately protected class.¹¹³ Yet, other opinions in assault cases state that the excessiveness of the violence that the victim suffers is the decisive factor in prosecution.¹¹⁴ In light of the extreme beatings found in cases that actually do reach the prosecutorial stage for either assault or battery, the inescapable conclusion is that unlike other battery victims, a wife must be near death before the criminal process will act to prosecute the husband.¹¹⁵

110. At present, the procedures used to avoid arrest are not showing a positive effect, since the same patterns of violence continue, and the divorce rate keeps rising. A wife stands to lose the same amount financially whether she divorces her husband or he goes to jail. Perhaps the serious threat of conviction would deter offenders, whereas one or two experiences with a peace bond will make the authorities' viewpoint clear to any husband. As Parnas indicates, the response of the law has been inadequate to prevent the reoccurrence of minor incidents and inadequate to prevent the build up of discord to the point of homicide. Parnas, *Response of Some Relevant Community Resources to Intra-Family Violence*, 44 IND. L.J. 159, 162 (1968-1969).

111. W. PROSSER, *THE LAW OF TORTS* § 122, at 863 (4th ed. 1971).

112. *See, e.g.*, *State v. Wanrow*, 88 Wash. 2d 221, 559 P.2d 548 (1977) (jury instructions regarding the woman's excuse of self-defense against a man must allow for the physical nature of a man as compared to a woman).

113. *See People v. Cameron*, 53 Cal. App. 2d 786, 126 Cal. Rptr. 44 (1975), where the court held that the wife beating statute did not violate equal protection because wives, as objects of abuse, are a class apart due to the conditions under which the abuse occurs (*e.g.*, late at night, in the home).

114. *See, e.g.*, *People v. Ruiz*, 82 Ill. App. 2d 184, 226 N.E.2d 438 (1967) in which a sleeping wife was dragged out of bed in front of her children. Her husband kicked her and beat her with a broken curtain rod, dragged her back and forth and finally threw her in the car and drove off. Mrs. Ruiz was unconscious for 20 days and underwent six brain operations. Mr. Ruiz received 5-10 years for aggravated battery upon a "helpless, injured woman."

The question remains whether the initial attack would have been sufficient for conviction, since the court stressed that the offender did not stop beating his wife even after she was bleeding and unconscious.

115. Exemplifying the lack of perception by courts of the seriousness of wife beating, is the comment made in denying bail bond to a woman who set fire to her ex-husband in retaliation for his repeated beatings. The judge said, "After all, what kind of a woman would burn her husband?" *Chicago Tribune*, Sept. 11, 1977, § 1, at 22, col. 1.

THE CIVIL ALTERNATIVE

Many states allow civil suits between husband and wife that enable a wife to be compensated for intentional torts committed by her husband against her.¹¹⁶ Recovery of damages in a civil suit may be obtained in addition to a criminal prosecution or divorce.¹¹⁷ Although of limited utility for lower income women, tort compensation where available can provide redress to a woman who has been injured without differentiation because of her legal relationship with the offender.

Tradition of Immunity

The general trend of authority before passage of the married women's statutes was that the criminal and divorce courts provided sufficient remedies for interspousal violence.¹¹⁸ This reasoning had been so pervasive that it persists today notwithstanding that the scope of women's rights has been reinterpreted and expanded since the passage of these statutes.¹¹⁹

Traditional thinking may be invalid today, however, since the criminal and divorce laws do not purport to provide relief for personal injury. These avenues are not an adequate alternative to a battered wife for neither compensates for the infringement of her personal security.¹²⁰ Furthermore, it is unlikely that the sanctity of a marriage can be harmed any more in a civil suit

116. See generally *Mosier v. Carney*, 376 Mich. 532, 566-73 (app.), 138 N.W.2d 343, 355-58 (app.) (1965). In *Taylor v. Patten*, 2 Utah 2d 404, 408, 275 P.2d 696, 699 (1954), the court abrogated interspousal immunity but pointed out that, although many touchings are consented to in marriage, this does not mean that the wife consents to intentionally inflicted personal injuries.

117. E.g., *Windauer v. O'Connor*, 107 Ariz. 267, 485 P.2d 1157 (1971). Husband shot his wife in the head, and the wife filed for divorce two days later. A short time after entry of the divorce decree, husband was convicted of assault with intent to commit murder. Approximately two months after husband's conviction the wife filed her action for personal injury, which she ultimately won.

118. See, e.g., *Abbott v. Abbott*, 67 Me. 304 (1877).

119. See, e.g., *Thompson v. Thompson*, 218 U.S. 611, 616-18 (1910); cf. *Windauer v. O'Connor*, 13 Ariz. App. 442, 477 P.2d 561, 564 (1970), *rev'd* 107 Ariz. 267, 485 P.2d 1157 (1971) (retention of immunity only "recalls past ages when the partnership role of spouses was submerged in the autocrat-husband concept." To allow immunity to bar recovery when the husband's conduct has destroyed the marriage would thwart justice); *Self v. Self*, 58 Cal. 2d 683, 687, 376 P.2d 65, 67, 26 Cal. Rptr. 97, 99 (1962) (California Supreme Court abrogated interspousal tort immunity, stating that no litigants since the leading case in 1909 had analyzed or challenged either the doctrine or possible legislative changes since then but had merely followed the rule).

120. See *Flores v. Flores*, 84 N.M. 601, 603, 506 P.2d 345, 347 (1973); *Goode v. Martinis*, 58 Wash. 2d 229, 234, 361 P.2d 941, 944 (1961) (criminal action may deter future wrongs, but it doesn't compensate past injuries).

than in an action for divorce or a criminal prosecution.¹²¹

Still, the effect of the married women's statutes upon interspousal immunity in a civil context has not resulted in a unanimous interpretation; two opposing views exist. One view, based on a strict interpretation of the married women's statutes, holds that these statutes are intended to expand property rights, not personal rights, thus denying a woman a civil action for damages.¹²² The contrary view interprets these statutes as a complete abrogation of common law principles, thereby allowing a wife a tort action against her husband.¹²³

Exceptions and Abrogation

The language of the various married women's statutes differs from state to state, some granting broader rights than others.¹²⁴ A few courts interpreting these statutes have abolished interspousal immunity because of the absence of any statutory requirement or existence of public policy compelling its preservation.¹²⁵ Other courts have limited the application of

121. See *Self v. Self*, 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962) (the court refused to continue the anomaly which allowed a wife to obtain relief when the suit involved property, but not when it involved personal injury); *Brown v. Brown*, 88 Conn. 42, 89 A. 889 (1914); *Crowell v. Crowell*, 180 N.C. 516, 522, 105 S.E. 206, 209 (1920) (in dictum, the court responded to the suggestion that a criminal prosecution is more appropriate than a tort action by stating that criminal prosecution provides no reparation and, if the principle of preserving domestic harmony doesn't prevent an indictment, why should it prevent a tort?); *Freehe v. Freehe*, 81 Wash. 2d 183, 188, 500 P.2d 771, 775 (1972) (limiting injured party to divorce or criminal action is inconsistent with the policy of preserving domestic tranquility).

122. See, e.g., *Wright v. Daniels*, 164 N.W.2d 180, 184 (Iowa 1969) (relying upon *Peters v. Peters*, 42 Iowa 182 (1875), in which relief was denied for 11 distinct assault and batteries because the husband was immune, the *Wright* court stated that nothing in the statute indicates legislative disapproval of immunity); *Lillienkamp v. Rippetoe*, 133 Tenn. 57, 64, 179 S.W. 628, 629 (1915) (the court would only construe the statute to abrogate the common law immunity if the statute expressly required that construction).

123. See, e.g., *Thompson v. Thompson*, 218 U.S. 611, 621-22 (1910) (Harlan, Holmes, Hughes, JJ., dissenting) (the Married Women's property statute is so explicit that no explanation is necessary; husbands are not explicitly excepted from the statute); *Gilman v. Gilman*, 78 N.H. 4, 95 A. 657 (1915) (by giving the language of the statute its ordinary meaning, the court found that the legislature intended to remove all disabilities which the common law had imposed).

124. The sweeping nature of the words of the statute were the basis for the court's abrogation of the common law in *Leach v. Leach*, 227 Ark. 599, 300 S.W.2d 15 (1957). The necessary inferences of the words of the statute led to abrogation in *Johnson v. Johnson*, 201 Ala. 41, 77 So. 335 (1917) and *Prosser v. Prosser*, 114 S.C. 45, 102 S.E. 787 (1920).

125. See, e.g., *Fitzpatrick v. Owens*, 124 Ark. 167, 186 S.W. 832 (majority opinion), 187 S.W. 460 (dissenting opinion) (1918) (in allowing the action for an intentional tort, the court rejected the arguments that the statute be interpreted narrowly and that immunity preserves marital harmony); *Self v.*

the doctrine to situations in which the rationale of preserving domestic harmony can be advanced.¹²⁶ Accordingly, suits have only been allowed after divorce,¹²⁷ for torts committed prior to marriage,¹²⁸ and after the death of one party.¹²⁹ Some courts have also distinguished between intentional torts and negligence actions, at times permitting the one but not the other.¹³⁰ The courts which refuse to recognize any exceptions to the common law immunity have instead distinguished between whether a particular statute denies that a cause of action existed at all, or whether the right of action was merely suspended during marriage.¹³¹

An anomalous situation exists in states that allow an action between spouses for contract and property injuries, but not for personal injuries.¹³² The court in *Brown v. Brown*¹³³ criticized this position by asking whether, if a wife may sue for a broken promise, why not for a broken arm? The court stated that, when the purpose of a marriage has failed due to one party's misconduct, no reason exists for not allowing a remedy to the other.¹³⁴

Self, 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962); *Freehe v. Freehe*, 81 Wash. 2d 183, 500 P.2d 771 (1972).

126. *E.g.*, *Korman v. Carpenter*, 216 Va. 86, 216 S.E.2d 195 (1975) (conceded that the rationale of preserving harmony was inapplicable after death, but narrowly restricted recovery in a wrongful death action).

127. *See, e.g.*, *Lorang v. Hayes*, 69 Idaho 440, 209 P.2d 733 (1949); *Gremillion v. Caffey*, 71 So. 2d 670 (La. 1954). *Cf.* *Goode v. Martinis*, 58 Wash. 2d 229, 235, 361 P.2d 941, 945 (1961) (if, at the time of the tort, the marital relation has lost its character and steps are being taken toward divorce, there is no convincing reason for depriving the spouse of a remedy).

128. *See, e.g.*, *Brown v. Gosser*, 262 S.W.2d 480 (Ky. 1953); *Hamilton v. Fulkerson*, 285 S.W.2d 642 (Mo. 1955).

129. *See, e.g.*, *Pelowski v. Frederickson*, 263 Minn. 371, 116 N.W.2d 701 (1962); *Johnston v. Peoples First Nat'l Bank*, 394 Pa. 116, 145 A.2d 716 (1958).

130. Some courts did not abrogate negligent and intentional immunity in the same case, but rather held the second case indistinguishable from the first. *See, e.g.*, *Klein v. Klein*, 58 Cal. 2d 692, 693, 376 P.2d 70, 71, 26 Cal. Rptr. 102, 103 (1962) (since interspousal immunity had previously been abrogated for negligent conduct, the court saw no logical or legal reason for drawing a distinction between negligent and intentional actions, and abrogated the immunity for intentional conduct as well); *accord*, *Maestas v. Overton*, 87 N.M. 213, 214, 531 P.2d 947, 948 (1975) (the court saw no reason to limit the abrogation of the common law in *Flores v. Flores*, 84 N.M. 601, 506 P.2d 345 (1973) to intentional torts, so they applied it to negligent conduct as well); *Singer v. Singer*, 245 Wis. 191, 14 N.W.2d 43 (1944).

131. *Compare* *Lillienkamp v. Rippitoe*, 133 Tenn. 57, 179 S.W. 628 (1915) (cause of action never existed) *with* *Gremillion v. Caffey*, 71 So. 2d 670, 674-75 (La. 1954) (no cause of action existed during marriage, but divorce removed the incapacity to sue).

132. *See* *Brown v. Gosser*, 262 S.W.2d 480, 484 (Ky. 1953) (the court allowed the suit for negligent injury, stating that the argument that personal injury actions are harmful to domestic peace would be more persuasive if the wife were not permitted to sue for property causes of action).

133. 88 Conn. 42, 89 A. 889 (1914).

134. *Id.* at 48-49, 89 A. at 892; *accord*, *Apitz v. Dames*, 205 Ore. 242, 271, 287

Such acknowledgement by the courts that violent conduct can severely disrupt the marital relationship seems the most logical argument against the retention of common law immunity.¹³⁵

Nonetheless, jurisdictions which offer divorce and criminal actions in lieu of tort suits find these alternatives preferable due to the suspicion of collusive suits by husband and wife to defraud insurers.¹³⁶ Also, courts in such jurisdictions fear the impact that adversary roles¹³⁷ and a public airing of personal matters will have on the marital relationship.¹³⁸ In response to these fears, one commentator has concluded that it is important to realize that the availability of a legal remedy does not necessarily promote litigation.¹³⁹ Usually, parties seek judicial action only after private negotiations have failed, and hence, any comparative disadvantage of the judicial system to a private resolution is immaterial.¹⁴⁰

Apparently, the courts' unspoken suspicion is that a wife will attempt to reap a windfall for a broken arm that she may have sustained in a "little squabble." In an effort to prevent

P.2d 585, 598 (1955); *Freehe v. Freehe*, 81 Wash. 2d 183, 187, 500 P.2d 771, 774 (1972) (if tranquility is tenuous at the outset, the law's imposition of a technical disability seems more likely to be another bone of contention than a harmonizing factor).

135. See *Flores v. Flores*, 84 N.M. 601, 506 P.2d 345 (1973) (when a husband stabs his wife, the immunity is no longer justified because the reasons for its application are no longer valid); *Bogen v. Bogen*, 219 N.C. 51, 53, 12 S.E.2d 649, 651 (1941) (citing *Crowell v. Crowell*, 180 N.C. 516, 105 S.E. 206 (1920) for the proposition that a man who has assaulted his wife is no longer exempt from liability on the grounds that he vowed to love and cherish her); *Goode v. Martinis*, 58 Wash. 2d 229, 235, 361 P.2d 941, 945 (1961) (when "only 'the shell of the marriage' " exists, to allow immunity would be to indulge in a fanciful assumption contrary to the facts alleged in the complaint).

136. See, e.g., *Thompson v. Thompson*, 218 U.S. 611, 617-18 (1910). But see *Klein v. Klein*, 58 Cal. 2d 692, 696, 376 P.2d 70, 73, 26 Cal. Rptr. 102, 105 (1962) (it would be a sad commentary on the law if it were so ineffective that it must deny relief to persons simply because of the fear of collusion in the future); Note, *Litigation Between Husband and Wife*, 79 HARV. L. REV. 1650, 1652 (1966) (It would be cynical to assume that the mere possibility of recovery will cause spouses to take action which might damage their marriage).

137. See, e.g., *Lyons v. Lyons*, 2 Ohio St. 2d 243, 208 N.E.2d 533 (1965) (negligence action denied because the adversary roles might disrupt the marriage).

138. But see *Fiedler v. Fiedler*, 42 Okla. 124, 140 P. 1022, 1025 (1914) (it is difficult to comprehend how the sanctity of marriage is injured more by allowing compensation than by allowing the wife access to the criminal courts to put her husband in prison, or access to the divorce courts to publish their married life to the world).

139. The impact of the litigation, measured by factors such as the seriousness of the injury, must be balanced against the possibility that the litigation will promote harmony or remove major irritants. Note, *Litigation Between Husband and Wife*, 79 HARV. L. REV. 1650, 1652-53 (1966).

140. *Id.* at 1656.

such actions, the courts challenge the seriousness of the dispute by recommending that the parties obtain a divorce without balancing factors such as the potential financial difficulties, the right of redress for sustained injuries, and the deterrent effect of money judgments.

In some jurisdictions, the state legislatures have resolved the dilemma for their courts; while in others, the courts have taken it upon themselves to act. In Illinois, the General Assembly amended the Married Women's Act specifically to retain interspousal immunity as a defense.¹⁴¹ This enactment was in direct response to the Illinois Supreme Court's decision in *Brandt v. Keller*,¹⁴² which abolished the doctrine of interspousal immunity in Illinois. In New York, the legislature also took action, but to achieve the opposite result of abrogating interspousal immunity in their state.¹⁴³ In contrast, many courts have hesitated to change the common law rule without express direction from the legislature,¹⁴⁴ while in other states, as California, the courts have repudiated the doctrine with silent acquiescence by the legislature.¹⁴⁵

FORMULATING EFFECTIVE LEGAL REMEDIES

The Availability of Compensation

The abrogation of interspousal immunity would provide the needed compensation to women when deciding what action to undertake against an abusive husband. Allowing damages in a tort action for battered wives would be providing the same relief afforded to other assault and battery victims. It is the injury that determines the remedy, not the status of the recipient. Battered wives should be no exception.

One solution offered is the creation of a specific tort cause of action designated "serious marital offender," that could clarify the conceptual problems involved in interspousal torts.¹⁴⁶

141. ILL. REV. STAT. ch. 40, § 1001 (1977). See also *Steffa v. Stanley*, 39 Ill. App. 3d 915, 919, 350 N.E.2d 886, 889 (1976) (the court sustained the statute against constitutional challenges, because immunity is a public policy matter for the legislature, "however much we might agree with plaintiff that interspousal tort immunity is an outmoded concept").

142. 413 Ill. 503, 109 N.E.2d 729 (1952).

143. N.Y. GEN. OBLIG. LAW § 3-313(2) (McKinney 1976).

144. See, e.g., *Rogers v. Rogers*, 265 Mo. 200, 177 S.W. 382 (1915). Cf. *Beaudette v. Frana*, 285 Minn. 366, 370-73, 173 N.W.2d 416, 418-19 (1969) (the court overruled all contrary cases and abrogated the common law, stating that since the legislature had only acted indirectly, this showed a preference for judicial resolution).

145. See *Self v. Self*, 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962).

146. Schwartz, *The Serious Marital Offender: Tort Law as a Solution*, 6 FAM. L.Q. 219 (1972).

Available after divorce, this tort action would provide relief in those cases found shocking, and also grant payments to those unable to receive alimony. In addition, the possibility of punitive damages would serve as a deterrent against violent husbands.¹⁴⁷ This would be especially beneficial in light of the failure of criminal penalties to adequately safeguard the personal rights of battered spouses.

These recommendations are especially suited towards states, like Illinois, that continue to accept interspousal immunity as a defense, as well as refuse to recognize no-fault divorce, even though it recently revised its divorce laws. Due to the high incidence of wife beating that presently occurs, the formulation of principles governing the utilization of divorce and tort actions in furnishing relief is necessary. Already, many states have included no-fault divorce with their other traditional divorce grounds.¹⁴⁸ Either no-fault divorce or a no-nonsense evaluation of cruelty in fault-based states can alleviate the uncertainty of divorce as a remedy. These grounds, plus serious measures for enforcing support awards, would make divorce a viable alternative, since it would enable a wife financially to keep her children and leave her husband.

Ending Diversion and Non-Intervention

The most urgent action needed is a curtailment of the diversionary process. One means to compel enforcement of existing laws is to recognize suits for nonfeasance against state officials as in New York.¹⁴⁹ A realization that wife beating can be a felonious and repeated activity, accompanied by a change of attitude toward the ability of the criminal justice system to handle domestic violence, could assist in the deterrence of violence, especially by repeated offenders.

Programs as Chicago's Community Intervention Program that provide counseling are positive improvements over no action at all by police. But the adequacy of such alternatives as a solution to the problem of wife beating must be evaluated by their implications. These programs are not used in conjunction with police activity, but in lieu of a police response, and thus, they actually tend to perpetuate the policy of non-arrest. This action does not change the manner in which offenders perceive their position. Rather, it reinforces the individual's belief that violent actions within the home are beyond the reach of the law and that, consequently, he remains unaccountable to society.

147. *Id.* at 228.

148. See R. EISLER, *DISSOLUTION* 10 (1977).

149. See note 80 and accompanying text *supra*.

Practical solutions have been proposed that are available to all states, including Illinois.¹⁵⁰ These measures would require police to keep records accounting for the calls received from women complaining of abusive husbands. These records could then inform police officers on subsequent shifts that a party is calling for the second or third time in a single day.¹⁵¹ Furthermore, policemen could be trained in large cities like Chicago in counseling skills.¹⁵² This would enable them to exercise an informed discretion that is based more on the understanding of the subtle complexities involved than on their own cultural biases about marital or racial relations.

A decisive step which can be taken to clarify the criminal law is the enactment of wife abuse legislation. For example in *People v. Cameron*,¹⁵³ a California court has interpreted the state's statute to hold that public policy is not to be used as a shield to hide marital altercations, but rather, requires legal recourse against a husband offending the marital relation. Since the quantum of violence for conviction or even prosecution that is demanded by the courts is so high under the assault and battery statutes, Illinois as well as other states, should acknowledge the criminal nature of wife beating by adopting a statute that recognizes and specifies what type of conduct constitutes a marital offense.

Clarification of Domestic Relations Court Jurisdiction

Although less effective if enacted without an accompanying wife beating statute, legislation could emphasize, as in New York, that criminal jurisdiction is available for cases initially filed in domestic relations court.¹⁵⁴ Also, domestic relations judges should have a complete appreciation of the screening process so they would realize that complainants have had to overcome pressured opposition steering them away from court, and hence, it is highly unlikely that the case is capricious. In

150. Funds and guidance for the study and implementation of measures to end wife beating are offered by the Law Enforcement Assistance Agency (LEAA). See 4 FAM. L. REP. (BNA) 2281 (Mar. 14, 1978). For a discussion of one successful LEAA award winning program which supported wives going through the court processes, see Lowenberg, *Conjugal Assaults: The Incarcerated or Liberated Woman*, 41 FED. PROBATION 10 (June 1977).

151. See FAM. L. REP. (BNA) 2232 (Feb. 21, 1978) (reporting on Va. H.R. 28, which seeks to implement this step).

152. See notes 94 and 97 and accompanying text *supra*; 4 FAM. L. REP. (BNA) 2232 (Feb. 21, 1978) (reporting on Va. H.R. 527, which would require more intensive police training in domestic violence).

153. 53 Cal. App. 3d 786, 126 Cal. Rptr. 44 (1975) citing CAL PENAL CODE § 273d (West 1970 & Supp. 1978). For a discussion of other aspects of the case, see notes 60 and 113 *supra*.

154. See note 80 and accompanying text *supra*.

turn, women would feel more confident and determined in pursuing their rights through judicial means. Domestic relations court would thus be an honest and workable alternative to the criminal system.

Other Legislation

Today, legislation is the chief means by which improvements in this area are sought to be accomplished. Even the United States Congress has heard testimony on general family abuse bills.¹⁵⁵ Over one-half of the state legislatures have either passed or have bills pending relating to wife abuse.¹⁵⁶ These bills cover a broad spectrum with some states having more than one bill pending. Many bills provide relief in the form of shelters for battered wives.¹⁵⁷ These shelters provide a place to which a wife can go after a violent incident with her husband, and they also offer her support for contending with her husband in the near future.

Of all the states, Minnesota has passed the most comprehensive statute¹⁵⁸ incorporating many of the approaches used alone in other states. This statutory scheme includes programs for emergency shelters, education, mandatory data collection by hospitals and police, an advisory task force, and support services. Responsibility for legal and social responses is placed upon a number of agencies as opposed to allowing each agency to avoid action by deferring to the next. Also, the statute explicitly provides for the flexibility needed to face future contingencies, while still offering immediate services to injured spouses.

CONCLUSION

The legal system continues to adhere to idyllic notions concerning the family. Yet the mechanisms for effective legal action are present. Although it may be argued that the problem is social rather than legal, or that the law is poorly suited to deal with the emotional underpinnings of the marital relationship, each arm of the law could use its respective expertise if criterion for legal intervention were determined. A corollary to such an approach is that these suggestions toward providing remedies for past and future marital assaults are not to be viewed as mutually exclusive, but rather as building a foundation for a combined solution to a multi-faceted problem.

155. See 4 FAM. L. REP. (BNA) 2277, 2294 (Mar. 14-21, 1978).

156. See 4 FAM. L. REP. (BNA) 2311, 12 (Mar. 28, 1978) (survey completed January, 1978, by the Council of State Governments).

157. See note 2 and accompanying text *supra*.

158. MINN. STAT. ANN. § 241.61 (Supp. 1978).

The basic tools are present in Illinois, as elsewhere, but wife beating has not yet been deemed important enough to warrant the employment of these tools. To curb the problem, new approaches prohibiting rather than merely mitigating the effects of beatings are necessary. This approach can come about only if there is a concomitant change in attitude by those involved in the legal procedures. Direct, rather than stop-gap measures, would indicate a resolve to end violence. Stop-gap measures do not strike at the root of the problem with sufficient force, but merely appease the rising public clamor for a solution.

The requisite step needed for a serious treatment of the problem is to view the effects of the assaults from the basis of their detriment to society and the type of conduct being sanctioned. Perhaps wife beating will then no longer be adjudged as a minimal personal offense. Dynamic legal solutions must end the legal system's refusal to implement in practice those changes which have taken place in attitude since Blackstone wrote about marital rights. In other words, the legal system must admit that a bone broken from an intentional beating is a bone broken no matter who struck the damaging blow.

Lynn A. Sacco

