

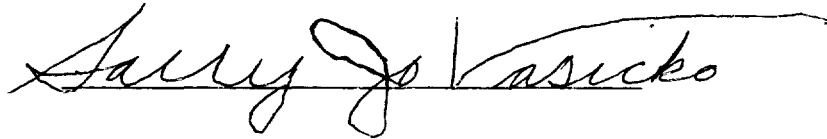
Analysis of Legal Options for Battered Women
Is There a Solution?

An Honors Thesis (HONRS 499)

by

Melissa Kelly

Dr. Sally Jo Vasicko
Advisor

A handwritten signature in black ink that reads "Sally Jo Vasicko". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Ball State University
Muncie, Indiana

April 29, 1994

Expected Dated of Graduation
May 7, 1994

SpColl
Thesis
LD
248?
.24
1994
K45

Purpose of Thesis

This analysis of the battered woman syndrome begins with the definition of a battered woman. Such a definition is needed in answering the question of why the battered woman doesn't leave her batterer. The analysis then turns to the legal options open to battered woman and new policies affecting these options. Finally, there is an exploration of future policies that need to be implemented in order to speed a solution to the plight of the battered woman.

Analysis of Legal Options for Battered Women:
Is There a Solution?

- I. Definition of battered women
 - A. Physical abuse
 - 1. Frequency
 - 2. Weapons
 - 3. Injuries
 - B. Psychological abuse
 - 1. Elements of psychological torture
 - 2. "Learned helplessness"
 - 3. Depression
 - 4. Abuse of children
 - C. Sexual abuse
- II. "Why didn't she leave?"
 - A. Environmental reasons
 - 1. Family and friends
 - 2. Society's helping agents
 - B. Psychological reasons
 - 1. Stereotypes and expectations
 - 2. Battering cycle
 - 3. Traumatic bond
 - 4. Learned helplessness
 - 5. Depression
- III. Legal options for the battered wife
 - A. Civil remedies
 - 1. Protection order
 - 2. Divorce/separation
 - 3. Money damages for personal injury
 - B. Criminal prosecution
 - 1. The police system
 - a. What actions may be prosecuted
 - b. Arrest
 - 2. The court system
 - a. Plea bargaining
 - b. Probation
- IV. Special concern-battered women who kill
 - A. Why they kill
 - B. Prosecution
- V. New Policies
 - A. The police system
 - B. The court system
- VI. Possible solution
 - A. The police system
 - B. Women shelters
 - C. Medical profession

[T]he abused wife undergoes a personality change as the abuse increases. She becomes frightened and unable to project her thinking into the future. She lives her life from one beating to the next and her thoughts relate solely to her efforts to avoid the next beating. The wife is usually hopeful that, if she pleases the husband, the abuse will stop. For his part, the husband usually expresses remorse after a beating and attempts to reconcile with gifts and/or promises to refrain from abuse in the future. The wife then sees the husband in a different light and is filled with false hope. Another aspect of the syndrome is that the wife eventually feels that she cannot escape her tormentor and that she will be tracked down if she attempts to flee the situation. Her self-esteem vanishes and her confidence is shattered. She feels that no one would believe her if she told them about the abuse and, thus, she keeps it to herself. (Ewing 3)

The above quotation is from a psychiatrist describing the battered woman syndrome. What once used to be whispered about is now acknowledged in all major professions; medical, law enforcement, social work and psychology. However, acknowledging the battered woman syndrome is not solving the problem. We are still hearing about cases, like Lorraine Bobbitt, where the beatings go on until one of them ends up maimed for life or even dead. We need more than acknowledgment, we need a solution. But where should the solution come in to play? When the beatings first begin, when the wife wants to leave or when it has gone too far and she kills her husband. Once the husband is dead, it's too late to intervene, and the first beating no one usually knows. That leaves only one place for a solution, when she tries to leave.

In order to find a solution, one must first understand the plight of the battered woman.

"Gayford, a British physician who pioneered in the study of battered women, used the term 'battered wife' to mean 'a woman who has received deliberate, severe and repeated demonstrable physical injury from her marital partner'." (Ewing 8) He studied the nature of "demonstrable physical injury" in 100 battered wives, where he described the extent of physical abuse. (8) In his study, women had been punched, kicked, attacked with knives, razors or broken bottles, beaten with belts and buckles, burned and scalded at least once a week. (8) They had been beaten with "hands, fists, feet, rocks, bottles, phones, iron bars, knives and guns", "chains, clubs, chairs, lamps, wrenches, hammers, and golf clubs" and/or anything else within the batterer's reach. (8,9) This abuse leaves a wide range of marks, scars and injuries. Some of these include bruises, fractures, stab and gunshot wounds, loss of teeth and a kidney, concussions, and subdued hematomas. (8) However, the physical abuse is not what haunts them, or what keeps them prisoners in their own homes. Injuries sustained from physical abuse can always heal. It is the injuries to the mind that never heal.

Another physician, Walker, has incorporated this realm of psychological abuse into her definition of a battered woman as "one who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights." (Walker xv) In her study of 435 women, Walker found that in

addition to suffering from physical abuse, "every one of them reported having been subjected to each of the eight forms of abuse labeled 'psychological torture'." (Ewing 9) The forms are:

- (1) social isolation;
- (2) exhaustion stemming from deprivation of food and sleep;
- (3) monopolization of perception manifested in obsessive or possessive behavior;
- (4) threats (including threats of death) against the woman, her relatives, and friends;
- (5) humiliation, denial of power, and name calling;
- (6) administration of drugs and alcohol;
- (7) induction of altered states of consciousness;
- (8) "indulgences" which maintained the woman's hope that the abuse would cease. (9)

Of these tortures, the first one, social isolation, is of particular interest. Being tortured with social isolation is one of the reasons why women feel they can't leave the abusive situation. The batterers prevent their wives from seeing their friends and family to the point that they are prisoners in their own homes. (10) Another factor of social isolation is isolation of financial resources. Even if the women have jobs outside the home, they are commanded to give their batterer their paychecks. (10) This strengthens their perception that they have no where to go, no one to turn to and no money.

There are other forms of psychological abuse besides psychological torture. They include learned helplessness, depression and abuse of the children. Learned helplessness is "a condition in which a subject does not attempt to escape from a painful or noxious situation after learning in a previous, similar situation that escape is not possible." (Barnett 103)

Passivity, poor problem solving ability and increased feelings of helplessness are components of learned helplessness. (103) Specifically, this has four effects on the battered woman.

As Walker has explained:

Repeated batterings . . . diminish the woman's motivation to respond. She becomes passive. Secondly, her cognitive ability to perceive success is changed. She does not believe her response will result in a favorable outcome, whether or not it might . . . Next, having generalized her helplessness, the battered woman does not believe anything she does will alter any outcome . . . Finally her sense of emotional well-being becomes precarious. She is more prone to depression and anxiety. (Walker 49-50)

Battered women also suffer disproportionately from depression, often to the point of being suicidal. In Gayford's study, 42% had made suicide attempts. (Ewing 11) And in Pagelow's study of 350 battered women, "almost half had contemplated suicide." (11) "Another common source of psychological abuse for the battered woman is the batterer's physical abuse and/or sexual abuse of her children." (12) But, in some cases it's not the batterer who abuses, it's the woman. In Walker's study, 53% of batterers had beaten their children and in Gayford's study, 37% of the women had beaten their children. (12) "There seem to be two styles of child abuse: the husband beats the wife who beats the children, and/or the husband beats both his wife and the children." (12)

Sexual abuse is another form of abuse that physically and mentally scars the battered woman. In Walker's study, 59% of battered women reported being raped by their batterer's. (Ewing

10) Forty-one percent in the same study "indicated that their batterers had required them to engage in 'unusual sex acts' such as 'being forced to insert objects in[to] their vaginas, to engage in group sex, have sex with animals and participate in bondage and other sadomasochistic activities.'" (10) "Other research has confirmed Walker's findings regarding rape and sexual abuse" including Kuhl, Hilberman and Munson. (10) Sexual abuse seems to be common in the lives of battered women, indeed, a number of women reported being raped in front of their children. (10) Unlike physical and psychological abuse, sexual abuse is less likely to be treated. This is in result of the fact that many jurisdictions do not consider marital rape a crime. (Thorne-Finch 21)

Having discussed all of the physical and psychological abuse a battered woman suffers, one might ask, "why didn't she leave?" The abuse and threat of abuse can provide a barrier to seeking help. Yet, there are other barriers much more significant. These include environmental and psychological factors.

The environmental barriers that keep the woman in the battering relationship include friends and family, and society's helping agents. One of the first places a woman may voluntarily turn to is her family and friends for financial and emotional support. However, the woman might "find her pleas for help met with resistance, if not hostility." (Ewing 13) "Not infrequently, a battered woman's friends and relatives refuse

to believe the abuse she has suffered, and even if they do believe her, they blame her, and advise her to remain in the relationship and try harder to be a better wife." (14) With refusing to give emotional support, it is not likely the battered woman would receive any financial support as well. "Cut off from financial resources, they are likely to find it extremely difficult to set up a new household." (13) They will need to find the money for rent, security deposits, household maintenance and support of their children. "Various forms of public assistance may be available but women may not be eligible for such assistance until they become legally separated or divorced, a process which also costs money and takes weeks or even months." (13)

In addition to friends and family, a woman might turn to a battered woman's shelter. "A battered woman's shelter is an institution, usually privately supported, staffed by volunteers and located in a converted residence, which offers battered women a safe haven from their batterers." (Ewing 14) There are about 900 shelters in the United States, but most of these can only provide a temporary place of refuge. (14) These shelters have very limited capacities and are constantly full if not beyond capacity. (14) Shelters can only help those women who seek it, and then, some of them are turned away.

The shelters are usually not the first outsiders a battered woman faces. Police officers are frequently called on to stop battering incidents. (Ewing 15) Although they are the first

of society's helping agents to become aware of the abusive situation, they only stop the battering incident in progress. (15) "Their goal is generally to quiet the situation and then leave as quickly as possible." (15) "Police officers rarely arrest a batterer or even attempt to remove him from the home." (15) In order for the police to arrest the batterer, the woman is usually told that she must file formal criminal charges at the prosecutor's office. (15) "In some instances, the police may respond to the battered woman's request [for arrest] with disbelief or else appear to sympathize with the batterer." (15) However, things are starting to change within police departments. "Some police departments have begun to initiate special training programs for their officers in how to deal most effectively with such incidents." (15)

Another society helping agent that sees many battered women are medical professionals. Because these women come in to be treated for injuries that they have sustained from their batterers, medical professionals are among the first people to see the battered woman. Yet, it appears that they lack either the ability or willingness to diagnose these women as victims of battering. (Ewing 16) Not only do they lack the ability or willingness to help battered women, they are usually unaware of other professionals who may be able to help. (16) The medical professional who treats the battered woman can only offer her traditional health care which, in most instances, consists of a prescription of tranquilizing drugs. (16)

Research into the reason why battered women don't leave their batterers has found that it is based on a "complex combination of environmental and psychological forces." (Ewing 17) There are five psychological forces which can keep the battered woman from leaving. They are:

- (1) their rigid stereotypical images of marriage, family, and male-female roles and relations;
- (2) their predictable response to the cyclical nature of the battering relationship;
- (3) the traumatic bond they develop with their batterers;
- (4) their learned helplessness;
- (5) the depression they suffer. (17)

"Many battered women feel that family life centers around the man, who has the right to control both them and the children and to make all important family decisions." (17) This stereotype reinforces their perceived role that they are "to do what the man tells them, to please him, and fulfill their wifely and motherly obligations, and to strive to keep the family intact." (17) This gives the battered woman an excuse for taking the abuse they suffer, that some how they have failed to be the good wife, mother or lover. (18) The battered woman's unrealistic expectations as to family influences their thinking that keeping the family intact is more important than their physical well-being. (18) As a result, the battered woman stays in order to give the children a two parent home.

The second psychological force is the battering cycle. This cycle is made up of three phases and, according to Walker, a woman is considered battered only if she has gone through the cycle at least twice. (Walker xv) The first phase is called

the "tension-building" phase where minor battering incidents occur. (56) The woman responds by trying to calm the batterer.

(56) The second phase involves an "acute battering incident" where the woman is severely abused, which results in a sharp physiological reduction in tension. (59, 60) This leads directly to the third phase of "loving behavior". (65) In this phase, the batterer apologizes which gives the woman inflated hope. (65)

Another psychological force has compared the battering relationship with that of hostages/captors, cult members/oppressive leaders, and concentration camp prisoners/guards. (Ewing 19) This is referred to as a "traumatic bond" which features an imbalance of power. (19) The battered woman becomes dependent on the batterer which results in them becoming "more negative in their self-appraisal, more incapable of fending for themselves, and thus more in need of the high power person." (19) As this is repeated, the "traumatic bond" is made stronger. (19) Another feature common to these relationships is the periodic nature of abuse. (19) The abuse occurs erratically with periods of peace. (19) Therefore, the woman cannot predict when the next beating will occur or if it will occur at all.

The other two psychological forces, learned helplessness and depression, as talked about earlier, can also give reason to why the battered woman doesn't leave. Seligman, the man who developed the concept of learned helplessness, has stated

that,

[O]rganisms, when exposed to uncontrollable events, learn that responding is futile. Such learning undermines the incentive to respond, and so it produces a profound interference with the motivation of instrumental behavior. It also proactively interferes with learning that responding works when events become controllable, and so produces cognitive distortions. (Ewing 20)

Learned helplessness and depression are closely related. "For instance, depressed individuals tend to experience . . . decreased motivation, loss of emotional and physical energy, and lowered initiation of voluntary responses." (21)

All of these barriers, both environmental and psychological, should now be able to answer one's question of "why didn't she leave"? Although the battered woman syndrome seems dreary, there can be help if and when the battered woman decides to leave. This help can come in two forms; medical and legal. The medical solution is focused on psychological counseling in order to re-establish self-esteem. The legal solution, on the other hand, is quite lengthy and complex.

The law is divided into two areas; civil and criminal. Civil law involves two private individuals and its purpose is to settle a dispute between them. Remedies in civil law may include money to the injured party or an injunction against someone to do or refrain from doing a certain act. Options to the battered woman under civil law include protection orders, divorce, and/or monetary damages. (Lerman 5)

A protection order, often referred to as a restraining

order, "is an order from a civil court to a [batterer] to require him to change his conduct," and can last for a maximum of one year. (Lerman 5) In order to get a protection order against the batterer, the battered woman must file a petition with the court. (6) Usually within two weeks, a hearing is held in front of a judge where both parties may testify. (6) For a protection order to be granted, the battered woman must show that she has suffered physical injury or the threat thereof. (6) As one might guess, a protection order is relatively easy to obtain. Once a protection order is granted, however, the batterer must break the order before the police can arrest him. (6) Although studies into the effectiveness of protection orders are few, one study shows that when batterers do break the order, an arrest occurs only 20% of the time. (Buzawa 118) In fact, the study found that "60% of the victims studied were abused again regardless of the presence of a restraining order." (119)

Divorce is another remedy provided by the civil court. These days, a divorce is relatively easy to obtain. Every state has no-fault grounds for divorce. This simply means that the married couple are no longer compatible. Most, if not all divorces, claim incompatibility as the grounds for divorce. Although filing for divorce is an important step in breaking the battered woman syndrome, it may not stop the violence. (Lerman 7) As Lerman states in her book, it can be helpful to get a protection order when filing for divorce. (7)

In order to receive monetary damages as a result of being

battered, the battered woman must file a civil suit of assault and battery. (Lerman 8) "This remedy has not been widely used, although battered women have won awards of money damages in at least a few cases." (8) Even though the money might come in handy when trying to get back on her feet, financially speaking, this remedy does nothing to stop the abuse of the battered woman.

Unlike civil remedies, criminal prosecution is designed to stop the abuse. Every state has laws making spousal abuse a crime. (Lerman 9) Conduct of batterers considered criminal are the following: physical assault, sexual assault, any act causing death, kidnaping or confinement and violation of a protection order. (9)

In order to make an arrest regarding one of the above actions, the police must have a warrant. The only time an officer can make an arrest without a warrant is when he or she believes a felony has been committed or he or she has witnessed a misdemeanor. (Lerman 10) An action is considered a felony if a weapon was used in the assault or severe injury has occurred. (10) In instances where the police are called, usually the only injuries are bruises; thus, reducing the chance of a felony arrest. Likewise, once the police arrive at the house, the abuse usually has stopped, so that the officer cannot fulfill the other requirement for a warrantless arrest, witnessing a misdemeanor.

This is not to say that arrests are never made. On the

contrary, they have actually increased. "As recently as 1984, police almost never made arrests in domestic violence cases with no visible injury, and 22 states barred police from making warrantless arrests in cases they had not witnessed." (Sherman 2) By 1988, most states changed their laws, and as a result "from 1984 to 1989, arrest for all minor assaults increased nationally by 70%." (2) Yet, in a study done by Hilton, this doesn't mean that an arrest stops the abuse. (Hilton 151) In his study, he showed that while the batterer was going through the police and court systems, abuse decreased by 50%. (151) The amazing fact is that six months after the arrest, the abuse increased by 25%. (152)

The court comes in to play once the arrest is made. Yet, most of these cases are plea bargained out of the court system. Lerman defines plea bargaining as "a deal in which the [batterer] agrees to plead guilty to lesser charges and the prosecutor agrees to request a less severe penalty than would be imposed if the [batterer] were convicted by a court." (11) This usually results in a sentence of probation. (11) When a batterer is sentenced to probation, he is usually ordered to move out of the home and attend counseling. (11) Although most would consider probation a slap on the wrist, at least the batterer receives help, while if he was in jail, more that likely, he would receive no help at all.

So far, in considering the legal ramifications of the battered woman, the batterer has been the focus of prosecution.

A special concern has come about due to a rather recent downpour of front page newspaper stories about battered women who kill their batterers. In looking for the reason in how this could happen, the psychological state of the battered woman, discussed earlier, finds its place once again. Walker, a physician who has testified as an expert in numerous cases in which a battered woman killed her batterer, has stated that in nearly every case, the woman said "that she had simply intended to stop the batterer from hurting her any more than he already had or from killing her." (Walker' 267) The woman believes that there was no other way of stopping the batterer that would have worked at the time. (267)

A point that appears quite interesting about battered women who kill, is the way they are prosecuted. Unlike the prosecution of the batterer, the battered woman is prosecuted for murder or manslaughter and, also unlike the batterer, serves lengthy prison terms. (Ewing 41) In Ewing's study of 100 battered women who killed their batterers, he found that 63 of them were convicted of various forms of criminal homicide. (41) Their sentences ranged from life in prison without parole to four years of probation. (42) This only goes to show that our system of justice is greatly prejudiced in favor of the batterer.

Is justice truly blind? Is there no hope for the future generation of women and families? Justice may be blind, but the scales are starting to tip in the favor of battered women. Both the police and court systems are recognizing the plight

of the battered woman and are overhauling themselves. Some states have passed mandatory arrest laws, allowing police officers "to make warrantless arrests in misdemeanor domestic violence cases." (Sherman 3) This law substantially influenced the increase of domestic violence arrests from 1984 to 1989, increasing the national arrests for all minor assaults by 70%.

(2)

The court has been doing some overhauling also. A few states have created a separate criminal offense of domestic violence. (Buzawa 119) "This is important since some activities such as harassment, intentional infliction of emotional distress, or threats other than the threat of assault, are difficult to prosecute under the rubric of general assault and battery statutes." (119) "And perhaps most extreme, . . . has been to impose restrictions on victims that effectively prevents them from freely dropping charges, that is, a 'no-drop policy'."

(122) There are two major reasons why this policy has been implemented;

- (1) domestic violence should be considered as a crime against the public order of the state not just the individual victim whose interests could be protected in a civil action or by protective order.
- (2) if victims do not support prosecution or are unconvincing witnesses, it is unlikely that many additional [batterers] would ever be convicted. (122-123)

These new policy implementations by the police and court systems are just the tip of the iceberg in trying to develop a solution to the battered woman syndrome. In addition to the

mandatory arrest policy of police officers, there needs to be a mandatory order for counseling of the battered woman. When the police go to a home on a domestic violence call, they should take with them an injunction ordering the battered woman to attend counseling so that she may gain the strength needed to leave the batterer. Other members of society's helping agents also need new policies. Women shelters need a no-turn away policy. This way, when the battered woman looks for help on her own, she won't be forced back into the abusive home. The medical profession, especially those working in an emergency room, are in serious need of training to gain the ability to detect a battered woman. A policy, not unlike President Clinton's "three strikes, you are out" crime cutting law would do quite nicely in this situation. In an emergency room, if a woman comes in for the third time with the classic injuries of a battered woman, she should be ordered, like with the police, to attend counseling. In addition to this, the batterer would be brought up on mandatory domestic violence charges.

It's easy for someone outside these agencies to look in and see their faults. However, this is how solutions to public problems are solved. The public cries "injustice", the agency is forced to see the problem, and together, idealistically, they work toward a solution. The above options of mandatory counseling, a no-turn away policy and advanced medical training are one such solution. This solution may not come soon, in fact solutions never do, but as the saying goes, all good things

come with time. This solution may be costly, but before those against welfare spending discount this solution, think. In a time with liberalistic leaders, this solution just may be the next bill proposal to go through Congress.

Works Cited

- Barnett, Ola W. & Alyce D. LaViolette. It Could Happen to Anyone, Newbury Park: Sage Publications, 1993.
- Buzawa, Eve S. & Carl G. Buzawa. Domestic Violence: The Criminal Justice Response, Newbury Park: Sage Publications, 1990.
- Ewing, Charles Patrick. Battered Women Who Kill, Lexington: D. C. Heath and Company, 1987.
- Hilton, N. Zoe. Legal Responses to Wife Assault, Newbury Park: Sage Publications, 1993.
- Lerman, Lisa G. Legal Help for Battered Women, Washington, D. C.: Center for Women Policy Studies, 1981.
- Sherman, Lawrence W. Policing Domestic Violence, New York: The Free Press, 1992.
- Thorne-Finch, Ron. Ending the Silence, Toronto: University of Toronto Press, 1992.
- Walker, Lenore E. The Battered Woman, New York: Harper and Row, Publishers, 1979.
- Walker', Lenore E. Terrifying Love, New York: Harper and Row, Publishers, 1989.

Bibliography

Knudsen, Dean & JoAnn L. Miller, eds. Abused and Battered: Social and Legal Responses to Family Violence, New York: Aldine deGruyter, 1991.

Schechter, Susan. Women and Male Violence, Boston: South End Press, 1982.

Warrior, Betsy. Wifebeating, Somerville: New England Free Press, 1976.

"Wife beating: an American tradition." The Journal of Interdisciplinary History, Summer 1992: 97.