



Erez, Edna, (January 31, 2002) "Domestic Violence and the Criminal Justice System: An Overview" *Online Journal of Issues in Nursing*. Vol. #7 No. #1, Manuscript 3. Available:
http://www.nursingworld.org/ojin/topic17/tpc17_3.htm

© 2002 *Online Journal of Issues in Nursing*
Article published January 31, 2002

DOMESTIC VIOLENCE AND THE CRIMINAL JUSTICE SYSTEM: AN OVERVIEW

Edna Erez, LL.B., Ph.D.

Abstract

It is only recently that domestic violence has been considered a violation of the law. Although men have battered, abused and mistreated their wives or intimate partners for a long time, historically, wife or partner abuse has been viewed as a "normal" part of marriage or intimate relationships. Only towards the end of the twentieth century, in the 1970's, has domestic violence been defined a crime, justifying intervention by the criminal justice system. This article surveys the history of domestic violence as a criminal offense, and the justice system response to woman battering incidents. It first discusses the definition of the offense including debates around the offense definition, and the prevalence and reported frequency of the behavior termed woman battering. It then reviews the legal and social changes over time that have altered the criminal justice system's approach to domestic violence. Next it outlines the responses of the police, and the prosecution of domestic violence. The article also discusses research findings related to domestic violence and the criminal justice system, along with current controversies concerning the justice approach to domestic violence, its law enforcement, and related unfolding trends in the movement to address domestic violence through the criminal justice system.

Key words: domestic violence, woman battering, policing, prosecution, adjudication, mandatory or presumed arrest policies, dual arrest, protection order, battered woman syndrome, no-drop policies

Introduction

Domestic violence is one of those gender related violations that has had a long past but a short history. Men have battered, abused and mistreated their wives or intimate partners for a long time. Historically, wife or partner abuse has been viewed as a "normal" part of marriage or intimate relationships; an experience that women who have entered marriage or established relationships should expect, or tolerate. Only towards the end of the twentieth century, in the 1970's, has domestic violence been defined a crime, justifying

intervention by the criminal justice system.

This article, written from the perspective of domestic violence and the criminal justice system in the United States of America (U.S.A.), surveys the history of domestic violence as a criminal offense, and the justice system response to woman battering incidents. It first discusses the definition of the offense, the prevalence of the behavior and its reported frequency. It then presents the legal and social changes over time that have altered the criminal justice system's approach to domestic violence. Next it outlines the responses of the police, and the prosecution of domestic violence. The article also discusses research findings related to domestic violence and the criminal justice system, along with current controversies related to domestic violence, its law enforcement and future trends in the movement to address domestic violence through the criminal justice system.

Definitional and Prevalence Issues

Most jurisdictions in the U.S.A. define the behavior of wife abuse or intimate violence as domestic violence. Criminal codes specifically listing the behavior as a crime (rather than merely addressing it within the general law of assault) refer to it as family or domestic violence.

There has been much debate revolving around the use of the term "domestic violence" to describe intimate violence or partner abuse. Research has shown that in violence between intimate partners, men are commonly the aggressors and women typically are the victims. In the overwhelming majority of cases reported to the police, and subsumed under the category of domestic violence in police records, women are the victims. For instance, research suggests that about 85% of the offenses subsumed under the category of domestic violence is violence between intimate partners (current or ex-husbands or boyfriends), in which the victim is typically a woman and the offender typically the man. The rest of the parties include parents, siblings, in-laws, or roommates ([Erez, 1986](#); [Erez & Kessler, 1997](#)).

Research on the prevalence of family violence ([Straus & Gelles, 1990](#)), however, has suggested that women are engaged in violence against their male partners almost to the same extent as men. Feminist researchers ([e.g. Kurz, 1993](#)), however, challenged the term "family violence" and the conception of intimate violence as "mutual combat" ([Straus, 1993](#)). They argue that the term family or domestic violence is misleading because it disguises the fact that women are typically the victims in domestic violence, and that underlying the abusive behavior is male control and domination. They recommend that the term family violence be replaced with "woman battering", which more accurately describes the majority of cases of domestic violence ([Kurz, 1993](#)).

Research also demonstrates that most violent incidents which find women cast as the perpetrators are cases of self-defense ([Dobash, Dobash, & Wilson 1992](#)). Many of these cases include situations where women who have suffered abuse either in the specific moment or, more commonly, over a prolonged period of time, have reacted by

Researchers have also pointed out that although there are cases in which

defending themselves. These cases include women who have thwarted the aggression of their partner or acted violently due to the extremely tenuous psychological state they were in following a lengthy and continuous abuse by their batterer ([Browne, 1987](#); [Walker, 1979](#)).

women assault their intimate partners, the experience of women being battered by men is different from that of males being battered by females.

Researchers have also pointed out that although there are cases in which women assault their intimate partners, the experience of women being battered by men is different from that of males being battered by females. The differences are qualitative as well as quantitative, and include considerations such as the frequency and severity of the abuse, its motivation and meaning to the victim, and the victim's ability to resist the abuse or to separate from the batterer ([Johnson, 1995](#)).

Although conflict and aggressive behavior characterize many marital or intimate relationships, research demonstrates that serious harm from abuse incidents are commonly found in cases in which men abuse their female partners. As will be discussed later, the presumed reciprocity of violence in marital couples or intimate relationships has had ramifications for battered women's encounters with police, particularly for arrest outcomes. Increase in arrest rates following legal reforms of mandatory or presumed arrest has been partially related to the "dual arrest" policy, namely, police inclination to arrest both the male perpetrator and his female partner, because in most domestic violence encounters the parties involved tend to file charges and counter-charges ([Martin, 1997](#)). An observed increased arrest rate of women in domestic violence cases has been attributed to this policy ([Ferraro, 1989a](#)); the criminal justice system response has not always been commensurate with the harm experienced by victims of battering

Research suggests that the prevalence and frequency of the behavior termed domestic violence is high, regardless of the method employed to study its extent ([Worden, 2000a](#)). There is evidence to suggest that estimates of intimate violence produced by various studies employing different methods are lower than their true incidence, as victims of intimate violence tend to underreport the behavior to researchers. Police records provide even a lower estimate of the incidence of domestic violence, as many victims avoid reporting the victimization to the police.

Victims refrain from reporting abuse to officials for many reasons. Oftentimes in the beginning of the relationship, victims feel shame, guilt or inadequacy about their presumed contribution to the conflict. Other reasons include fear of losing the financial or economic support the abuser provides, desire to keep the family unit intact, concern for their children, emotional attachment to the abuser, and perceived or real lack of options to leave the abuser and become self-sustaining. Fear of the abuser becomes a major reason for non-reporting of the violence as the violence increases or intensifies. ([Erez & Belknap, 1998a](#); [1998b](#)). Abusers often threaten to kill their partners if they leave, and research has shown that such threats need to be taken seriously, as "separation assault" ([Mahoney, 1991](#)) is a common situation in which victims are injured or even killed. Victims tend to report the behavior to the police only after a long period of abuse, once they reach

the point of "enough is enough" ([Fischer & Rose, 1995](#)). This point is reached after abuse has escalated over a sustained period of time, and has become serious, frequent or unpredictable, often with accompanied threats or palpable risk to their children ([Erez & Belknap, 1998a](#); [1998b](#); [Fischer & Rose, 1995](#)).

Intimate violence defined as criminal includes related offenses such as stalking, which often takes place after a relationship has ended. Domestic violence and stalking occur between same sex relationships and between past relationships (ex-spouses and ex-boyfriend/girlfriend). There are, however, many forms of abuse between current and past relationships that are not considered criminal offenses, even though they are part of the abuse pattern and they often precede, co-occur or even substitute for physical violence. These forms include verbal abuse, psychological abuse, control of economic opportunities, resources or finances, property damage, harming pets and making threats to the victim's children ([Tong, 1984](#)). Although some of these behaviors may be illegal in other contexts, many of them remain outside the ordinary reach of the criminal law and the justice system if they occur within the context of intimate relationships.

For the purpose of this article, domestic violence is defined as threatening or injurious physical, psychological, sexual, verbal or economic behavior directed toward an intimate partner, regardless of marital status or whether the behavior occurs within current or terminated relationships. Because most acts of domestic violence are perpetrated by men against women, woman battering is the focus of this article.

The Justice System Response to Domestic Violence: Historical Background

Domestic violence appears to be a cultural universal; its historical roots are as ancient as they are deep.

Domestic violence appears to be a cultural universal; its historical roots are as ancient as they are deep. The emergence of monogamous pairing relationships, designed to provide women protection from violation by men other than their spouses and guarantee husbands their identities and rights as fathers, resulted in a dependency status of wives in the legal, social and economic spheres ([Martin, 1976](#)). The monogamous marriage was characterized by differential power between the partners. The wife's sole purpose was to satisfy her husband's needs, bearing his children and tending to his household ([Martin, 1976](#)). In medieval times, husbands had the power of life and death over their dependents and the right to unrestrained physical chastisement of members of the household, including their wives and children ([Pleck, 1987](#)). Physical cruelty, including murder of a wife or a serf, was allowed as long as it was inflicted for disciplinary purposes ([Davis, 1971](#)). Women were killed by their husbands for reasons such as talking back, scolding and nagging, and miscarrying children ([Martin, 1976](#)).

The English common law, in the name of the protection of the family, provided husbands the right to chastise their wives only "moderately". It excluded death ([Blackstone, 1987, p. 177](#)). The English law, which was

brought to the American colonies, allowed husbands to retain their right to physically chastise their wives, as long as they did not use a stick larger than their thumb (the origin of the expression "the rule of thumb"). In *Bradley v. State* (1824), the Mississippi State Supreme court affirmed the right of the husband to exercise moderate chastisement in disciplining his wife. The court also stated that family arguments were best left inside the walls of the home and were not proper matters for the court to intervene. This position was reinforced by other cases, which held that the court could not invade the domestic domain unless some lasting injury was inflicted, or excessive violence was used only to gratify "bad passions" (*State v. Black*, 1864 and *State v. Oliver* 1979). The courts recognized the husband's right to use the necessary degree of force to compel the wife to "behave" and "know her place" (*Joyner v. Joyner*, 1962).

The subjugation of the wife to the husband's authority was reflected in the marriage contract. Through marriage, the woman had to give up her name, move to her husband's home, and become his dependent. The marriage vow required the wife to "love, honor and obey" her husband. The various restrictions on the wife through the marriage contract (such as inability to own or manage property, enter into contracts or sue) made the wife economically and legally dependent on her husband. This dependency has been "justified" by the state's overriding interest in keeping the family intact. The protection of the family was also the major reason for a de facto decriminalization of wife abuse. The sanctity of the family home and the charge that "a man's home is his castle" led to treating spouse abuse manifestly different than assaults between persons who were not intimates. Because the wife was viewed as belonging to her husband, what happened between them was regarded as a private matter and was not a concern to the criminal justice system ([Dobash & Dobash, 1979](#)).

The protection of the family was also the major reason for a de facto decriminalization of wife abuse.

A major change in the legal rights of married women in the U.S.A. occurred at the end of the 19th century. Many of the legal restrictions on them were lifted and the right of the husband to chastise his wife was abolished. Much of what today is considered "domestic violence" was considered acceptable, if not recommended, behavior a century ago ([Pleck, 1987](#)). In the late nineteenth century, lawmakers and judges were still considering whether a husband's physical assault towards his wife was a criminal act, sufficient to serve as grounds for divorce, or whether it was merely an acceptable way of correcting her misbehavior ([Dobash & Dobash, 1979](#)). Yet relative to criminal justice, the belief that physical abuse in spousal relationships does not constitute a crime continued to guide the police in their response to domestic violence cases until the 1970s. As long as the chastising of women did not result in serious injury, the criminal justice system would not intervene.

The activities of the women's movement in the 1970s, together with concurrent advocacy on behalf of victims of crime, particularly victims of rape and domestic violence, have been instrumental in changing the prevailing approach to domestic violence. They called attention to the plight of victims in the criminal justice system, especially to female victims of

domestic violence and sexual assault whose neglect and invisibility in the criminal justice process was just surfacing. They transformed domestic violence from a private issue to a public concern, and redefined it as a crime and law violation warranting criminal justice intervention. The impunity of batterers and perpetrators of gender violence to criminal charges was challenged and the message that violence against women is not a serious offense was reversed. No longer could perpetrators avoid responsibility for inflicting injuries on their female partners, and the legal distinction between violent acts that are criminal towards strangers yet tolerated towards intimate partners, specifically female partners, began to fade away. Yet, the perception of wife abuse as different from other assaults retains some of its special status in criminal law. Long after wife battering was formally defined as a criminal offense, many states continued to define sexual assault or rape as criminal only when the complaining party was not the wife of the perpetrator. Some states maintain this dual standard even today ([Ryan, 1996](#); [Zorza, 1992](#)).

The emergence of the battered women shelters movement ([Loseke, 1991](#)), together with grass roots advocacy organizations, called for legal and practical solutions to domestic violence victims. In particular, short term solutions such as shelters to house abused women were created, and long term solutions, such as reorienting gender roles toward equality between the sexes and establishing legal reforms in the institution of marriage were begun ([Pence, 1983](#); [Schechter, 1982](#)). In addition, various groups on behalf of women directed attention to the asymmetry in power relationships underlying partner violence, and challenged barriers to women's rights and equality. They argued for greater social concern for women and children, and legitimized the needs of women and children who sank deeper into poverty because of unfair welfare practices which economically penalized them for the negligent behavior of their husbands ([Worden, 2000a](#)). Calls for the reform of the criminal justice system followed, and efforts directed by activists, practitioners, and scholars to restructure the criminal justice system response to domestic violence addressed the various components of the criminal justice system: police, prosecution and adjudication of domestic violence, and intervention programs for batterers.

...criminal justice systems are limited in their capabilities to respond to reforms, and past practices tend to persist or fade slowly.

As the following sections demonstrate, studies of criminal justice reforms have produced conflicting results or qualified conclusions, and this has posed difficulties in translating them into practical recommendations. The challenge for the criminal justice system in finding an effective response to domestic violence has continued as newly discovered issues emerge while accepted knowledge on this subject is questioned. This continuous search for solutions and ways to combat or reduce

domestic violence requires constant revision of practices and policies as new knowledge and skills training become available. Such adaptation is not easily accomplished, as criminal justice systems are limited in their capabilities to respond to reforms, and past practices tend to persist or fade slowly.

Police Response to Domestic Violence: Reforms and Evaluative Research

Police are the first line of defense for victims in general, and victims of domestic violence in particular. The victimization in cases of domestic violence is often perpetrated behind closed doors, with no one to witness it. If there are family members in the household who witness the violence they may be apprehensive about testifying; more often than not they shy away from having to take sides amidst dual or conflicting loyalties.

The first contact the victim and offender have with the criminal justice system is likely to be the police. This initial contact was found to be particularly important with domestic violence victims. If the police response is considered "inadequate", it negatively affects the victims' self esteem and makes them less likely to turn to the criminal justice system in the future ([Brown, 1984](#); [Erez & Belknap, 1998a](#); [1998b](#)).

Changes in Police Responses to Domestic Violence

In the past, there have been three major police responses to address domestic violence calls in the U.S.A.: non-intervention, mediation and arrest. Until the 1960's, the typical police response to domestic violence calls was non-intervention, as traditionally the prevailing view of law enforcement agents (or the legal system in general) was that domestic violence is a private matter, and that "a man's home is his castle". There was no perceived need or justification for outside intervention in familial matters. Most police and other justice officials believed that domestic violence was best handled within the home ([Erez & Belknap, 1995](#)). Arrest in misdemeanor domestic violence was rarely performed. Police attached low priority to these incidents. In police culture, intervention in domestic situations was not perceived as "real" police work; spousal abuse was viewed as unglamorous and unrewarding ([Straus, 1980](#)). Further, police tended to ignore such calls or purposely delayed responding to them for several hours ([Buzawa & Buzawa, 1996](#)). Research has shown that response time for domestic violence cases was higher in the 1970s compared to the 1980s ([Oppenlander, 1982](#)).

Although a pattern of under-enforcement of domestic violence calls was discerned ([Erez, 1986](#); [Oppenlander, 1982](#)), it was not clear whether domestic violence was under-enforced relative to other crimes, and whether it was related to legal requirements which barred officers in many states from making warrantless arrest. For instance, some state laws require that misdemeanor offenses be committed in the presence of an officer. Other possible explanations for the low level of arrest include: the erroneous perception by police that domestic violence incidents pose heightened risk level to the officer, victim preferences against arrest, and possible officers' support or sympathy for the abusive male partner ([Sherman, 1992](#)).

The policy of avoiding arrest in domestic violence received some professional attention in the 1960s. Social scientists and psychologists began to advocate mediation in "family disturbances" incidents ([Bard, 1970](#)). This second approach, mediation, to domestic violence promoted some form of crisis intervention, which often included separation of the parties, reconciliation, or mediation and referral to social service agencies ([Erez & Belknap, 1995](#)). Police across the country received training in mediation and many police departments established family crisis intervention units ([Bard, 1970](#)). Some police departments even included social workers in their newly established crisis teams ([Burnett, Carr, Silapi & Taylor, 1976](#)).

This approach resulted in further decrease in arrest in cities in which crisis intervention was practiced. Further, it has been reported that mediation training taught officers that it is better to side with the batterers than it is to side with the victims (Oppenlander, 1982; Tong, 1984) and reinforced a line of thinking that emphasized how victims' behavior might have "caused" offenders' behavior (Rowe, 1985; Zoomer, 1989).

Since police officers frequently arrived at the scene at the point referred to by Walker (1979) as the "reconciliation phase," such strategies fit in well the idea of mediation. The offender usually wanted the incident to be settled in a non-formal manner. This mediation resulted in keeping domestic violence out of the criminal justice system (Rowe, 1985).

In the 1980s, feminists' calls for change combined with conservatives' calls for solving social problems through law enforcement resulted in demands for a more aggressive role for police officers to respond to domestic violence. Both the police and women's groups rejected mediation strategies. For police officers, mediation seemed more like social work than activities suitable for police work. The police were also ill prepared to perform crisis intervention (Langley & Levy, 1977;1978). Further, there was no evidence to suggest that mediation was useful in long-term efforts to reduce recidivism of domestic violence (Sherman, 1992). Women's groups objected to the mediation approach because it ignored or underplayed the danger to women in abusive relationships. Women's advocates further regarded mediation as fundamentally flawed, because it assumes equality of culpability between the parties to a dispute and fails to hold the offender accountable for his actions (Rowe, 1985). Women's groups argued that mediation policies in domestic violence cases inadvertently contributed to a dangerous escalation of the violence.

In the 1980s, feminists' calls for change combined with conservatives' calls for solving social problems through law enforcement resulted in demands for a more aggressive role for police officers...

In some jurisdictions (e.g. New York, California and Connecticut) women's groups began to file suits against police departments on behalf of abused women whom the police failed to protect by arresting the abuser (Erez & Beldnap, 1995). They succeeded in receiving high settlements or court judgements against the police who were found negligent in protecting abused women from their abusive husbands/partners. (Erez & Beldnap, 1995).

The trend away from mediation and toward the third response, namely, arrest as a criminal justice response to domestic violence, was reinforced by findings of the Minneapolis domestic violence experiment (Sherman & Berk, 1984). This controlled experimental study randomly assigned cases to three types of treatment: separation of parties, mediation or advising, and arrest. Its findings suggested that arrest has a deterrent effect on the batterer, and leads to reduction in repeated violence. The U.S. Attorney General's Task Force on Family Violence (1984) cited the study as sufficient evidence for adopting pro-arrest policies nationally, and shortly thereafter, by 1989, over three quarters of jurisdictions around the country had amended their laws to allow

for warrantless misdemeanor arrests in domestic violence. Many police departments have revised their policies to include arrest as a presumed or mandatory response to domestic violence, and correspondingly, the number of arrests in misdemeanor cases have risen nationally by about 70% from 1985 to 1989 ([Sherman, 1992](#)).

In addition to reforms pertaining to warrantless arrests in misdemeanor assaults, legal changes have included primary aggressor identification requirements in arrest cases as a corrective to dual arrest practices. The practice of arresting both parties when cross-complaints are filed has led to a sharp increase in the number of females arrested in domestic violence ([Ferraro, 1989a](#)), and has further victimized many battered women who act aggressively when defending themselves against the battering

Evaluating Mandatory/Presumed Arrest Policies and Other Reforms

Research has demonstrated that even when law or policy dictate arrest, the police still exercise discretion in finding that a crime has occurred, and do not always use arrest as a response to domestic violence. For instance, considerations such as an officers' interpretation or understanding of the law; ideological factors or the beliefs officers hold regarding battered women; practical considerations such as the amount of work involved in processing an arrest compared to the likelihood of a reprimand for failing to do so; and political issues such as the relationships between police department administrators and street officers, are all factors that affect the decision to arrest batterers ([Ferraro, 1989a](#)). Therefore, even in states that have adopted mandatory or presumed arrest policies, the number of arrests for domestic violence has not increased significantly compared to the pre-mandatory/presumed arrest era. For example, a recent Ohio study of police reports of domestic violence incidents suggests that the rate of arrest has increased from about 12-18% in the past ([Erez, 1986](#)) to about 32%, with various higher or lower rates for different types of domestic violence cases ([Erez & Kessler, 1997](#)). For instance, violation of protection orders has a very high arrest rate --around 75%-- but the arrest rate for assault is only around 25% ([Erez & Kessler, 1997](#)).

There are also many other reasons for which policies such as arrest (as well as prosecution or adjudication) may not be enforced as lawmakers have envisioned. For instance, legal agents who may be skeptical about the asymmetry of violence behavior, or who do not view domestic violence complaints as serious or appropriate reason for intervention ([Belknap, 1995](#)), may be inclined to interpret the criminal law very strictly for arrest or prosecution purposes ([Johnson, Sigler & Crowley, 1994](#)), or at the same time be tolerant of physical aggression that could be rationalized as punishment for women's marital inadequacies ([Saunders, 1995](#)). Such agents are inclined to define marital violence as a civil matter intended for resolution in divorce courts rather than under the purview of the criminal courts ([Johnson, Sigler & Crowley, 1994](#)).

Practitioners hold diverse attitudes concerning domestic violence that may color their interpretation of the law as well as their willingness or motivation to enforce it ([Belknap, 1995](#)). Although these attitudes can be changed through training and/or experience, local practitioners' pre-existing attitudes may be a critical factor in their willingness or ability to enforce the law.

Reforms in law enforcement often require practitioners to change past practices or revise deeply entrenched beliefs and views about the phenomenon they are charged to enforce (Worden, 2000a). The degree of success in changing these attitudes varies considerably.

The effectiveness of arrest as a response for policing domestic violence has been confirmed by some replication studies but has not been supported by others (Sherman, 1992). The deterrent effect of arrest in domestic violence cases remains debatable (e.g. Binder & Meeker, 1992), although the most recent evidence suggests that batterers desist from re-offending following arrest (Maxwell, Garner & Fagan, 2001). Some scholars continue to advocate pro-arrest policies, suggesting that arrest sends a message to the batterer that the behavior is criminal and unacceptable, and protects women by insuring that the law is properly enforced. Others, particularly feminist scholars have argued that the mandatory or presumed arrest response deprives women of a choice in whether to have their abuser arrested, and ignores the needs of abused women in terms of referrals or provision of resources (Stanko, 1995). Still others think that arrest alone is ineffective in halting the long-term progression of violence often manifested by socially marginal offenders (for whom the studies have questioned all along the presumed deterrent effect of arrest).

...feminist scholars have argued that the mandatory or presumed arrest response deprives women of a choice in whether to have their abuser arrested...

Alternatives to arrest, usually in the form of crisis intervention approach, provide viable options for domestic violence victims when no injury is involved. Social activists argue that heavy emphasis on arrest as a panacea for domestic violence detracts from the role of community attitudes and practices in determining the scope and nature of the problem. Further preoccupation with pro-arrest policies results in focusing on the individual, rather than acknowledging societal factors that perpetuate dependency of women on batterers (Ferraro, 1989b.) Some experts have also criticized the lack of coordination among the police, the judiciary and social services in responding to domestic violence (Gamache, Edleson & Schock, 1988) or generally in promoting community coordinated responses to domestic violence (Worden, 2000a) The low probability of prosecution in spousal abuse cases, together with the fact that arrest is only a minor nuisance to the abuser who is usually out of jail within a few hours following the arrest, further explains the lack of deterrent effect arrest has on many batterers (Hirschel, Hutchinson & Dean 1992; Lerman, 1992).

Feminists have also argued that the findings from experimental research have been interpreted only from the viewpoint of the abuser and ignored the perspectives of the battered women. For instance, the supposed deterrent effect of arrest on employed middle class men (presumably those with a social bond to society, thus those who are most amenable to deterrence through arrest response) could be attributed to the fact that middle class women would not want to jeopardize their comfortable lifestyle by having their provider arrested. Further, the belief that the employment status of the offender is important, as Sherman, 1992, has suggested, ignores the

importance of the employment status of victims. Women who are employed are more able to successfully leave battering relationship than their unemployed counterparts ([Erez & Belknap, 1998a; 1998b](#)). Another possibility is that inner-city poor women continue to be victimized by repeated abuse because, unlike their middle class wealthier counterparts, they cannot easily find alternative living arrangements and social services for themselves and their children. Thus an inner-city, poor, battered woman has no alternative but to remain in her place like a 'sitting duck' for the abuser when he returns ([Bowman, 1992](#)).

The attention to arrest has had some advantages in regard to the criminal justice response to domestic violence. First, the focus on police response has been evaluated almost exclusively in terms of the arrest vs. mediation decision. Clearly there are other actions police can take, in addition to arresting batterers when responding to domestic violence calls. For instance, the use of referrals by police seems crucial for informing battered women and their violators of available programs, shelters and legal rights ([Belknap & McCall, 1995](#)). Too little attention has been paid to this important function of the police in domestic violence. Second, the research agenda focusing on the deterrent effect of pro-arrest policies has limited the definition of "success" to include only whether arresting batterers affects their recidivism. This focus ignores other influences that arrest might have on victims, such as providing them an opportunity to escape with or without their children, as well as criminal justice agents' communicating to victims and their children that the batterer's behavior is reprehensible and in fact a crime. Such explicit communications are crucial for assisting battered, immigrant women, who often do not know that woman battering is a crime ([Erez, forthcoming](#)), or that help and services are available to battered women, regardless of their immigration status ([Erez, 2000; Erez, forthcoming](#)).

The Prosecution and Adjudication of Domestic Violence

The prosecution and adjudication of battering cases has received lesser attention (for exceptions see [Ford & Regoli, 1992; Schmidt & Steury, 1989](#)). The behavior of the police is significant as they are the first to appear at the scene, and they serve as the gatekeepers to the criminal processing system. However, the ultimate purpose of police action is to channel deserving cases for prosecution and adjudication. The element of deterrence underlying the criminalization of domestic violence and the arrest of batterers can only be fulfilled if the perpetrators are tried, convicted, and punished ([Hart, 1993; Lerman, 1981](#)). The prosecution and adjudication stages are consequential for perpetrators -- deciding their guilt or innocence, creating a criminal record and imposing a penalty. But they are even more important for battered women, influencing their determination to access to the legal system. By convicting batterers, the law reaffirms victims' descriptions of abusive behavior, and rejects abusers' versions of events or legal defenses. Research has clearly demonstrated that there are vast differences between men's and women's reports of the abusive incidents and relationships ([Dobash, Dobash, Cavanagh & Lewis, 1998](#)). The symbolic message the law sends through the approbation of women's abuse complaints is critical in determining their willingness to mobilize the law to resist intimate violence.

Using the Criminal Justice Paradigm for Domestic Violence: Dilemmas and Difficulties

The criminal justice paradigm is problematic for processing domestic violence cases for a combination of reasons. One reason is that the police or criminal justice response is reactive (victims often refrain from reporting their victimization). Also, domestic violence often involves a series of incidents, sometimes with escalating seriousness, with little physical evidence, and *often no* witnesses. The cases are often charged as misdemeanors; and because of the high attrition rate, offenders do not accumulate criminal records that might influence prosecutors' (and judges') future estimates of dangerousness, or risk to the victim (Worden, 2000a). Also, the adversarial nature of the criminal justice process presupposes that both sides are committed to winning "their cases" and that victims primarily seek public conviction and punishment. The adversarial process also presupposes financial and personal independence of the parties. Yet, research has shown that victims have various motivations for seeking criminal justice intervention, most of which are not related to punishing their batterers (Ford, 1991; Ford & Regoli, 1993). Further, victims are often interdependent with or dependent on their abusers in both personal and economic dimensions (Worden, 2000a). Victims also face legal issues such as custody and child visitation in their cases, that may be settled in a different venue than the criminal court. Therefore, some scholars have argued that domestic violence cases require a modified frame of reference, or customized proceedings to address domestic abuse related violations. In particular, they suggest adjudication which involves community processing and community courts, both of which would address the underlying problem in its broader social context, its consequences, and relationships, rather than merely the specific incident or individual case (Worden, 2000a).

Typical Battering Cases Adjudicated by the Courts: Research Findings

Extant research on the dimensions, dynamics and consequences of woman battering provide the following typical attributes of victims who appeal to the criminal justice system's and their battering incidents: battered women who appeal for relief and protection from intimate violence have been physically and sexually assaulted by their abusers, have suffered psychological and physical injuries, have been threatened with or without weapons drawn at them, and have lived with their children in fear for an extended period of time (for a recent summary of the reality of, and myths concerning, woman battering [see Pagelow, 1997](#)). Battered women are particularly in danger if they want to separate; they are often assaulted when they attempt to leave abusive relationships (Browne, 1987) experiencing what has been referred to as a "separation assault" (Mahoney, 1991). Before battered women seek help from the criminal justice system, they have already endured various forms of continuous and severe abuse at the hands of their partners (Erez & Belknap, 1998a; 1998b).

...domestic violence often involves a series of incidents, sometimes with escalating seriousness, with little physical evidence, and *often no* witnesses.

Research also suggests that when battered women first approach the justice system they tend to underplay the extent of their injuries, feel shame and guilt about their victimization, and are very hesitant to mobilize the system for

their protection. Before calling the police, they have tried every possible avenue of non-incriminatory intervention strategies, including the use of available social services, counseling and treatment options, as well as mobilizing the help of family and friends ([Erez & Belknap, 1998a](#); [1998b](#)). The police most often are the agency of last resort.

Studies suggest that when women reciprocate with violence, they commonly act in self-defense, after all previous attempts to stop the battering have failed ([Dobash, Dobash & Wilson, 1992](#); [Schwartz & Dekesseredy, 1993](#)). Recent changes in arrest policies have resulted in an increase in the number of women arrested for domestic violence ([Ferraro, 1989a](#); [Hamberger, 1997](#)). However, preliminary results suggest that the overwhelming majority of female offenders in domestic violence cases acted in self-defense, or retaliated against previous assault or abuse. A substantial proportion of women also used aggression to express feelings such as frustration or anxiety ([Hamberger, 1997](#)).

...victims have aims other than conviction when pursuing a case against their batterer.

Research also indicates that women who appeal to justice agents for help are often not taken seriously. Their injuries may be minimized, and they are oftentimes discouraged from pursuing the case further ([Erez & Belknap, 1998a](#); [1998b](#); [Ferraro, 1989](#); [Lerman, 1986](#)). Most commonly, women who contact the police often choose not to follow through with the case because they are too afraid of the batterer ([Cannavale, 1976](#); [Ford, 1983](#); [Erez & Belknap, 1998a](#); [1998b](#)).

Studies of woman battering underline the key role that "fear of reprisal" plays in battered women's reluctance to involve criminal justice system agents, particularly in cases of highly violent batterers ([Ewing, 1987](#); [McLeod, 1983](#); [Singer, 1988](#)). Battered women also fail to "cooperate" when serious assaults against them are classified as misdemeanors ([Hart, 1993](#); [Langan & Innes, 1986](#)). Women lose interest in prosecution when their victimization is trivialized, concluding "the costs and risks of prosecution outweigh the potential consequences for assailants" ([Hart, 1993, p. 627](#)).

Research on victims' motivation, and self-defined needs relative to prosecution, has shown that victims have aims other than conviction when pursuing a case against their batterer. For instance, victims engage the criminal justice system for practical reasons, such as protecting themselves from violence, attempting to get help for their batterer, and endeavoring to enforce collection of child support or recover property. Victims tend to withdraw from prosecution once they have reached their goals or accomplished their aims. Victims do not withdraw because of second thoughts about their intimate partners, but because they have achieved the pragmatic objectives that motivated them to lodge the complaint ([Ford, 1991](#); [Ford & Burke, 1987](#); [McLeod, 1983](#)). Contrary to the criminal justice paradigm, victims rarely seek public condemnation or punishment of their batterers ([Lerman, 1981](#); [Worden, 2000a](#)).

Research that has addressed the adjudication of domestic violence cases in court has demonstrated that cases commonly include more serious cases of battering, with higher levels of injury and frequency. They are more likely to

reflect "patriarchal terrorism" rather than "common couple violence" (Johnson, 1995). Yet, defense attorneys' discourse about battering, and batterers' defense tactics or excuses, reflect the latter rather than the former. Court discourse and defenses against woman battering charges are dominated by male batterers' views and stereotypes of women; attorneys who defend batterers commonly question the mental health of the victim, or argue that the victim has been the primary aggressor, i.e. the batterer acted in self defense against her aggression (Erez & King, 2000). Victims' battering experiences are often denied and minimized in court, and cases that reach the court are referred to by attorneys as a few "true" or "real" cases of domestic violence (Bowker, 1983; Erez & King, 2000; Ford, 1983).

The discourse of "mutual combat" (Dobash, Dobash & Wilson, 1992; Schwartz & Dekeseredy, 1993; Straus, 1993;) or "common couple violence" (Johnson, 1995) shifts the blame, or part of it, to the victim. Such discourse underestimates the impact of the battering on women and their children and ignores the dynamics of battering relationships in addressing a specific incident (Ferraro, 1989b). In legal arenas, there is a tendency to accept women's reluctance to resort to legal means as a sign that the danger no longer exists and the situation is "under control" (Ferraro, 1989b; Lerman, 1986). Battered women's reluctance to prosecute helps abusers minimize victim injury and persuade legal officials that the battering in the particular incident does not merit serious consideration, or that women too readily mobilize the system despite a lack of serious danger to themselves or their children.

Recent Reforms in Prosecution and Adjudication of Domestic Violence

Following the 19th century legal changes that redefined wife abuse as a crime, there were few changes in state laws governing domestic violence until the 1970s. Over the past two decades, however, legislatures have enacted many innovative laws and judicial officers (prosecutors and courts) that have helped to expand the scope and responsibilities of criminal justice agencies in domestic violence.

Recent legal innovations, which have addressed reforms within the prosecution and adjudication processes, include conditions under which protection orders can be obtained and recognition of special legal defenses for battered women who have killed their partners (Fagan, 1996). Also, civil protection orders, at one time available only pending divorce, were extended through legislation to battered women who were not in divorce proceedings (Hart, 1991). Through various pieces of legislation, attempts were made to improve prosecution strategies and victims, services, encouraging collaboration between victim services and criminal justice agencies (Burnett, et. al., 1976), as well as evaluative assistance from researchers.

The prosecution of domestic violence cases has been the target of reforms, which were aimed at producing more charging decisions, and courts generating more orders of protection. These reforms were based on the realization that many misdemeanor cases drop out of the criminal justice process at various points, as criminal justice officials have discretionary powers and use them for legal as well as organizational considerations. Some reforms were triggered by symbolic reasons; other had practical justifications, such as presumed deterrence, incapacitation or rehabilitation of

batterers. But regardless of the motivation behind them, there is little evidence that they have significantly altered patterns of prosecuting and adjudicating domestic violence cases.

Prosecutors, like the police, historically have taken minimal action in the few cases of domestic violence that have come to their attention ([Ford & Regoli, 1993](#), [Schmidt & Steury, 1989](#)). This disregard towards domestic violence cases has resulted, however, from application of legal considerations, such as the statutory seriousness of the offense, the offender's prior record, taking into account whether weapons were used, the presence of an injury, or the availability of physical evidence ([Rauma, 1984](#); [Schmidt & Steury, 1989](#)). Other than injury, these elements or case characteristics are not usually present in domestic violence incidents, and their absence reduces the likelihood of prosecution.

Yet, the debate surrounding the most effective ways to improve the prosecution of domestic violence cases has revolved around victims' behavior, particularly their lack of "cooperation." It has been documented that prosecutors believe or anticipate that victims will withdraw or recant their allegations ([Ellis, 1984](#)), and this is often the reason prosecutors hesitate to pursue such cases. There is also the belief that victims who have recanted their allegations or failed to "cooperate" may forfeit their entitlement to the benefits of the legal system ([Stanko, 1982](#)). These views are based on the presumption that a cooperating victim is essential to the objective of prosecution, which in turn is based on the assumption that the aim of the prosecution is conviction.

These two assumptions are not necessarily defensible in domestic violence cases. The aim of the prosecution, victim advocates argue, should be victim safety, which the batterer's legal entanglement may enhance ([Worden, 2000a](#)). Prosecution can also be a way to send a message to the perpetrator that the battering is unacceptable, or it can serve as a measure to empower victims, whereby the criminal justice system serves as an ally at the victim's disposal ([Ford, 1991](#), [Lerman, 1981](#)). As the next section suggests these descriptions do not characterize the majority of cases that currently are prosecuted by the criminal justice system.

Policy attempts to sidestep the perceived disinclination of victims to follow through with their domestic violence complaints or overcome early withdrawal from proceedings primarily included no-drop policies. These policies are supposed to allow prosecutors to go forward with the prosecution even when victims decide to withdraw the complaint or fail to cooperate with the prosecution. Prosecutors began to experiment with no-drop policies in the 1980s ([Ford & Regoli, 1993](#)), presumably to release victims from formal responsibility to pursue cases, or from ambivalence about cooperating with charges against their partners.

These policies were met with both enthusiasm as well as dismay by observers. Some have argued that the effect of the policy, if not its intent, has been to legitimize prosecutors' early screening decisions by pre-selecting complainants who are committed to prosecution early in the process and protecting prosecutors' investments in case development at later stages if the victim attempts to withdraw or does not follow through. At the extreme, some prosecutors maintain that they would subpoena reluctant victims to

testify to ensure conviction of their batterers (Worden, 2000a). Research evaluating no-drop policies has been sparse; the research that exists shows that no-drop policies have a limited value in accomplishing conviction of batterers whose victims do not choose to cooperate (Ford & Regoli, 1993). While this may be a benefit in some cases to victims, it may produce disempowerment of victims in other cases. Criticism raised against the no-drop policies is similar to that raised against mandatory arrest to the extent that such policies strip victims of their agency, autonomy, and freedom to choose their course of action.

Prosecutors have undertaken other strategies to increase their ability to prosecute crimes with reluctant victims, or those who withdraw their complaints, as is the case in domestic violence incidents. One strategy is the adoption of victim advocacy programs within prosecutors' offices, which streamline case processing and may increase victim retention in the legal process. Another strategy is evidence-based prosecution, the practice of building cases without relying on victim testimony. These approaches hold promise as they take pressure off victims. However, these policies have been viewed as intended to serve prosecutorial needs rather than victims' objectives (Cahn & Lerman, 1991), and it is not clear whether prosecutors will receive the resources or have the inclination to adopt such labor-intensive strategy with misdemeanor cases (Worden, 2000a), although they may be an accepted practice in felony cases.

Legal defenses for Battered Women

The "battered woman syndrome" has been another reform introduced in justice proceedings as a way to correct past practices of ignoring the plight of the battered woman in defending herself in court, or the need to apply standards of law, or legal defenses such as self defense, that were not suitable for situations of battering. The "battered woman syndrome" has been employed as a legal defense in cases in which a battered woman assaulted or killed her abuser. Often these are incidents in which a woman who has been abused for a prolonged period of time, and consequently experienced what has been termed "murder by installment" (Ewing, 1987), has reacted by injuring or killing her abuser. These are often cases in which a battered woman had assaulted her abuser without any provocation, but nonetheless has been perceived as defending herself due to her special psychological state of mind. Such a woman is often considered as being in imminent danger to herself or her children and therefore can benefit from this defense, even though she killed without provocation, or assaulted her abuser while the abuser slept or was otherwise off guard (Gillepsie, 1989).

The "battered woman syndrome" has been employed as a legal defense in cases in which a battered woman assaulted or killed her abuser.

Research Findings on Prosecution and Adjudication Related Issues

This section will review research on judges' behavior or responses to domestic violence. It will also address the role of physical evidence, and prosecution orders.

Judges' Behavior or Responses to Domestic Violence

Little research has been conducted on judges' behavior in the courtroom or their opportunities to communicate with offenders informally. Some research has suggested that judges vary in the messages they send to defendants, even within the same jurisdiction ([Quarm & Schwartz, 1985](#)). Stern public messages to defendants were more helpful to victims than subtle clues; the latter were perceived by victims as not helpful, conveying a message that that they do not have the support of the court ([Goolkasian, 1986](#)).

Studies also suggests that "officers of the court" who process domestic incidents are often not familiar with the dynamics of intimate violence, nor are they aware of victims' reasons for mobilizing the system, filing charges or dropping their complaints. Reminiscent of past experiences with the prosecution of rape cases, attorneys who prosecute and defend batterers are more concerned with the possibility of manipulative women falsely accusing "innocent" men than with protecting victims from harm and abuse ([Erez & King, 2000](#)). Defense strategies and tactics, and attorneys' self-appraisal of their success in court, suggest that stereotypical images of victims embodied in the defenses and deeply entrenched in the court belief system, may still guide the legal system's framework of action ([Erez & King, 2000](#)).

It is a challenge to change entrenched beliefs about domestic violence/woman battering held by court officials; and various States' Task Forces throughout the U.S.A. have listed this task as a primary goal for enhancing court processes involving gender concerns. Less complex ways to increase the prospects of initiating prosecution or "winning" a case are to increase the strength of the physical evidence for prosecution.

The Role of Physical Evidence in Domestic Violence: Medical Reports

Recent research has noted the importance of precise medical reporting for strengthening cases of domestic violence.

Recent research ([Isaac & Enos, 2001](#)) has noted the importance of precise medical reporting for strengthening cases of domestic violence. This research demonstrates that medical reports that are highly detailed, written legibly, and state that the victim is the source of the narrative about injuries and trauma, or provide exact quotes, are critical in decisions to launch criminal cases ([Isaac & Enos, 2001](#)). Medical reports can be made much more useful to domestic violence

victims in legal proceedings if clinicians can do the following: take photographs of injuries known or suspected to have resulted from the violence; write legibly, preferably with the use of computers; set off the patient's own words with quotation marks and use such phrases as "patient states", or "patients reports," to indicate that the information source is the victim. Clinicians are also advised to avoid such phrases as "patient claims" or "patient alleges" which imply doubt about the patient's reliability. If the clinician observations conflict with the patient's statements, the clinician should record the reason for the difference.

Clinicians are also advised to use medical terms and avoid legal phrases such as

Clinicians are also advised to use medical terms and avoid legal phrases such as "alleged perpetrator" or "assailant" or "assault."

"alleged perpetrator" or "assailant" or "assault." Clinicians are encouraged to avoid summarizing a patient's report in conclusive or legal terms (e.g. patient is a battered woman). More effective reporting involves describing the person who caused the injury by quoting the patient as accurately as possible, describing the patient's demeanor, such as crying or shaking, and recording the time and day of examination, and if possible, how much time lapsed since the abuse ([Isaac & Enos, 2001](#)). Considering the importance of physical evidence in domestic violence

cases, adherence to these suggestions may significantly strengthen the cases and help in their prosecution.

Protection Orders: Recent Research Findings

Research has most commonly addressed one aspect of court processing, namely the issuance and enforcement of protection orders. Studies have shown that victims seek protection in the wake of serious threats to themselves or their children, or in the aftermath of actual abuse ([Kaci, 1992](#)) particularly if the abuse has lasted for a sustained period of time ([Fischer & Rose, 1995](#)). Victims seek protection orders for the same reasons they pursue prosecution. The decision is often not related to the gravity of the incident preceding the violence but rather to various practical and safety matters, which suggests that victims are rational and motivated individuals seeking to construct barriers against violent partners ([Worden, 2000a](#)). Many victims believe that protection orders will help them in being safe ([Finn, 1991](#)), a fact that has led some to fear for victims cultivating a false sense of safety in jurisdictions where orders are not easy to enforce ([Klein, 1996](#); [Zorza, 1992](#)). Research has suggested that protection orders are helpful if they are written very specifically, are comprehensive in their terms and conditions, are easy to obtain, and are integrated into the victims' access of social and victim services ([Keilitz, 1994](#)).

Research has shown that victims often complain about protection orders when they are perceived to not provide any measure of safety, particularly when their abusers have a history of violence, children were involved, or the offender has been arrested and resisted legal proceedings or denied culpability during court hearing ([Chaudhri & Daly, 1996](#)). Protective orders were also not associated with a higher chance of receiving child custody. Victims reported that their abusers assaulted them when they were presented with a protection order; victims also reported that law enforcement agents agreed that protection orders do not enhance victims' safety ([Erez & Belknap, 1998a](#); [1998b](#)).

It is common knowledge that issues of domestic violence are not easily compartmentalized, and often the division between criminal and civil remedies is illusory or artificial. For instance, it is often necessary to address within the same court various issues related to partner abuse, such as custody, visitation and protection orders together with issues related to victim safety. Therefore, a movement to replace criminal and civil courts with specialized domestic violence courts has emerged; some jurisdictions have experimented

with such courts. There is little evidence, however, to evaluate the way in which these courts have performed and with what kind of results ([Worden, 2000a](#)).

Lastly, the sanctioning of batterers has also received research attention, with **only** a few studies assessing the effectiveness or deterrence value of some of the common punitive measures imposed on batterers, such as fines or jail time ([Davis, Smith & Nickles, 1998](#); [Thistlewaite, Wooldredge & Gibbs, 1998](#)). Enormous efforts, however, have been directed towards evaluating batterer intervention programs—the most common sanction imposed on batterers, often in addition to fine or as a probation condition ([Gregory & Erez, 2002](#); [Gondolf, 1997, 1999](#); [Tolman & Edelson, 1995](#)). The research evaluating the effectiveness of batterer intervention programs and other sanctions commonly imposed in battering cases has not produced any conclusive findings on the effectiveness of any specific sanction or its relative advantages as compared to other options.

The importance of a coordinated community response to an effective way to address domestic violence, has been, however, confirmed. Integrating criminal justice and community networks in responding to woman battering may be more productive in addressing the problem than acting separately or without networking and community cooperation. Various jurisdictions have experimented with such cooperative efforts, for example, police departments join together with shelters and hospitals to address abuse, concluding that integrative and cooperative efforts are efficient and effective ways to respond to battered women, and to pull together resources and expertise ([Worden, 2000b](#)).

Summary and Conclusion

Research has shown that by almost any definition of domestic violence, this crime is a common occurrence. Because physical violence within families is so prevalent, and as historically society has placed a high value on family privacy and male authority, particularly within the confines of the familial unit, the criminal justice system for a long time has resisted criminalizing acts of family violence. These views and attitudes have undergone revisions over the last two decades, and the field has witnessed increased understanding of the causes of domestic violence, the behavior patterns of abusers, and the reactions of their victims. Yet, there are still many questions left unanswered about the ways to conceptualize domestic violence and establish acceptable intervention strategies.

The criminal justice response to woman battering has been a major area of concern for both activists and academics. Over the last two decades, many jurisdictions in the U.S.A. have taken various steps to combat the violence through legal means; they successfully passed legislation mandating the arrest of batterers, introduced "no-drop" prosecutorial policies, and established specialized domestic violence courts. Underlying these legal reforms is an assumption that implementing policies, which force the police to arrest, will help prosecutors pursue cases and prevent fearful victims from dropping the charge. Similarly, creating special courts to deal comprehensively with family conflict will enhance the system's ability to combat woman battering.

Studies evaluating the impact of these legal efforts suggest that the reforms have had only a limited effect on transforming the system's traditional handling of woman battering. Stereotypical views of battered women and abusive relationships held by law enforcement agents continue to underlie at times police and court practices. Conceptions of woman abuse as "family violence" and the myth of woman battering as "mutual combat" have compromised attempts to treat battering cases as crimes and protect women from violent men. Victim-blaming attitudes occasionally held by police, prosecutors, judges and other court staff in woman battering cases may distort the reality of domestic violence dynamics, play down the danger posed to women in abusive relationships and inhibit battered women from utilizing the system. Common court practices employed by defense attorneys to defend batterers, such as attacking the veracity of the complaint and the credibility of the complainant, have made it difficult to convict the few batterers whose cases reach the courts. When the proof of the defendant's guilt turns to the credibility of witnesses, battered women may not be perceived as convincing if they are too timid or frightened and thus unable to speak or give a coherent, reliably narrated testimony.

The pendulum has swung from allowing battering victims a major role in criminal justice decision making toward mandating the state to initiate its own course of action...

Recent trends in policy reforms to overcome the difficulties in responding to woman battering include removing arrest and prosecution decisions from battered women, increasing the use of restraining orders, and implementing batterer treatment programs as sanctions. The pendulum has swung from allowing battering victims a major role in criminal justice decision making toward mandating the state to initiate its own course of action-- be it arrest or prosecution -- even without the victims' consent or cooperation.

Some of the issues agreed upon in designing a response to domestic violence underscore a realization that the phenomenon of family violence implicates social structural factors which cannot necessarily be addressed through criminal justice interventions, that attempts to rely on law enforcement alone to handle the problem are not likely to produce a sustained change in the batterer's behavior, and that the problem needs to be addressed with an integrated community approach. Without addressing the underlying causes of domestic violence/woman battering, its roots and antecedents, a meaningful and sustained change in the extent of the problem is not likely to occur.

Pulling together resources and coordinating efforts may improve our response to domestic violence. Including educational, religious, political, cultural, media or health professionals or institutions in a coordinated response can help in addressing this persistent social problem. The American public's intuitive conclusion that law enforcement alone cannot resolve the problem (Stalans, 1996) is in fact correct. Further, the criminal justice response, like other institutional responses, can be either helpful or harmful to victims as well as to their batterers (Erez & Belknap, 1998). Awareness of available research on the potential of each response to help or harm victims may constitute another step toward the elimination of domestic violence.

Author

Edna Erez, LL.B., Ph.D.

eerez@kent.edu

Edna Erez, L.L.B., Ph.D, has a law degree from Hebrew University of Jerusalem and a Ph.D. in sociology/criminology from the University of Pennsylvania. She also conducted postdoctoral studies in criminal justice evaluation research at the University of Southern California. Dr. Erez has been a research fellow at the Max Planck Institute of International and Comparative Criminal law in Freiburg, Germany, and at the Australian Institute of Criminology in Canberra, Australia. Dr. Erez was the Chair of the American Society of Criminology Task Force on Violence Against Women, which presented its report to Attorney General Janet Reno in 1995. Her research interests include sociology of law, victims of crime, and women in crime and justice. Her most recent research addresses violence against immigrant women and evaluation of intervention programs with woman batterers.

References

Bard, M. (1970). *Training police as specialists in family crisis intervention*. NCJ 50. Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration.

Belknap, J., & McCall, K.D. (1994). Woman battering and police referrals. *Journal of Criminal Justice* 22 (3), 223-236.

Belknap, J. (1995). Law enforcement officers' attitudes about the appropriate responses to woman battering. *International Review of Victimology* 4, 47-62.

Binder, A., & Meeker, J.W. (1992). Implications for the failure to replicate the Minneapolis experimental findings. *American Sociological Review* 58, 886-888.

Blackstone, W. (1987). *Commentaries on the Laws of England*. St. Paul, MN: West.

Bowker, L. H. (1983). Battered wives, lawyers, and district attorneys: An examination of law in action. *Journal of Criminal Justice*, 11, 403-412.

Bowman, C. G. (1992). The arrest experiments: A feminist critique. *Journal of Criminal Justice Law and Criminology* 83 (1), 201-208.

Browne, A. (1987). *When battered women kill*. Boston: Northeastern University.

Brown, S. E. (1984). Police responses to wife beating: Neglect of a crime of violence. *Journal of Criminal Justice* 12, 277-88

Buel, S.M. (1988). Mandatory arrest for domestic violence. *Harvard Women's Law Journal* 11, 213-226.

Burnett B., Carr, J. J., Sinapi, J., & Taylor, R. (1976). Police and social workers in community outreach program. *Social Casework* 57, 41-49.

Buzawa, E., & Buzawa, C. (1996). *Domestic violence: The criminal justice response*. Thousand Oaks, CA: Sage.

Cahn, N. R., & Lerman, L.G. (1991). Prosecuting women abuse. In M. Steinman (Ed.), *Woman battering: Policy responses* (pp. 95-112). Cincinnati: Anderson Publishing.

Campbell, A. (1993). *Men, Women, and Aggression*. New York: Basic Books.

Campbell, R. (1995). The role of work experience and individual beliefs in police officers' perceptions of date rape: An integration of quantitative and qualitative methods. *American Journal of Community Psychology* 23, 249-277.

Cannavale, F. (1976). *Witness cooperation*. New York: Lexington.

Chaudhri, M., & Daly, K. (1996). Do restraining orders help? In E.S. Buzawa, & C. Buzawa (Eds.), *Domestic violence: The criminal justice response* (2nd ed.). Thousand Oaks, CA: Sage.

Davis, E. G. (1971). *The First Sex*. New York: Putnam.

Davis, R. C., Smith, B.E., & Nickles, L.B. (1998). The deterrent effect of prosecuting domestic violence misdemeanors. *Crime & Delinquency* 44 (3), 434-442.

Dobash, R. E., & Dobash, R. (1979). *Violence against wives*. New York: Free Press.

Dobash, R. E., & Dobash, R. (1992). *Violence against women and social change*. London, New York: Routledge.

Dobash, R. E., Dobash, R., Cavanagh, K., & Lewis, R. (1998). Separate and intersecting realities: A comparison of men's and women's account of violence against women. *Violence Against Women* 4 (4), 382-414

Dobash, R. E., Dobash, R. & Wilson, M. (1992). The myth of sexual symmetry in marital violence. *Social Problems*, 39, 71-91.

Ellis, J.E. (1984). Prosecutorial discretion to charge in cases of spousal assault: A dialogue. *Journal of Criminal Law and Criminology* 75 (1), 56-102.

Erez, E. (forthcoming). Migration/Immigration, woman battering and the justice system. *International Journal of Comparative and Applied Criminal Justice* (special issue on migration, culture conflict and crime).

Erez, E. (2000a). Integrating a victim perspective within criminal justice. In A.

Crawford, & J. Goodey (Eds.), *Integrating a victim perspective within criminal justice* (pp. 165-184). Aldershot, England: Ashgate.

Erez, E. (2000b). Immigration, culture conflict and domestic violence/woman battering. *Crime Prevention and Community Safety: An International Journal* 2 (2), 17-21.

Erez, E. (1986). Intimacy, violence, and the police. *Human Relations* 39 (3), 265-281.

Erez, E., & Belknap, J. (1995). Policing domestic violence. In W. Bailey (Ed.), *Encyclopedia of Police Science* (2nd ed). New York: Garland Publications.

Erez, E., & Belknap, J. (1998a) In their own words: Battered women's assessment of the criminal processing system's responses. *Violence and Victims* 13 (3), 251-268.

Erez, E., & Belknap, J. (1998b). Battered women and the criminal justice system: The perspectives of service providers. *European Journal of Criminal Policy and Research* 6, 37-87.

Erez, E. & Kessler, D. (1997). *The prosecution and adjudication of domestic violence cases: An evaluation study*. A report submitted to the Office of Criminal Justice Services, State of Ohio, Columbus, OH.

Erez, E., & King, T. (2000). Patriarchal terrorism or common couple violence: Attorneys' views of prosecuting and defending woman batterers. *International Review of Victimology*, 7(1-3), 207-226.

Ewing, C.P. (1987). *Battered women who kill*. New York: Lexington.

Fagan, J. 1996. Contributions of research to criminal justice policy on wife assault. In D. D. J. Besharov (Ed.), *Family violence: Research and public policy issues*. Washington, D.C.: American Enterprise Institute Press.

Ferraro, K. J. (1989a). Policing woman battering. *Social Problems* 36 (1), 61-74.

Ferraro, K. J. (1989b). The legal response to woman battering in the United States. In J. Hanmer, J. Radford, & E. A. Stanko (Eds.). *Women, policing and male violence*. London: Routledge and Kegan.

Finn, P. (1991). Civil protection orders: A flawed opportunity for intervention. In M. Steinman (Ed.), *Woman battering: Policy responses*. Cincinnati: Anderson Publishing.

Fischer, K., & Rose, M. (1995). When "enough is enough": Battered women's decision making around court orders of protection. *Crime & Delinquency* 41 (4), 414-429.

Ford, D. A. (1983). Wife battery and criminal justice: A study of victim decision-making. *Family Relation* 32, 463-475.

Ford, D. A. (1991). Prosecution as a victim power source: A note on empowering women in their violent conjugal relationships. *Law & Society Review* 25 (2), 313-334.

Ford, D. A., & Burke, M.J. (1987). Victim initiated criminal complaints for wife battery: An assessment of motives. Paper presented at the Third National Conference for Family Violence Researchers, Durham, New Hampshire.

Ford, D. A., & Regoli, M. .J. (1992). The preventative impacts of policies for prosecuting wife batterers. In E. S. Buzawa, & C.G. Buzawa, *Domestic violence: The changing criminal justice response* (pp. 181-207). Westport, CT: Auburn House.

Ford, D. A., & Regoli, M.J. (1993). *The Indianapolis domestic violence prosecution experiment: Final report*, NU Grant No. 86-IJ-CX-0012. Indianapolis: Indiana University; and Washington, D.C.: U.S. Department of Justice, National Institute of Justice, and U.S. Department of Health and Human Services, National Institute of Mental Health.

Frisch, L. A. (1992). Research that succeeds, policies that fail. *Journal of Criminal Law and Criminology* 83 (1), 209-216.

Gillepsie, C. K. (1989). *Justifiable homicide: Battered women, self defense and the law*. Columbus, OH: Ohio University Press.

Gondolf, E. W. (1997). Batterer programs: What we know and need to know. *Journal of Interpersonal Violence* 12 (1), 83-98.

Gondolf, E. W. (1999). A comparison of four batterer intervention systems: Do court referral, program length, and services matter? *Journal of Interpersonal Violence* 14, 41-61.

Goolkasian, G. (1986a). *Confronting domestic violence: A guide for criminal justice agencies - Issues and practices*, NCJ 101680. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Goolkasian, G. (1986b). *Confronting domestic violence: The role of criminal court judges - Research in brief*, NCJ 102833. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Hamberger, L. K. (1997). Female offenders in domestic violence: A look at actions in their context. *Journal of Aggression, Maltreatment and Trauma* 1 (1), 117-129.

Hart, B. J. (1991). Battered women and the criminal justice system. In E. Buzawa, & C. Buzawa (Eds.). *Do arrests and restraining orders work?* Thousand Oaks, CA: Sage.

Hart, B. (1993). Battered women and the criminal justice system. *American Behavioral Scientist* 36 (5), 624-638.

Hirschel, J. D., Hutchinson III, I.W., & Dean, C.W. (1992). The failure of

arrest to deter spouse abuse. *Journal of Research in Crime and Delinquency* 29 (1), 7-33.

Isaac, N. E. & Enos, V. P. (2001). *Documenting domestic violence: How health care providers can help victims - Research in brief*. Washington DC: National Institute of Justice. U.S. Department of Justice.

Johnson, I. M., Sigler, R. T., & Crowley, J. E. (1994). Domestic violence: A comparative study of perceptions and attitudes toward domestic abuse cases among social service and criminal justice professionals. *Journal of Criminal Justice* 22 (3), 237-248.

Johnson, M. P. (1995). Patriarchal terrorism and common couple violence: Two forms of violence against women. *Journal of Marriage and the Family* 57, 283-294.

Kaci, J. H. (1992). A study of protective orders issued under California's Domestic Violence Prevention Act. *Criminal Justice Review* 17 (1), 61-76.

Keilitz, S. (1994). Civil protection orders: A viable justice system tool for deterring domestic violence. *Violence and Victims* 9 (1), 79-84.

Klein, A. R. (1996). Re-Abuse in a population of court-restrained male batterers: Why restraining orders don't work. In E. S. Buzawa, & C. Buzawa (Eds.), *Do arrests and restraining orders work?* Thousand Oaks, CA: Sage.

Kurz, D. (1993). Social science perspectives on wife abuse: Current debates and future directions. In P. Bart & E. Morgan, *Violence Against Women the Bloody Footprints* (pp. 252- 269). Newbury Park, CA: Sage.

Langan, P. A., & Innes, C. A. (1986). *Preventing violence against women*. Special Report, NCJ 102037. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

Langley, R. & Levy, R.C. (1977). *Wife Beating The Silent Crisis*. New York: Dutton.

Langley, R. & Levy, R.C. (1978). *Wife Abuse and the police response*. FBI Law Enforcement Bulletin 47 (May 1978)

Lerman, L. G. (1981). *Prosecution for spouse abuse: Innovations in criminal justice response*. Washington, D.C.: Center for Women Policy Studies.

Lerman, L. (1986). *Prosecution of Domestic Violence Against Women Special Report*. Washington, DC: Bureau of Justice Statistics.

Lerman, L. G. (1992). The decontextualization of domestic violence. *Journal of Criminal Law and Criminology* 83 (1), 217-240.

Loseke, D. R. 1991. Changing the boundaries of crime: The battered women's social movement and the definition of wife abuse as criminal activity. *Criminal Justice Review* 16 (2), 249-262.

- Mahoney, M. R. (1991). Legal images of battered women: Redefining the issue of separation. *Michigan Law Review* 90,1-94.
- Martin, D. (1976). *Battered Wives*. San Francisco: Glide.
- Martin, M. E. (1997). Double your trouble: Dual arrest in family violence. *Journal of Family Violence* 12 (2), 139-157.
- Maxwell, C. D. Garner, J. H., & Fagan, J. A. (2001). *The effects of arrest on intimate partner violence: New evidence from the spouse assault replication program series - Research in brief*. Washington DC: National Institute of Justice.
- McLeod, M. (1983). Victim non-cooperation in the prosecution of domestic violence assault: A research note. *Criminology* 21 (3), 395- 416.
- Oppenlander, N. (1982). Coping or coping out? *Criminology* 20, 449-465.
- Pagelow, M (1997). Battered women: A historical research review and some common myths. *Journal of Aggression, Maltreatment and Trauma* 1, 97-116.
- Pence, E. (1983). The Duluth domestic abuse intervention project. *Hamline Law Review* 6, 247-275.
- Pleck, E. (1987). *Domestic tyranny: The making of American social policy against family violence from colonial times to the present*. New York: Oxford University Press.
- Quarm, D., & Schwartz, M. (1985). Domestic violence in criminal court: An examination of new legislation in Ohio. *Women and Politics* 4 (3), 29-46.
- Rauma, D. (1984). Going for the gold: Prosecutorial decision-making in cases of wife assault. *Social Science Research* 13 (4), 321-351.
- Rowe, K. (1985). The limits of the neighborhood justice center: Why domestic violence cases should not be mediated. *Emory Law Journal* 34, 855-910
- Ryan, R. M. (1996). The sex right: A legal history of the marital rape exemption. *Law and Social Inquiry* 20 (4), 941-1004.
- Saunders, D. G. (1995). Prediction of wife assault. In J. Campbell (Ed.), *Assessing dangerousness: Violence by sexual offenders, batterers, and child abusers, Vol. 8 of Interpersonal violence: The practice* (pp. 68-95). Thousand Oaks, CA: Sage.
- Schechter, S. (1982). Toward an analysis of violence against women in the family. In S.Schechter (Ed), *Women and male violence* (pp. 209-240). Boston: South End Press.
- Schmidt, J., & Steury, E. H. (1989). Prosecutorial discretion in titling charges in domestic violence cases. *Criminology* 27, 487-510.

Schwartz, M., & Dekeseredy, W. (1993). The return of the battered husband syndrome through typification of women as violent. *Crime, Law and Social Change* 15, 51-72.

Sherman, L. (1984). The specific deterrent effects of arrest for domestic assault. *American Sociological Review* 49 (2), 261-272.

Sherman, L. (1992). *Policing Domestic Violence*. New York: Free Press.

Sigler, R. T. (1989). *Domestic violence in context*. Lexington, MA: D.C. Heath.

Singer, S. I. (1988). The fear of reprisal and the failure of victims to report a personal crime. *Journal of Quantitative Criminology* 4, 289-302.

Stalans, L. J. (1996). Family harmony or individual protection? Public recommendations about how police can handle domestic violence situations. *American Behavioral Scientist* 39, 433 - 448.

Stanko, E. A. (1982). Would you believe this woman? Prosecutorial screening for "credible" witnesses and a problem of justice. In N. Rafter, & E. Stanko (Eds.), *Judge, la lryet; victim, thief women, gender roles, and criminal justice* (pp. 63-82) Boston: Northeastern University Press.

Stanko, E. A. (1995). Policing domestic violence: Paradoxes and dilemmas. *Australian and New Zealand Journal of Criminology* (special addendum).

Straus, M. A. (1980). *Behind closed doors: Violence in American families*. Garden City, NY: Anchor.

Straus, M. A. (1993). Identifying offenders in criminal justice research on domestic assault. *American Behavioral Scientist* 36 (5), 587-600.

Straus, M. A., & Gelles, R. J. (1990). *Physical violence in American families: Risk factors and adaptations to violence in families*. New Brunswick, NJ: Transaction Publishers.

Thistlewaite, A., Wooldredge, J., & Gibbs, D. (1998). Severity of dispositions and domestic violence recidivism. *Crime & Delinquency* 44 (3), 388-398.

Tolman, R. M., & Edleson, J. L. (1995). Intervention for men who batter. A research review. In S. M. Stith, & M. A. Straus, *Understanding partner violence: Prevalence, causes, consequences, and solutions*. Minneapolis: National Council on Family Relations.

Tong, R. (1984). *Women, Sex and Law*. Totowa, NJ: Romwan & Allanheld.

Walker, L. (1979) *The Battered Woman*. New York: Harper & Row.

Worden, P. A. (2000a). The changing boundaries of the criminal justice system: Redefining the problem and the response in domestic violence. In C. M. Friel, *Criminal Justice 2000* (Vol. 2) *Boundary Changes in Criminal*

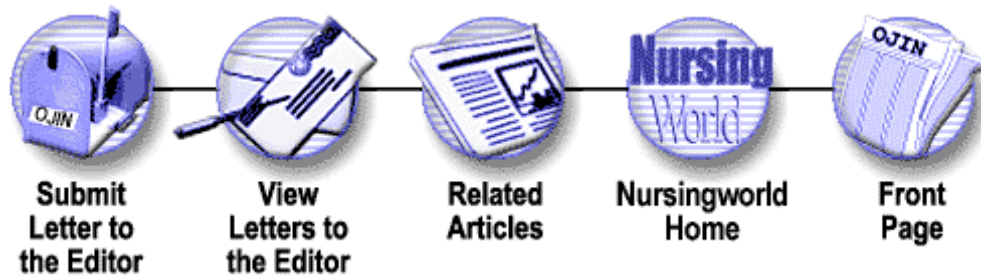
Justice Organizations (pp. 215-266). Washington D.C.: National Institute of Justice.

Worden, P. A. (2000b). Models of community coordination in partner violence cases. Final report (draft), Grant No. NIJ 95-WT - NX-0006. Washington, D.C.:U.S. Department of Justice, National Institute of Justice.

Zoomer, O. (1989). Policing woman beating in the Netherlands. In J. Hanmer, J. Radford, & E.A. Stanko (Eds.), *Women, policing and male violence* (pp. 125-154). London: Routledge & Kegan.

Zorza, J. (1992). The criminal law of misdemeanor domestic violence, 1970 - 1990. *Journal of Criminal Law and Criminology* 83 (1), 46-72.

© 2002 Online Journal of Issues in Nursing
Article published January 31, 2002



[Submit Letters to the Editor](#) | [View Letters to the Editor](#) | [Related Articles](#)
[NursingWorld Home](#) | [Front Page](#)
