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Stopping the Chronic Batterer Through Legislation: Will It Work This Time?

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TABLE OF CONTENTS

- I. INTRODUCTION
 - A. *The History of Domestic Violence*
 - B. *What Is Domestic Violence?*
 - C. *The Decision to Leave*
 - D. *Learned Helplessness*
 - 1. Is She Really a Victim?
 - E. *Battered Woman's Syndrome*
 - 1. A Defense or an Excuse?
 - 2. Defining the Battered Woman
 - 3. Applying the Battered Woman's Syndrome
 - 4. The Batterer's Profile
 - a. *Abuse from the Atypical Batterer*
- II. SOLUTIONS TO DOMESTIC VIOLENCE
 - A. *Civil Protection Orders*
 - 1. Disadvantages of Louisiana's CPO Statute
 - B. *Mandatory Intervention Policies*
 - 1. Mandatory Arrests
 - 2. No-Drop Prosecution
 - a. *Disadvantages to No-Drop policies*
 - b. *Alternatives to No-Drop*
- III. DOMESTIC VIOLENCE LEGISLATION
 - A. *The Survivors' Testimony*
 - B. *Disadvantages of Act 1038*
 - C. *Review of Act 1038*
- IV. CONCLUSION

I. INTRODUCTION

Undoubtedly, women in American society have made enormous advancements in every profession imaginable. Not only are women visible in the medical and academic professions, but they have also become noticeable in the corporate¹ and political² arenas as well. In fact, women comprise 15.1% of all executive, administrative, and managerial occupations, 29.3% of all physicians, 52.3% of all economists, and 29.3% of lawyers and judges in the United States.³

Even though the implementation of the Equal Protection Clause⁴ to the United States Constitution has proven to be a disappointment to women's rights, women have advanced to financial and political heights that were once viewed as unimaginable thirty years ago. That's why it is still baffling to conceive that one of the major threats⁵ to women's health⁶ in our society

1. Quentin Hardy, *We Did It*, FORBES, Aug. 11, 2003, at 76 (highlighting Carly Fiorina, the chief executive of Hewlett-Packard, who organized the largest high tech merger in the industry to date).

2. See, e.g., Carla Anne Robbins & Jim VandeHei, *Rice's Advice to Bush Goes Further Than Foreign Policy*, WALL ST. J., June 8, 2001, at A16 (praising Condoleezza Rice, the national security adviser for U.S. President George W. Bush, for not only being a former provost of Stanford University, but also a renowned authority in the field of international relations, education, and missile defense initiatives).

3. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, 2002, No. 593.

4. For a thorough discussion of the Equal Protection Clause and its relevance to the field of domestic violence see Jennifer S. Hendricks, *Women And The Promise of Equal Citizenship*, 8 TEX. J. WOMEN & L. 51 (1998).

5. Linda Mills, *Empowering Battered Women Transnationally: The Case for Postmodern Interventions*, 41 SOCIAL WORK 261 (1996) [hereinafter *Empowering Battered Women*] (indicating that "the injuries that all battered women receive are at least as severe as those suffered in 90 percent of violent felonies, although the overwhelming number of domestic-violence injuries is considered to be only misdemeanors"). Domestic violence is the "principal source of injury to women between the ages of fifteen and forty-four." LINDA G. MILLS, *THE HEART OF INTIMATE ABUSE: NEW INTERVENTIONS IN CHILD WELFARE, CRIMINAL JUSTICE, AND HEALTH SETTINGS*, 12-13 (1998), [hereinafter *Heart of Intimate Abuse*]; see also Joan Zorza, *Women Battering: High Costs and the State of the Law*, in DOMESTIC VIOLENCE LAW 383-88 (Nancy K.D. Lemon ed., 2001); H. Morley Swingle et al., *Unhappy Families: Prosecuting and Defending Domestic Violence Cases*, 58 J. MO. B. 220 ("more than two million women are assaulted by spouses or boyfriends every year"); U.S. Dept. of Justice, Bureau of Justice Statistics, *Intimate Partner Violence*, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv/pdf> (noting that 85% of all crimes involving intimate partners in 1998 were against women) (last visited Nov. 7, 2003); Thomas L. Kirsch II, *Problems In Domestic Violence: Should Victims Be Forced To Participate In the Prosecution of Their Abusers?*, 7 WM. & MARY J. WOMEN & L. 383, 388 (2001) (stating that 90% to 95% of domestic violence is perpetrated by men against women).

6. Battery by a spouse or lover is the single most common reason for women entering hospital emergency rooms, exceeding childbirth, automobile accidents, muggings, and all other medical emergencies. See Erin L. Han, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B. C. THIRD WORLD L. J. 159, 160 (2003) [hereinafter *Mandatory Arrest and No-Drop*] (stating that "[b]etween 22 and 35% of female emergency room patients are there because of injuries inflicted on them by their partners. One out of four pregnant women has a history of being abused") (quoting Kirsch, *supra* note 5, at 385-86.)

is domestic violence.⁷ Thankfully, society has noticed the existence of domestic violence and its impact on heterosexual⁸ relationships. However, the nation still fails to understand that “domestic abuse” was integrated into human culture before reaching the legal system. Destroying the stigma of violence on the abuse women suffer therefore requires that society also accept the fact that it too has contributed to the abuse of women.⁹ Until society fully atones for its apathetic behavior, the abused woman will never have true refuge in the legal system.

In 2002, I had the unique opportunity to represent battered women in Baton Rouge, Louisiana while practicing as an attorney with the Capital Area Family Violence Intervention Program (imagine saying this at every court appearance).¹⁰ The experience was priceless and also humbling. It caused me to understand that the wounds from domestic violence extended far deeper than the woman’s body—it pierced her mind and soul as well. The month-long training that I underwent could not prepare me for some of the stories that I heard. I constantly found myself overwhelmed by the number of women affected by domestic violence. Some were college-educated, some were mothers and grandmothers, some were my church members, and some had just graduated from high school.

Every court appearance, every trial, and every conference I participated in with my clients made me understand that this is not simply a “woman’s issue.” It is a family and a community issue as well. It was during my tenure as a legal advocate that I decided to use my experience as a mechanism for change. My opportunity to publicly condemn domestic violence and voice my frustration with our criminal justice system came

7. This Article defines “domestic violence/abuse” as the intentional use of physical or psychological force by an adult male against an adult female with whom there currently exists, or has existed an intimate relationship. This definition mimics the one used in Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1042 n.5 (1991) [hereinafter *Civil Images*]; see also Lisa G. Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 HARV. J. ON LEGIS. 61, 71-73 (1984) (giving a broad definition of domestic abuse that can be used in drafting comprehensive legislation to address the diverse and complex needs of the victims of domestic violence).

8. This author recognizes that domestic violence is not just a disease of heterosexual relationships. In fact, there are incidences of domestic abuse in gay and lesbian relationships, among siblings, among parents and grandparents from their children and grandchildren, and among the children from their biological or legal guardians. However, because over 1.13 million women each year are reported as victims of serious domestic violence, I feel that there is some justification for me to prejudice my perception of domestic violence to those instances where there is a female victim and a male aggressor. See generally Andrea D. Lyon, *Be Careful What You Wish For: An Examination of Arrest and Prosecution Patterns of Domestic Violence Cases in Two Cities in Michigan*, 5 MICH. J. GENDER & L. 253 (1999) [hereinafter *Be Careful What You Wish For*].

9. Profess Siegal has addressed this issue:

While authorities denied that a husband had the right to beat his wife, they intervened only intermittently in cases of marital violence: Men who assaulted their wives were often granted formal and informal immunities from prosecution in order to protect the privacy of the family and to promote “domestic harmony.”

Reva B. Siegel, *The Rule of Love: Wife Beating As Prerogative and Privacy*. 105 YALE L.J. 2117, 2118 (1996).

10. Throughout this Article I will refer to this organization as the Battered Woman’s Program.

when the Louisiana legislature decided to place the issue of domestic violence on its 2003 agenda.

Initially, I was proud and somewhat boastful of the fact that our legislature wanted to formally discuss this issue in an open forum. However, as I listened to the questions in the committee hearings and the debates on the House and Senate floors, I began to realize that ending intimate violence could only be achieved once society had changed its cultural understanding of domestic violence. It is our cultural understanding of domestic violence that breeds our prejudices towards victims. Therefore, trying to alter these prejudices through the law and administrative policies are useless.

Since society's understanding of violence is imperfect, any assistance it offers to victims will also be defective. For example, suppose the chief of police believes that the man is "the head of the household" and that government should never interfere with his authority in the home. You could then assume that the deputies under him would also share this ideology.¹¹ However, if the chief subsequently changes his opinion about man being the supreme authority in the home, then his deputies will dismiss their initial understanding on the issue by altering their perception of violence to align with the chief's position. Changing the chief's attitude about violence does not come from a statute or law because his understanding of violence is cultural. However, his cultural convictions will change his management of domestic violence cases and hopefully enlighten others to change theirs.

This Article will attempt to address three specific aspects of this phenomenon. Part I will discuss and hopefully set aside some of the most prevalent societal biases victims encounter once they courageously decide to expose their hidden shame. Part II will critique the success of three of the most popular solutions our law enforcement agencies and legislators have created to terminate the flow of violence in the home. Part II will also discuss whether these proposed solutions actually provide the victim with the necessary assistance she needs to regain control over her life and the life of her children.

Finally, Part III will discuss Act 1038 (also referred to as House Bill 849),¹² which was introduced and passed by the Louisiana Legislature during its 2003 Regular Legislative Session. Act 1038 creates the state's first domestic violence battery statute that will finally give district attorney offices across the state a means of increasing penalties for those convicted of

11. See, e.g., Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 987 (1991) (discussing criminal statutes that provide for spousal arrest on the basis of battery or violation of orders of protection).

12. 2003 La. Sess. Law Serv. 14.35.3 (West 2003). Louisiana governor, M.J. Foster, Jr., signed Act 1038 on July 2, 2003, thereby designating it as section 35.3 under Title 14.

domestic abuse. Proponents of Act 1038 suggest that a separate criminal statute will be less rigid than the “mandatory prosecution” policies, yet more aggressive than a majority of the other proposed solutions. Part III will also examine whether this new statute will offer domestic violence victims a more flexible or victim-friendly solution than the other solutions discussed in Part II. Finally, I will review the advantages and disadvantages of having a criminal statute for domestic violence and juxtapose this statute against other more *victim-friendly* methods of deterrence.

A. *The History of Domestic Violence*

Pamela McMahon stated that “[t]here is a need to look harder for ways to end domestic violence, to move beyond locking up perpetrators of violence and patching up their victims. This will require a radical shift in the way society thinks about the prevention of violence.”¹³ Every¹⁴ American over the age of majority has witnessed at least one episode of a mother, sister, niece, cousin, grandchild, daughter, friend, classmate, student, neighbor, co-worker, or significant other being abused.¹⁵

[S]ociety as a whole suffers from violence that leaks into the public on a regular basis at schools, places of employment, and homes of those not otherwise involved. The marketplace of ideas, including those benefiting technology, academia, business, etc., suffers the loss of women who feel confined to their homes or who are otherwise unable to function in the workplace.¹⁶

In the year of 753 B.C., Ancient Rome created the Laws of Chastisement¹⁷ that permitted husbands to strike their wives as a method of preventing the wife from exposing her husband to criminal and civil liability.¹⁸ The only restriction that the Roman government imposed on the husband’s discretion was that the circumference of the rod or switch had to be no greater than the girth of the husband’s right thumb.¹⁹ Hence, the

13. Pamela M. McMahon, *The Public Health Approach To The Prevention of Domestic Violence*, 47 LOY. L. REV. 471, 471-72 (2001).

14. See Kalyani Robbins, *No-Drop Prosecution of Domestic Violence: Just Good Policy, or Equal Protection Mandate?*, 52 STAN. L. REV. 205, 207 (1999) [hereinafter *No-Drop Prosecution*] (“Each time a man hits a woman and gets away with it, *all* women suffer, both from the risk of harm that has not been prevented, and from the retardation of the movement toward societal equality.”).

15. See Swingle et al., *supra* note 5 (“[a] woman is abused every fifteen (15) seconds, making domestic abuse the leading cause of injury to women ages 15 to 44”); see also Kirsch, *supra* note 5, at 385.

16. See *No-Drop Prosecution*, *supra* note 14, at 207.

17. Virginia Murray, *A Comparative Survey of the Historic Civil, Common, and American Indian Tribal Law Responses to Domestic Violence*, in DOMESTIC VIOLENCE LAW 2 (1988).

18. *Id.*

19. *Id.*

phrase “The Rule of the Thumb.”²⁰ The husband’s right to control and discipline his wife quashed the woman’s individuality, self-worth and, more importantly, her desire not to be victimized.²¹ Despite the harshness of the law in Ancient Rome, the Laws of Chastisement were intended for the purported protection of the female spouse—not as a means of inflicting violence or torture.²²

This power of correction vanished once the Roman Empire was engulfed in war and the women who were once subject to male domination suddenly became exposed to education and property ownership.²³ Jeff Hearn described the historical context of domestic violence as follows:

Despite these reforms [referring to the various legislative acts on behalf of stopping the violence against women and children by the husband] and the formal equalization of women’s and men’s property rights in marriage, by the end of the nineteenth century in practice little had shifted the nature of men’s authority relations over women in marriage. Men’s day-to-day domination and authority was routinely reinforced by the state, for example, in the avoidance of intervention in “marital disputes” by the police. Women’s position was also generally weak in terms of divorce proceedings and the award and receipt of maintenance.²⁴

William Blackstone, an eighteenth century English legal scholar who endorsed and codified “domestic chastisement,” described the husband’s power of correction as a form of behavior modification that was tolerable and a vital part of the patriarchal family structure.²⁵ According to Blackstone, the husband, who was the intra-family disciplinarian, had to possess broad authority to chastise his wife whenever she conducted herself in either an immoral or offensive manner in society.²⁶ She was considered property, just as the oxen and mule on the family farm.²⁷ But when she committed an act that was culturally immoral or offensive, she became a worthless object that could be easily discarded.²⁸

20. *Id.*; see also Sgt. Joanne Archambault, Barriers to Criminal Justice System and Victim Services Collaboration, *Collaboration to Stop the Violence Against Women*, Seminar, Baton Rouge, Louisiana, March 13, 2002.

21. See Tulin D. Acikalin, *Debunking the Dichotomy of Nonintervention: The Role of the State in Regulating Domestic Violence*, 74 TUL. L. REV. 1045, 1049-52 (2000).

22. *Id.*

23. *Id.*

24. See JEFF HEARN, *THE VIOLENCE OF MEN* 9 (1998).

25. Acikalin, *supra* note 21, at 1051.

26. *Id.*

27. See *id.* (husbands were to rule their households and “exercise absolute control over their wives”).

28. See *id.* at 1050. (fathers and husbands could, if the wife or daughter was disobedient, “put the woman to death without a public trial”).

In Blackstone's era, the wife received minority status equivalent to that of a child because she was not entrusted to possess personal property and she was not allowed to present any testimony or evidence against her husband/master.²⁹ She could not leave the abusive relationship without the husband's consent—and even if with consent he could physically restrain her.³⁰ Mistakenly, Blackstone concluded by indicating that the overall purpose of making the husband the wife's disciplinarian in the home was to provide her with a “protector against [the] harsh outside society.”³¹ Though it appears admirable for the husband to oversee his wife's affairs, it was really a license for the husband to broadcast his superiority in the family and to discredit the wife's individuality and independence.³²

While the current governmental system does not officially condone domestic abuse (or so they say), we cannot be blind to the reality that power, control and violence have become the accepted modes of resolving conflicts—especially in a society that nurtures negative attitudes towards women.³³ The violence women endure is meant to keep them from leaving the battering relationship, providing sexual services or performing household chores, including child rearing. It is not for the purpose of making her morally healthy, as Blackstone argues.³⁴

B. *What Is Domestic Violence?*

Surprisingly, society frequently uses “tunnel vision” when it considers what is or is not domestic violence or domestic abuse. It is undisputed that a relationship in which a person physically assaults or beats their intimate partner is a clear example of domestic violence. But suppose this intimate partner only requires his mate to report their whereabouts on an hourly basis when they are away from home. Or suppose this partner drastically limits his mate's interaction with “disrespectful or intrusive” friends and family members. It is then that that advocates start to see the black and white zones of domestic abuse turning gray.

Would we call such behavior abuse or over protectiveness or just plain jealousy?³⁵ Or is there a difference among them? What is so surprising to

29. *See id.* at 1051-52.

30. *See id.* at 1050 (wife could not do anything without husband's consent and if she did, he could beat her to death).

31. *See id.* at 1051.

32. *See id.* at 1052 (male domination and female subjugation prospered as the male managed his family).

33. *See* DONALD G. DUTTON, *THE BATTERER: A PSYCHOLOGICAL PROFILE* 41-52 (Basic Books 1995).

34. *See* Birgit S. Busch, *Domestic Violence and Title III of the Violence Against Women Act of 1993: Feminist Critique*, 6 *HASTINGS WOMEN'S L. J.* 22-23 [hereinafter *Domestic Violence and Title III*] (citing SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE* 20-27 (1982)); EMERSON R. DOBASH & RUSSEL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY* 33 (1979).

35. *See* SANDRA M. STITH ET AL., *VIOLENCE HITS HOME: COMPREHENSIVE TREATMENT APPROACHES TO DOMESTIC VIOLENCE* 336 (Springer Publishing, Co. 1990) [hereinafter *VIOLENCE HITS HOME*] (batterers are generally distrustful of others and seek comfort and closeness only from

the layperson and even to some women's advocacy groups is that domestic violence is really not at all about abuse—it is about control.³⁶ Domestic violence is a form of mental torture³⁷ that has a deep, extensive history in male-female relationships. It is both emotional and physical at the same time.³⁸ It is virtually impossible for an advocate to comprehend that a woman without bruises can still be a victim without accepting this fact.³⁹

It is unfortunate that violence, be it physical, verbal or psychological, is just a by-product of the batterer's need to control his intimate partner. Generally, physical violence is not needed to categorize an action as a form of domestic violence.⁴⁰ What the batterer is doing is breaking his partner's will so that she needs only him, will respect only him, and will do only what *he* commands.⁴¹ Shannon Seldon graphically describes the batterer's actions as a form of torture that has been so embedded in the fabric of the dysfunctional relationship that it becomes virtually impossible for counselors or social workers to understand the victim's action⁴² without understanding that torture had a hand in the decision.⁴³

Seldon strongly cautions advocates to use great care in deciphering the complexities of domestic violence to laypersons considering that if they are not careful in their explanations it can actually obscure "the pervasiveness of domestic violence" and divert attention away from the batterer's actions to the victim's responses.⁴⁴ Thus, an insensitive or apathetic approach to defining this problem and its affect on the abused family could cause the

their victimized partners; however, such closeness becomes expressed in the form of possessiveness).

36. "The project of defining domestic violence requires identifying and describing the social meaning generated by the proliferation of stories... while simultaneously recognizing and describing the particularity of individual women's experiences." Shannon Seldon, *The Practice of Domestic Violence*, 12 UCLA WOMEN'S L. J. 1, 2 (2001).

37. *Id.* at 13-15.

38. Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 569-70 [hereinafter *Killing Her Softly*].

39. *See id.* (political and legal advocates must address the emotional responses of women to domestic violence).

40. E. Odihambo-Abuya, *The Pain of Love: Immigration and Domestic Violence in Australia – A Regime of Chaos*, 12 PAC RIM. L. & POL'Y J. 673, 683 (2003).

41. *Id.* at 394; *see also Domestic Violence and Title III*, *supra* note 34, at 23 (explaining that these acts are not random, isolated events, but intended to intimidate and terrorize all women).

42. *See VIOLENCE HITS HOME*, *supra* note 35, at 53 ("victims are either loved dearly by their spouses and put on pedestals, or they are deemed unworthy of human kindness and subjected to abuse; thus, victims generally... see their options as either staying or leaving, their husbands as either good or bad, themselves as either good enough or inadequate").

43. *See Seldon*, *supra* note 36, at 14-15 (describing women in abusive relationships as "prisoners" who are not at liberty to go and come as they choose, but always "remain[n] continuously susceptible to attack").

44. *Id.* at 26.

public to consider this a disease only contracted by the poor, the minority, the uneducated, and the powerless.⁴⁵

It could also cause female victims who reach out for assistance to develop a “culture of resistance” to any institution that does not respect their unique circumstances in light of their special needs and interests.⁴⁶ The woman’s freedom of choice is a sign of empowerment that the advocate must rigorously endorse if he or she ever wishes to maintain a positive relationship with her while providing her, and if present, her children, with a viable means of security.⁴⁷

C. *The Decision to Leave*

As mentioned earlier, domestic violence or intra-family discipline is no longer condoned by modern society. Because feminist organizations and legal scholars have aggressively challenged domestic violence and the policies that support them, domestic violence has become a main topic on many legislative agendas and in many debates for judicial campaigns.⁴⁸ Nevertheless, domestic abuse will persevere if society neglects to accept that it still happens among people with diverse racial and ethnic backgrounds, who live in fine neighborhoods, graduate from Ivy League schools and hold prestigious careers.⁴⁹

Linda Davis, a celebrated advocate for the victims of domestic violence, suggested that the only way to resolve this impediment to harmonious and mutually respectful male-female relationships is to “change the social perceptions of its basic nature.”⁵⁰ More particularly, we must address two questions: how can men continue to hurt women despite their apparent pain and distress, and why do some women have only limited coping responses to these situations and thus remain in dangerous life-threatening relationships?⁵¹ Several prominent psychotherapists have suggested that the victims’ advocate must “[humanize] the [the victim] . . . by getting to know her, by entering her world and learning that feelings of sadness, fear, and

45. *Id.*

46. See Einat Peled et al., *Choice and Empowerment for Battered Women Who Stay: Toward A Constructivist Model*, 45 SOCIAL WORK 9, 21 (2000).

47. *Id.* at 13.

48. See, e.g., Dale A. Reidel, *Losing Faith in the System: Unfettered Political Speech of Judicial Candidates Fails to Assure an Open-minded Judiciary After Republican Party of Minnesota v. White*, 28 U. DAYTON L. REV. 421, 446 (noting the importance of allowing for discussion of a candidate’s judicial philosophy on issues relating to domestic violence cases).

49. See Sarah M. Buel, *Fifty Obstacles To Leaving, A.K.A., Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999) [hereinafter *Fifty Obstacles*] (wherein she discloses her bout with domestic abuse before entering Harvard Law School with a full scholarship). Buel is a Clinical Professor at the University of Texas School of Law (UTLS). *Id.* at 1 n.1. She is also founder and co-director of the UTLS Domestic Violence Clinic; co-founder and consultant, National Training Center on Domestic and Sexual Violence; and a former domestic violence, child abuse, and juvenile prosecutor and advocate. *Id.*; see also Interview with Sarah Buel (June 20, 2003).

50. L.V. DAVIS, VIOLENCE AND FAMILIES: SOCIAL WORK, 36, 371-373 (1991).

51. *Id.*

conflict cross *all* cultural lines.”⁵² Advocates should not be callous in their evaluation of the victim’s choices, and must not become disillusioned with the battered woman if she inadvertently forsakes her plan of safety and return to her abusive partner.⁵³ After all, battered women still have the inalienable right to make decisions that affect their own lives, even when those decisions are not popular.⁵⁴ Some victims have the additional task of concerning themselves with issues that affect their children⁵⁵ and as well as their physical well-being.

Advocates who berate victims for their decision to return or stay in the abusive environment will ultimately jeopardize their safety and the safety of their children⁵⁶ because the victim will adhere to the advocate’s instructions just to satisfy her—not because the instructions will cultivate a safe environment.⁵⁷ Leaving does not usually put an end to the violence, but it may cause the batterer to increase his violence, to coerce her into “reconciliation,” or to retaliate against her for abandoning him.⁵⁸

Consequently, it is at this crucial juncture (i.e., the decision to leave or stay) that the victim’s safety must become the advocate’s paramount interest. Just recently, the General Accounting Office (GAO) released a report that found domestic abusers to comprise more than twenty-five percent of the felons found in possession of illegal handguns.⁵⁹ The GAO also discovered that many of the domestic abusers were able to purchase these handguns without undergoing background checks.⁶⁰ Individuals convicted of “misdemeanor domestic violence charges make up about 14 percent of the

52. Roberta Thyfault et al., *Battered Women in Court: Jury Trial Consultants and Expert Witnesses*, in *DOMESTIC VIOLENCE ON TRIAL*, at 55 (Daniel Jay Sonkin, ed. 1987) (emphasis added) [hereinafter *Battered Women in Court*].

53. See *Mandatory Arrest and No-Drop*, *supra*, note 6, at 168-69.

54. *Id.*

55. See McMahon, *supra* note 13, at 473 (finding an increased risk of violence among adults who were exposed to violence during their childhood).

56. See Debra Whitcomb, *Prosecutors, Kids, and Domestic Violence Cases*, PROSECUTOR (Sept./Oct. 2002) (commenting that “violence against women and violence against children often co-exist in families—the frequency of child abuse doubles in families experiencing intimate partner violence, compared to families with nonviolent partners . . . [also], the rate of child abuse escalates with the severity and frequency of the abuse against the mother”) (citing STRAUSS, M., ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* (1980)); see also Lesley Daigle, *Empowering Women To Protect: Improving Intervention With Victims of Domestic Violence in Cases of Child Abuse and Neglect; A Study of Travis County, Texas*, 7 TEX. J. WOMEN & L. 287, 288 (1998) (claiming that children of battered women are “fifteen times more likely to be abused than children of women who are not domestic violence victims”).

57. See Barbara Hart, *National Estimates and Facts about Domestic Violence*, NCADV VOICE, at 12 (Winter 1989) (stating that many people, including clinicians, believe that battered women will be safe once they separate from the batterer, and that women are free to leave abusers at any time).

58. *Id.*

59. Dan Eggen, *Domestic Abusers Bought Guns; Background Checks for Thousands Not Completed*, GAO SAYS, WASH. POST, June 26, 2002, at A8.

60. *Id.*

total number of denials [for handguns], but 26 percent of the cases in which the ATF had to retrieve a weapon.⁶¹

The legislature, law enforcement agencies and society in general have all subscribed to the notion that the home is sacred and not intended for the prying eyes of strangers.⁶² Nevertheless, they have also come to appreciate the fact that the “privacy argument” had to be overridden whenever a woman was being sexually, physically, or psychologically abused in her home. The government (i.e., the legal system) possesses the authority to intervene into her private relationship, remove the source of the abuse, and restore that home to its original non-violent state—if possible.⁶³ While her decision to remain may thwart the government’s attempt to free her home of violence, the system must not emulate her abuser’s behavior by throwing up its hands in disgust and labeling her as mentally ill or foolish.⁶⁴

The women that I have counseled and represented in family court have all encountered some form of retaliation from their abusers without leaving the relationships.⁶⁵ A majority of them fear that leaving their abusers would cause them more financial hardship than what they are able to endure. Some believe that leaving would only encourage their abusive partner to aggressively pursue them—much like a hunter pursues his prey in the wild.⁶⁶ Whatever reason the victim gives for her decision, the advocate must not question her as if she is responsible for the abuse.⁶⁷ Certainly, she is the only one who knows what calms him and what makes him explode.⁶⁸ Only the victim can decide when to leave and when it would be best to stay.

61. *Id.*

62. See, e.g., Kapila Juthani, *Police Treatment of Domestic Violence and Sexual Abuse: Affirmative Duty to Protect vs. Fourth Amendment Privacy*, 59 N.Y.U. ANN. SURVEY. AM. L. 51 (2003) [hereinafter *Affirmative Duty to Protect*].

63. See *Civil Images*, *supra* note 7.

64. See *Killing Her Softly*, *supra* note 38, at 571.

65. For example, in *Hicks v. Hicks*, the wife and defendant in a divorce lawsuit appealed the judgment of the district court that appointed the husband primary custodial parent of their three children. 733 So. 2d 1261, 1262 (La. Ct. App. 1999). The husband apparently sought custody of the children after the wife left the children in his care to seek refuge with relatives because her husband had a history of physically abusing her. *Id.* The appellate court agreed with the defendant/wife, and awarded her sole custody of the children and suspended the father’s visitation rights until he completed a court-approved domestic violence treatment program. *Id.* at 1266 (citing LA. REV. STAT. ANN. § 9:364(C) (West 2003)). Unfortunately, once the court was satisfied that the father had completed his the treatment program and was no longer abusing drugs and alcohol, it awarded him sole custody. *Id.* The mother, on the other hand, who failed to foster a relationship between the children and their father, was defiant to the court’s orders in returning the children to their father, and had an allegation of abuse filed against her by her new husband. See *D.O.H. v. T.L.H.*, 799 So. 2d 714 (La. Ct. App. 2001).

66. *Fifty Obstacles*, *supra* note 49, at 19 (estimating that a battered woman who decides to leave her abuser is 75% “more likely to be murdered when she tries to flee or has fled, than when she stays”); see also Hart, *supra* note 57.

67. Cheryl Hanna, *No Right To Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1882 (1996) [hereinafter *No Right to Choose*].

68. *Id.* In *State v. Arrington*, the victim was rescued from her abusive husband by her neighbors. 738 So. 2d 1087, 1088 (La. Ct. App. 1999). The couple had been discussing a divorce when the defendant calmly closed the front door, walked over to the victim and cut her in the neck with a knife. *Id.* Testimony from the victim and her children indicated that the defendant had regularly assaulted his wife with a knife during the marriage. *Id.*

Neither her counselor nor her *zealous* advocate should impede the victim's decision because if she chooses to follow advice rather than her heart, she may not live to regret it.

D. Learned Helplessness

1. Is She Really a Victim?

Far too often, society is uninterested in the battered woman's story—more so when her story of abuse does not come from the typical heterosexual relationship.⁶⁹ It is only after she has stopped the threat of violence (i.e., killed or maimed the batterer) that society attempts to seek justice.⁷⁰ From their cultural biases about abused women, jurors ask, was she really a victim? Why didn't she just leave him? Is it appropriate for us to decide her guilt or innocence when this is a "private" matter?⁷¹

The feminist movement has afforded the issue of domestic violence significant coverage in the news,⁷² in the workplace,⁷³ on film,⁷⁴ in

69. This writer recognizes that domestic violence is prevalent in gay and lesbian relationships, but this Article will only on focus abuse involving female victims in heterosexual relationships. For more information on gay and lesbian domestic violence refer to Kathleen Duthu, *Why Doesn't Anyone Talk About Gay and Lesbian Domestic Violence*, 18 T. JEFFERSON. L. REV. 23, 23-40 (1996); for a discussion on gay and lesbian battering see, for example, Ruthann Robson, *Lavender Bruises: Intra-Lesbian Violence, Law and Lesbian Legal Theory*, 20 GOLDEN GATE U. L. REV. 567 (1990) [hereinafter *Lavender Bruises*].

70. See *Civil Images*, *supra* note 7 (the battered women's movement has succeeded in persuading some courts and legislatures to recognize that jurors need expert testimony on the effects of battering in order to understand the actions of battered women).

71. Siegel, *supra* note 9 (explaining that "men who assaulted their wives were often granted formal and informal immunities from prosecution, in order to protect the privacy of the family and to promote 'domestic harmony'").

72. See *People v. Simpson*, No. BA097211, 1995 WL 21768 (Cal. Super. Ct. Jan. 18, 1995).

73. Corporations like Polaroid and AT&T are taking active roles in preventing workplace violence considering that experts have theorized that a majority of workplace attacks have increased since more women have decided to leave abusive homes. Some corporations have started tapping the office phones of women who fear an attack, begun escorting these women to and from the parking lots, and some have initiated proceedings to obtain restraining orders against the abusers in the name of the company. Joseph Pereira, *Employers Confront Domestic Abuse*, WALL ST. J., Mar. 2, 1995, at B1; see also Darcelle D. White et al., *Is Domestic Violence About To Spill Into Your Clients' Workplace?*, 81 MICH. BUS. L. J. 28 (2002); Maria A. Calaf, *Breaking the Cycle: Title VII, Domestic Violence, and Workplace Discrimination*, 21 LAW & INEQ. 167, 170 (2003) (citing U.S. GEN. ACCOUNTING OFFICE, DOMESTIC VIOLENCE: PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS 19 (1998)).

74. Eric Harrison, *Preposterous Plot Makes You Scream "Enough,"* HOUS. CHRON., May 24, 2002, at 1. (This article offers a strong criticism of the movie "Enough," which depicted a battered woman who, after several near-death incidents with her estranged husband, underwent intense physical training and successfully challenged her husband to a one-on-one dual. ENOUGH (Columbia Tristar 2002). Singer/actress, Jennifer Lopez portrayed the abused spouse in this 2002 film. *Id.* Additionally, academy award winning actress, Julia Roberts, played a childless, battered woman in the film *Sleeping with the Enemy* who staged her death in order to escape her abusive

television⁷⁵ and in Congress.⁷⁶ However, this country must still grapple with the notion that perhaps its efforts in addressing this horrible social virus are either too sensitive to the abuser or too hostile towards the abused.⁷⁷ The assistance offered by law enforcement and the justice system has been so frustrating to the victim's need to live violence free that she has learned to accept the abuse as a natural feature of all intimate relationships.⁷⁸

Ironically, it is the woman, not the man, who is portrayed as the root cause of the violence in the battering relationship; she is the person who society portrays as powerful, manipulative and controlling.⁷⁹ These perceptions not only distort the victim's true behavior but also show how misguided society has become to the reality of intimate violence.⁸⁰ In essence, society hates the battered woman because of her submissiveness, and they despise her decision to stay because this places her and her children, if applicable, in harm's way. Often, the battered woman's family abandons her because she had isolated herself from them. The woman's children are enraged by her because she does not even try to protect herself or them. Her friends have lost all hope of rescuing her, so they refuse to get involved when they see her black eyes or her bloody nose. While she is suffering rejection and humiliation, her mate enjoys the comfort of apathetic police officers, nonchalant neighbors, and hypnotized church members. It is the battered woman that has become the culprit. She wears the stench of

husband. *SLEEPING WITH THE ENEMY* (20th Century Fox 1991). Her batterer ultimately tracked her down and forced her into a lethal confrontation. *Id.*)

75. In 1993, Steven White Productions, Inc., broadcasted a television movie entitled "Going Underground" starring Joanna Kerns, portraying a battered woman who, after eleven years of abuse, engages in a serious custody battle with her violent husband after leaving the abusive home. *Going Underground* (USA Network 1993). Failing to get an impartial hearing from the court, the battered spouse takes her children and flees the court's jurisdiction until state legislature amended the custody statutes to allow testimony of domestic abuse in custody proceedings. *Id.*

76. Catherine F. Klein, *Full Faith and Credit: Interstate Enforcement of Protection Orders Under the Violence Against Women Act of 1994*, 29 FAM. L. Q. 253, 253-54 (1995) (stating that the Violence Against Women Act (VAWA) of 1994 was a bill created as a crime-prevention program that provided "\$1.6 billion to confront that national problem of gender-based violence;" this bill also attempted "to make crimes committed against women considered in the same manner as those motivated by religious, racial, or political bias"). For a more in-depth discussion on VAWA, see *Domestic Violence and Title III*, *supra* note 34; Hendricks, *supra* note 4.

77. Physical violence against wives was once deemed necessary for the "well-being" of women. It was couched in terms of corrective discipline and chastisement of erring wives. See Barbara J. Hart, *The Legal Road to Freedom*, in *BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE* (M. Hansen, ed., 1993).

78. Sometimes the victim's willingness to accept violence depends upon its effect on her children. In *Morrison v. Morrison*, 699 So. 2d 1124, 1127 (La. Ct. App. 1997), the district court awarded sole custody to the defendant/mother after discovering that *both* parties had an extensive "history of perpetuating family violence." The mother's custody decree was later amended to award her only provisional custody until the father could prove that he completed a domestic violence treatment program mandated by Title 9, section 362(7) of the Louisiana Revised Statutes. *Id.* at 1127-28.

79. See MINNESOTA COALITION FOR BATTERED WOMEN, *WOMEN MURDERED IN MINNESOTA IN 1990* 1 (1991); see also MELANIE F. SHEPARD & JAMES A. CAMPBELL, *THE ABUSIVE BEHAVIOR INVENTORY*, UNIVERSITY OF MINNESOTA-DULUTH DEPARTMENT OF SOCIAL WORK (1990).

80. See MINNESOTA COALITION FOR BATTERED WOMEN, *WOMEN MURDERED IN MINNESOTA IN 1990* 1 (1991).

shame and embarrassment while her mate bathes in society's fountain of indecisiveness.

These false perceptions have also spilled into our "impartial" justice system. Michelle Jacobs implied that juries are even more distrustful of battered women, especially non-white women, when they claim to have been forced by their abusive partners to commit misdemeanor crimes.⁸¹ Facing these types of prejudices have prompted certain legal scholars to see victims of domestic violence as so traumatized by the abuse that they are simply "helpless" and in desperate need of protection from the state.⁸²

The battered woman's failed attempts to leave the relationship have also cued Lenore Walker to present this behavior as a true indication of the victim's helplessness against her intimate partner.⁸³ Eventually the battered woman is psychologically broken down to the point of relinquishing any sense of autonomy and complying with all the wishes of the captor.⁸⁴ No matter how she tries to end the violence, it will always be there, haunting her until either her batterer voluntarily leaves or she dies from the abuse. As a result, researchers have concluded that the victim has become content with being helpless.

"Learned helplessness" describes a woman's lack of motivation to change her abusive surroundings due to her sincere belief that no response, decision or course of action will ever alter her present situation.⁸⁵ Once the woman perceives that a series of punishments or failures are outside of her control, then learned helplessness is more likely.⁸⁶ The theory claims that the woman loses the ability to predict normally expected contingent outcomes when she does a particular act.⁸⁷ Without an understanding of how to stop the violence, she eventually drowns herself into a depressed posture, hoping that her partner will unilaterally end the abuse once he realizes that she is not willing to expose their secret shame.⁸⁸ Dr. Lee Bowker summarizes Lenore Walker's definition of learned helplessness as a

81. See Michelle S. Jacobs, *Prostitutes, Drug Users and Thieves: The Invisible Women in the Campaign to End Violence Against Women*, 8 TEMP. POL. & CIV. RTS. L. REV. 459, 463-64 (1999).

82. *Id.*; see also Linda L. Ammons, *Mules, Madonna, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003, 1021-28, 1046-56, 1069-76 (1995).

83. See LENORE E. WALKER, *THE BATTERED WOMAN* 44-54 (1979) [hereinafter *THE BATTERED WOMAN*] (stating that as the number of battered women increases so does the probability that the violence will kill the victim or her abuser).

84. *Id.*; see also Edward Gondolf & Ellen Fisher, *The Survivor Theory*, in *DOMESTIC VIOLENCE LAW* 83 (1988).

85. *THE BATTERED WOMAN*, *supra* note 83, at 44-54.

86. *Id.*

87. *Id.*

88. See Calaf. *supra* note 73 (the effects of domestic violence extend beyond the noticeable physical injuries and sometimes causes substance abuse, severe psychological trauma, and stress-related illnesses).

hybrid of both the social and personality systems.⁸⁹ However, Bowker disagrees with Walker by arguing that Walker's assessment leans too heavily towards the assumption that the victim's personality system sustains the abuse since the traumatic event "causes a high arousal . . . in the woman's autonomic nervous systems . . . that keeps their bodies and minds running at full speed."⁹⁰

The client that I will always remember was a young woman, who I'll call, Joan. Joan was an African-American female who resided on the outskirts of Baton Rouge, Louisiana. Before the domestic violence docket is called, I, as the attorney for Battered Women's Program, would schedule a brief meeting with clients in the conference room at the district court before going into court. Sometimes this would be my first opportunity to meet with victims since their partners would often prevent them from coming to court. On this occasion, I met Joan for the first time. I had dismissed her case twice because her ex-boyfriend would harass her the day before her hearing. Prior to this hearing, Joan had moved in with a friend a week before her hearing so her ex-boyfriend was unable to contact her.

When Joan entered the conference room, she was stunned to learn that she had a male attorney. However, she became more comfortable with me after I took a minute or so to break the ice with casual conversation. During our discussions, I learned that she and my mother were from the same hometown and that she was, perhaps, a distant relative of mine. After our brief interlude, Joan was ready to tell me why she wanted a protective order.

Joan gave graphic details of her brutal relationship with her live-in boyfriend and abuser, Mike (also a fictitious name). Though they were together for a relatively short period of time, they bought a mobile home together while Joan was a freshman student at the local community college. The two also began discussing marriage until violence erupted in their relationship. Mike became very controlling after Joan agreed to marry him. All of a sudden, Mike began dictating what Joan should wear, whom she should talk to in the neighborhood, and when she should come home. He even began to seriously question her desire for higher education.

Finally, Joan decided that her relationship with Mike was neither healthy nor productive. She cancelled the wedding and terminated her relationship with Mike indefinitely. Mike was furious about Joan's decision—especially since she did not "consult" with him before making it.⁹¹ Yet, Mike remained calm while watching Joan pack her clothes and

89. See THE BATTERED WOMAN, *supra* note 83, at 44-54; see also JESSICA TWEDT, UNDERSTANDING THE CONNECTION BETWEEN VIOLENCE AGAINST WOMEN AND SUBSTANCE ABUSE, COLLABORATION TO STOP THE VIOLENCE AGAINST WOMEN, Seminar, Baton Rouge, Louisiana, March 13, 2002.

90. Lenore Walker, *Battered Woman Syndrome is a Psychological Consequence or Abuse*, in CURRENT CONTROVERSIES 136 (R. J. Gelles & D. Loseke, eds., 1993).

91. One of the most prevalent and destructive tools an abuser uses against his intimate partner is that he attempts to take away the abused partner's right to be angry with him. In essence, the abusive partner does not have a problem with "his" anger; rather he has a problem with the victim's anger toward him. See LUNDY BANCROFT, WHY DOES HE DO THAT?: INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN 59-60 (2002) [hereinafter ANGRY MEN].

move her belongings to her mother's home. But when she returned the next day to pick up her mail and leave her key,⁹² Mike begged her to reconsider her decision. Joan refused his plea, and told him that it was his behavior that forced her to leave.⁹³

Mike immediately dropped to the floor and wept bitterly, but Joan was not moved. When she placed the key on the table, Mike grabbed her arm, threw her on the bed and began disrobing her. She ordered him to stop, but he continued pushing up her skirt and breaking the buttons on her blouse while holding her down on the bed.⁹⁴ Joan screamed at the top of her lungs until Mike pressed the pointed edge of a butcher knife against her throat. Tears fell from both of our eyes as Joan continued to describe Mike's behavior. I soon became so enraged that I immediately opened the conference door and called for the on-duty sheriff. Before the sheriff could leave his station, Joan pleaded with me not to have Mike arrested. All she wanted was that he leave her alone.⁹⁵

In retrospect, I realized that my reaction was inappropriate and, to a certain degree, insulting and offensive to Joan. Wanting to hold Mike accountable for his criminal behavior was a typical response, but for me to assume the role of "big brother" to my client was just the opposite end on the abuse pendulum. Like Mike, I was exercising control over Joan's life. While Mike wanted to punish her for taking away his authority in the relationship, I wanted to protect her when I impulsively—and unilaterally—decided that Mike should be prosecuted and Joan needed rescuing.⁹⁶

92. In *State v. Moore*, 568 So. 2d 612, 614 (La. Ct. App. 1990), a female defendant fatally shot her husband who tried to use a knife to break into her apartment. At trial, she testified that her husband had beaten her numerous times and that he had shot at her on two different occasions. *Id.* She also testified that her husband was especially violent after using drugs (i.e., cocaine and marijuana). *Id.* Though the couple had separated several times, she repeatedly allowed him to move in with her after being separated from him for only one year. *Id.*

93. See *ANGRY MEN*, *supra* note 91.

94. See David Adams, *Treatment Models for Men Who Batter*, in *FEMINIST PERSPECTIVES ON WIFE ABUSE* 176, 176-99 (Kersti Ylloo & Michelle Bograd eds., 1988) (stating that public administrators and policy makers are slowly becoming aware that without adequate community intervention, many abusive men will prevent women from leaving relationships—even to the point of murder).

95. See Peter Margulies, *Battered Bargaining: Domestic Violence and Plea Negotiation in the Criminal Justice System*, 11 *S. CAL. REV. L. & WOMEN'S STUD.* 153, 165 (2001) (arguing that women comprise a majority of more than a half a million of all domestic violence reports, but, despite the dreadfulness of their experiences, many women decide not to report the abuse they experienced for fear of humiliation and embarrassment).

96. See *VIOLENCE HITS HOME*, *supra* note 35, at 57 (cautioning therapists not to succumb to the battered woman's overwhelming desire to have others solve their problems; they also warn therapists that these victims have a tendency to drop hints and play dumb in an effort to have the therapist rise to the occasion and rescue them without accepting any responsibility to save themselves); see also Selden, *supra* note 36, at 20 (confirming that women who are consistently battered may soon not try to resist or respond, and instead focus merely on surviving the attack).

How could I possibly know what was best for Joan after only a brief session with her?⁹⁷ Besides our short conversation before the interview, I knew absolutely nothing about Joan or the abuse she endured. Had Joan not pulled my coattail, I would have escalated the abuse by indirectly implying that she was feeble, helpless, passive, and incapable of knowing what was best for herself.⁹⁸ Further, my premature and abrupt reaction could have caused Joan to dismiss her protective order and take her chances with terminating the relationship on her own. Had I persisted in my attempt to have Mike prosecuted for this crime, Joan's interests would have been suffocated by my goodwill just like the defendant's actions in *State v. Rainey*.⁹⁹

In *Rainey*, the defendant was charged with attempted second-degree murder and convicted of aggravated battery after coming to the aid of his girlfriend's roommate, Kelly, who was being beaten by her ex-boyfriend, Parker.¹⁰⁰ The defendant intervened in the altercation after Parker slapped Kelly in the face and pushed her against the wall.¹⁰¹ Parker also attempted to punch Kelly after she fell to the floor but the defendant came to her aid.¹⁰² The defendant got Parker off of Kelly and started banging Parker's head on the floor.¹⁰³ He also punched and kicked Parker until Parker was unconscious.¹⁰⁴ Though my actions were not as egregious as the defendant's actions in *Rainey*, they did exceed what was necessary for my client's protection.

Theoretically, one might guess that victims should always be elated when the opportunity arises for them to expose their batterer to the public¹⁰⁵ and inform the audience in the courtroom of how their abuser plagued their homes with verbal threats, physical violence and psychological abuse. Yet, too often victims come to realize that in this legal system the abuser is no longer their intimate partner but rather the prosecutor and, in some cases, the judge.¹⁰⁶ This transfer of power from the abuser to the prosecutor and judge

97. Survivors of domestic abuse "'must be the author and arbiter of their own recovery. Others may offer advice, support [and] assistance,'" but they cannot present a cure for her situation. *Killing Her Softly*, *supra* note 38, at 577 (quoting JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 133 (1997)).

98. See E. Stark et al., *Wife Abuse In The Medical Setting: An Introduction For Health Personnel*, MONOGRAPH SERIES NO. 7, NAT'L CLEARINGHOUSE ON DOMESTIC VIOLENCE, WASH., D.C. (United States Printing Office 1981).

99. 722 So. 2d 1097 (La. Ct. App. 1998).

100. *Id.* at 1099.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 1099-1100.

105. See Linda F. Little, *Gestalt Therapy with Females Involved in Intimate Violence*, in *VIOLENCE HITS HOME* 47, 48 (Sandra M. Stith et al., eds., 1990) [hereinafter *Gestalt Therapy*]. Abused partners are terribly reluctant to admit to being abused—they downplay its importance and its contribution to the dysfunction in the family structure. *Id.*

106. See Mary E. Asmus, et al., *Prosecuting Domestic Abuse Cases in Duluth: Developing Effective Prosecution Strategies from Understanding the Dynamics of Abusive Relationships*, 15 *HAMLIN L. REV.* 115, 132 (1991) ("The obstacles represented by historic attitudes toward domestic

takes place when these individuals force victims to either leave the abuser or take some other *appropriate* action to solve *their* problem.¹⁰⁷

Linda Mills suggests that the intervention models established by shelters and other advocacy programs must recognize that the victims of domestic abuse will not be empowered by strict adherence to the expectations of legal or social work advocates, but through acknowledgement of the victim's need to prioritize her plan of safety in a flexible time frame and in a supportive environment.¹⁰⁸ Several family therapists have concluded that "[p]rofessional burnout, bitterness, resentment, and discouragement run high with workers in women's shelters" considering their tireless effort to secure employment, legal representation, and residential provisions for their clients.¹⁰⁹

In reality, a battered woman is generally exposed to continual embarrassment and humiliation from family, friends and co-workers "after" she has admitted to being abused.¹¹⁰ These abstract injuries to the woman's self-esteem further exacerbate any of the physical injuries she has suffered at the hands of her abuser and often result in stress-related illnesses, substance abuse, and severe psychological trauma.¹¹¹ Consequently, "[t]he corresponding legal image of battered women is one of passive victims to be helped, rather than fully capable women who have been temporarily affected by the violence against them."¹¹²

While it is commendable for family, friends, and co-workers to offer their support and concern, they must also understand and appreciate that many women, like Joan, may choose to remain in the abusive home because sometimes the choice of leaving is more dangerous than staying.¹¹³ In fact, leaving the abusive environment not only places her in a financial dungeon, but it heightens her chances of receiving a barrage of attacks from her intimate partner that may even result in death. Accordingly, counselors must set aside their unfounded perceptions about why abused women decide to

violence should be anticipated and addressed by the prosecutor in preparing the case. The prosecutor should also keep in mind the distinction between myths and reality of domestic violence which shape our culture's underlying attitude of acceptance of that violence.").

107. See *Mandatory Arrest and No-Drop Out*, *supra* note, 6, at 166.

108. See *Empowering Battered Women*, *supra* note 5, at 265-66.

109. See *Gestalt Therapy*, *supra* note 105, at 49.

110. See *Mandatory Arrest and No-Drop*, *supra* note 6, at 166 (stating that "[g]iven the complexity of the reasons why a battered woman might stay with her abuser, disentangling a victim from her situation is not as simple as picking her up and carrying her to safety"); see also *Heart of Intimate Abuse*, *supra* note 5.

111. See *Civil Images*, *supra* note 7; see also *Domestic Violence and Title III*, *supra* note 34.

112. *Civil Images*, *supra* note 7, at 1086.

113. See Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991) [hereinafter *Legal Images*].

return to the place of abuse,¹¹⁴ and embrace the fact that battered women often consider returning to the abusive environment and continuing their existing relationships either for “emotional, financial, or cultural reasons.”¹¹⁵

Like Joan, victims are not always eager to stand before the public and offer specific details concerning some of the most intimate and personal aspects of their lives.¹¹⁶ Unfortunately, it is not always the batterer who mocks the woman’s attempt to seek relief, but sometimes it is those who stand in judgment of her actions or methods of dealing with the violence that have become her harshest critics.¹¹⁷

Understanding how learned helplessness fits into the domestic violence debate is the easy part. Women have been “systematically taught” that their “physical beauty and appeal to men” are the only items they should treasure.¹¹⁸ Even the marriage institution has amplified the woman’s sense of inferiority by bestowing upon the husband the authority to decide where the couple should live.¹¹⁹ The hard part in this debate is explaining to the novice advocate or to the concerned neighbor that the victim, despite her voluntary decision to stay in the battering relationship, still has the competency to decide what is best for her—not society or government.

E. Battered Woman’s Syndrome

1. A Defense or an Excuse?

Whenever a problem arises that has the potential of affecting a large portion of society, human nature’s insatiable desire to adequately define that problem and present an all-inclusive formula to remedy it is automatically triggered. The response to the domestic violence epidemic has been no different. As stated earlier in this Article, society’s definition of domestic violence remains a work-in-progress.¹²⁰ It naturally follows that offering a

114. See *Fifty Obstacles*, *supra* note 49, at 19. The advocates for battered women must dismiss their presumptions that domestic abuse victims are stupid, masochist, or co-dependent simply because they wanted to return to their abusive environment. *Id.*

115. *Id.*; see also *Empowering Battered Women*, *supra* note 5, at 263.

116. See *Fifty Obstacles*, *supra* note 49, at 19; see also SUSAN KEILITZ, LEGAL REPORT: CIVIL PROTECTIONS ORDERS: A VIABLE JUSTICE SYSTEM TOOL FOR DETERRING DOMESTIC VIOLENCE, VIOLENCE AND VICTIMS 79, 80, 82 (1994) (Studies have indicated that of the women who have obtained temporary protection orders, 60% experienced physical or psychological abuse in the year that the order was issued.).

117. See *Legal Images*, *supra* note 113, at 4 (“The consequence is that we understand ourselves less, our society less, and our oppression less, as our capacity to identify with battered women diminishes ([i.e.,] ‘I’m not like that’). Before the feminist activism of the early 1970s brought battering to public attention, society generally denied that domestic violence ever existed.”).

118. THE BATTERED WOMAN, *supra* note 83, at 51.

119. *Id.* at 52.

120. See *State v. Moore*, 734 So. 2d 706 (La. Ct. App. 1999). In *State v. Moore*, the defendant admitted to slapping his wife twice, but denied that the blows were violent or that she sustained any injuries. *Id.* at 707.

solution to correct this psychological disease or abnormality is equally as difficult.

Nevertheless, feminist legal scholars and psychologists have created a paradigm doctrine intended to explain the victim's cognitive ability in an abusive relationship—the Battered Woman's Syndrome (BWS).¹²¹ BWS was initially utilized to explain why the female victim resorted to violence as the appropriate response to the battering relationship.¹²² The heart-rending story of Francis Hughes is just one incident in which BWS was applicable.¹²³ Realistically, the number of men killed by their female partners was only 4% compared with 33% for women killed by their intimate male partners.¹²⁴ Research has also indicated that the woman would not use violence if she believed that it could harm her mate.¹²⁵ Actually, her overall intent in using violence is to stop her partner from abusing her (i.e., self-defense).¹²⁶ Regardless of her intent in using violence, society still frowns on the women's use of violence because it is contrary to the nurturing role of a wife and mother.

Although symptoms of BWS are present during various stages of the relationship, it is the most visible in those cases where the woman has killed her abuser. Holly Maguigan strongly disagrees with the common presumption that “most” battered women who use violence to either kill or injure their abusers do so when there is a lull in the violence.¹²⁷ While battered women defendants use BWS in an effort to escape or reduce criminal liability, their legal advocate is obligated to ensure them due

121. See, e.g., Ruth Jones, *Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser*, 88 GEO. L.J. 605 (2000) [hereinafter *Breaking the Control*] (noting the many theories attached to battered women, among them battered woman's syndrome).

122. *Id.* at 615.

123. Hughes' story was memorialized in the 1984 film “The Burning Bed,” which portrayed the story of a mother played by actress Farah Fawcett who kills her abusive, alcoholic husband by setting her marital bed on fire. See *Legal Images*, *supra* note 113, at 35; *THE BURNING BED* (Anchor Bay Entertainment, 1984). The myth depicts the battered woman as the mousy wife who either kills the unsuspecting husband or employs the gun for hire to kill her partner and dispose of the body. See Abigail Trafford, *Why Battered Women Kill: Self Defense, Not Revenge, Is Often the Motive*, WASH. POST, Feb. 26, 1991, at 7.

124. See Laurie J. Taylor, Comment, *Provoked Reason in Men and Women: Heat-of-Passion Manslaughter and Imperfect Self-Defense*, 33 UCLA L. REV. 1679, 1680-81 (1986).

125. See A. Murray, *Physical Assaults By Wives: A Major Social Problem*, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE 67, 80 (Richard J. Gelles et al. eds., 1993) (citing Alice H. Eagly et al., *Gender and Aggressive Behavior: A Meta-Analytic Review of the Social Psychological Literature*, 100 PSYCHOL. BULL. 309 (1986)).

126. See *Be Careful What You Wish For*, *supra* note 8, at 262.

127. Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 382 (1991) [hereinafter *Myths and Misconceptions*]; see also Ali Akbar Dareini, *Iran Faces Grim Reality of Husband Killing: Desperate, Abused Wives See Murder As Only Way Out of Male-Dominated Society*, HOUS. CHRON., July 8, 2002, at 12.

process and a fair trial, free of the common impediments to fair trials for battered women.¹²⁸

Like many of the disconcerted victims, prospective jurors sitting through the voir dire process are extremely hesitant to reflect on their experiences with domestic violence for fear that confessing these personal and humiliating details may jeopardize their standing in the community and among their peers.¹²⁹ Now that the doctrine of “family privacy” has been labeled as “an ideological Trojan horse,”¹³⁰ courts have begun seeking other loopholes to avoid the legitimacy of BWS.

In *State v. Rodrigue*,¹³¹ a female defendant was charged with second-degree murder after she stabbed her former boyfriend with a knife.¹³² The facts reflect that the defendant and her former boyfriend got into a verbal argument outside a grocery store after the boyfriend confronted her about their relationship.¹³³ During the argument, the boyfriend ripped off portions of the defendant’s clothes, dragged her to his home and held her captive inside his home for over an hour.¹³⁴ The boyfriend then attempted to have anal sex with her until the defendant stabbed him and left the residence.¹³⁵

Responding to an anonymous 911 call about the incident, an officer discovered the boyfriend’s nude body and proceeded to question the defendant about the murder.¹³⁶ The defendant gave a *voluntary* statement, informing the officer that she and the decedent had lived together for six months, but had separated two weeks before the homicide.¹³⁷ Although the defendant relayed to the officer every detail of the incident, the officer questioned her veracity when he could not substantiate the occurrence of a struggle at the scene of the crime.¹³⁸

To establish a claim of justifiable homicide,¹³⁹ the defendant attempted to introduce evidence of the boyfriend’s “assaultive” behavior.¹⁴⁰ The district court, however, ruled that such evidence was not admissible under Louisiana Code of Evidence Article 404 because the defendant could not show that she was involved in a “current” intimate relationship with the decedent.¹⁴¹ The appellate court agreed¹⁴² with the ruling and affirmed the decision.¹⁴³

128. See *Myths and Misconceptions*, *supra* note 127, at 383 (stating that the most common impediment to a fair trial involving battered women is the impartial application of existing law by trial judges).

129. See *Battered Women in Court*, *supra* note 52.

130. See *No-Drop Prosecution*, *supra* note 14, at 208.

131. 714 So. 2d 203 (La. Ct. App. 1998) [hereinafter *Rodrigue I*].

132. *Id.* at 205.

133. *Id.*

134. *Id.*

135. *Id.*

136. *State v. Rodrigue*, 734 So. 2d 608, 609 (La. 1999) [hereinafter *Rodrigue II*].

137. *Id.*

138. *Rodrigue I*, 714 So. 2d at 205.

139. See LA. REV. STAT. ANN. § 14:20 (West 2003).

140. *Rodrigue I*, 714 So. 2d at 208.

141. *Id.* at 207.

The Louisiana Supreme Court reversed the decision, stating that the defendant's reliance on the domestic violence exception to Article 404 as a means of advancing her claim of self-defense was statutorily permissible.¹⁴⁴ The Louisiana Supreme Court further opined that the district court's requirement that the defendant prove an existing intimate relationship with the decedent was "contrary to the purpose of the statute."¹⁴⁵

A clear understanding of BWS requires that advocates remove themselves from the popular misconception that all battered women will eventually attempt to repair the dysfunctional relationship by responding with lethal violence.¹⁴⁶ Undeniably, the criminal justice system has tainted society's understanding of BWS.¹⁴⁷ In reality, most victims have attempted to end the terror of violence by either leaving the relationship, petitioning the courts for protective orders, calling the police, or seeking refuge in shelters. The women who do resort to using lethal violence against their partners are the ones who are faced with an ongoing attack or the imminent threat of death or serious bodily injury.¹⁴⁸ Further complicating the victim's use of BWS has been the courts' hesitation to include a "domestic violence" exception in the evidence statutes that would strengthen public policy while at the same time shielding victims from further ridicule by juries if they decide—out of fear—not to testify against the batterer.¹⁴⁹

Therefore, women's groups and the various service organizations for domestic violence victims must remind the public that violence is just one of the many responses of the battered woman.¹⁵⁰ Therefore, the battered woman cannot be defined by the actions of a few victims who have accidentally captured media attention.

2. Defining the Battered Woman

The BWS concept relies on the juror's understanding of the psychological aspect of domestic abuse.¹⁵¹ However, before we can grasp an

142. *Id.* at 210. There was one dissenting opinion from the majority decision that became the foundation of the defendant's writ of certiorari to the Louisiana Supreme Court. *Id.* (Fitzsimmons, J., dissenting).

143. *Id.*

144. *Rodrigue II*, 734 So.2d at 612.

145. *Id.*

146. See *Breaking the Control*, *supra* note 121.

147. *Id.*

148. *Id.*

149. See *No-Drop Prosecution*, *supra* note 14, at 213.

150. See *Be Careful What You Wish For*, *supra* note 8, at 258 (stating that victims may "slap a partner or pound on his chest as an expression of outrage or in frustration." not with the intent to do harm to their partner).

151. See *Breaking the Control*, *supra* note 121.

understanding of the “syndrome,” we must also clarify what is meant by the phrase “battered woman.”

Lenore Walker defines the battered woman as any woman 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 any concern for her rights.¹⁵²

Initially, I would agree with Walker’s definition except for the insertion of “repeatedly” as a prerequisite for identifying the abused woman. Walker defines “repeatedly” as involving more than one assault or at least two acute battering incidents.¹⁵³ Hence, the woman who has succumbed to using violence might find it difficult to use BWS as a defense if the psychological abuse she complains of is too subtle according to societal standards (i.e., told to drop her career, childhood friends or have no contact with disrespectful relatives). She may also encounter hardship in advancing this defense if she can only point to one specific incident of severe abuse.¹⁵⁴

Angela Browne’s definition of a battered woman diverts attention away from the “repeated” incident element, but requires that the victim be “struck repeatedly” during any given incident and that the abused woman experience some sort of physical injury or trauma.¹⁵⁵ Walker and Browne both emphasize the importance of cycles in the understanding of domestic abuse between intimate partners.¹⁵⁶ By focusing on the “incidents” that may have precipitated the man’s violent behavior, they are trying to illustrate that abuse follows a predictable pattern.¹⁵⁷ However, the fallacy of promoting an incident-related definition is that the victim will conclude that she—not the batterer—is responsible for the abuse.

Mary Ann Douglas,¹⁵⁸ on the other hand, uses a more inclusive method of defining who is a *battered* woman by deleting the need for the victim to prove physical abuse through a physical injury.¹⁵⁹ Mildred Pagelow¹⁶⁰ incorporates the use of physical and/or psychological abuse in her definition

152. See THE BATTERED WOMAN, *supra* note 83, at 12-54.

153. *Id.* at 203.

154. See generally *Breaking the Control*, *supra* note 121.

155. See ANGELA BROWN, WHEN BATTERED WOMEN KILL 13 (1987).

156. See *id.*; THE BATTERED WOMAN, *supra* note 83.

157. See WHEN BATTERED WOMEN KILL, *supra* note 155; THE BATTERED WOMAN, *supra* note 83.

158. Mary Ann Douglas, *The Battered Woman Syndrome*, in DOMESTIC VIOLENCE ON TRIAL 39 (stating that “[p]hysical abuse is assault that ranges from hitting or slapping at one end of the continuum to homicide at the other . . . [and it] may or may not be accompanied by physical injury and/or by the victim’s attempts to defend themselves”); see also Mildred Pagelow, *Factors Affecting Women’s Decisions to Leave Violent Relationships*, 2 J. FAM. ISSUES 4, 391-414; MILDRED D. PAGELOW, WOMAN-BATTERING: VICTIMS AND THEIR EXPERIENCE 20 (1981) (citing various studies).

159. See LA. REV. STAT. ANN. § 9:361-369 (West 2003) (recognizing the existence of family violence in those instances where one incident of family violence has resulted in serious bodily injury or where there are multiple (a least two) incident of family violence); see also *Hick v. Hicks*, 733 So.2d 1261 (1999).

160. See Pagelow, *supra* note 158.

and mirrors Walker's belief that battering happens in stages or cycles.¹⁶¹ However, unlike the other legal scholars, Pagelow places a great deal of interest on the woman's reaction to violence as a means for determining if the violence will escalate during the relationship.¹⁶² Although all definitions contain indisputable truths about domestic violence, they are also laden with certain dangerous myths that may not be true for all abusive relationships.

The portrait that society considers the epitome of a battered woman is usually one that is hand-painted by the abuser. Lundy Bancroft describes the abuser as a master magician who, through the use of smoke and mirrors, skillfully uses lies and sympathy to divert attention from his actions while placing a huge microscope on his partner's responses to the abuse.¹⁶³ In addition to his deception, the abuser offers an assortment of excuses for his "unintentional" actions that further manipulates his partner into believing that he is the victim and that either she, or perhaps his parents, are the ones accountable for the violence.¹⁶⁴ This particular tactic works well for the abuser because society has such a limited or restricted definition of what actually constitutes domestic violence.

Therefore, the woman's appearance or the number of times she has been beaten by her intimate partner cannot be the determining factor in defining who is a battered woman. Rather, the battered woman should be defined by her reaction to the violence. The modification of her behavior when her partner walks in the room can be an indication that she has been abused even though he has not publicly beaten her. The woman could be defined as a battered woman by the amount of her control she has relinquished to him in common situations (i.e., what she should eat, what she should wear, and when she can visit her friends and family). Thus, the definition of a battered woman should focus on the woman's reaction to her partner and not the results from violence.

3. Applying the Battered Woman's Syndrome

BWS has been credited with bringing domestic violence to the forefront of legislative and judicial discussions, and I must commend the feminist movement for promoting a theory that educates and sensitizes state actors in the criminal justice system to the plight of the emotionally scarred victim. However, I must caution expert witnesses and the attorneys who seek their expertise to no longer stereotype the victims of domestic violence by characterizing them as dysfunctional women with suicidal or murderous intentions.

161. *Id.*

162. *Id.*

163. See ANGRY MEN, *supra* note 91, at 26.

164. *Id.*

Defense attorneys who hope to sway the jury into acquitting victims of abuse who commit murder should present their clients as independent women with unique personalities, interests and goals—not just carbon copies of the defendant discussed earlier in the *Rodrique* case. The defense’s expert should not compel the victim to relinquish her individuality, self-esteem, and self-respect in order to educate the jury about the destructive psychological aspects of domestic violence. Rather, the expert’s testimony and definition of a battered woman should be careful to avoid concepts, hypotheses, or definitions that depict her as either incompetent, uneducated, or too emotionally and financially dependent to make sound, informed decisions for her own safety. Experts should also avoid portraying battered women as opportunists, looking to have two bites from the same proverbial apple.

Scholars have recently embarked on a symptom of domestic violence that is commonly overlooked when discussing the plight of the abused woman: her inability to protect herself against the batterer’s violence. Although this trait is commonly categorized as a form of learned helplessness, it can also explain her willingness to forfeit punishment for her abuser in exchange for being left alone.

For example, the defendant/wife in *State v. Sepulvado*,¹⁶⁵ was charged with first-degree murder¹⁶⁶ following the death of her six-year old son.¹⁶⁷ The autopsy reflected that the young boy had substantial bruises and multiple head wounds that contributed to his death.¹⁶⁸ A forensic pathologist testified that the defendant’s son died of heart and lung failure after receiving severe third-degree burns.¹⁶⁹ Defendant entered a plea of not guilty and not guilty by reason of insanity.¹⁷⁰ However, the jury found her guilty of manslaughter and the district court sentenced her to twenty-one years at hard labor.¹⁷¹

The investigation revealed that the defendant and her husband, Chris Sepulvado (Chris), had been dating for sometime before Chris’ violent behavior began to surface.¹⁷² At the time she met Chris, the defendant had already physically separated from her ex-husband, and had custody of her four-year old son, Wesley.¹⁷³ The defendant left Chris shortly after he started beating her.¹⁷⁴ Despite objections from her family members, the defendant returned to Chris and continued dating him although she endured frequent “beatings” during their two-year relationship.¹⁷⁵ The defendant left

165. 655 So. 2d 623 (La. Ct. App. 1995).

166. See LA. REV. STAT. ANN. § 14:30 (West Supp. 2003).

167. See *Sepulvado*, 655 So. 2d at 624.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

again, but on her third return, she took her son¹⁷⁶ with her and continued dating Chris until they married in March 1992.¹⁷⁷

Chris continued beating the defendant before the marriage and soon started abusing Wesley¹⁷⁸ instead of the defendant.¹⁷⁹ When Wesley defecated in his pants, Chris threatened to hang the child and “tied one end of a rope around a ceiling fan and the other end around Wesley’s neck.”¹⁸⁰ Chris then ordered Wesley to “stand on a chair, hold up one leg and count,” all while the defendant was present.¹⁸¹ The second time Wesley defecated in his pants, he was beaten with a belt, and “[o]n the third occasion, [Chris] shoved Wesley’s head into a toilet and flushed.”¹⁸² Following this incident, Chris instructed the defendant not to feed Wesley for the entire day.¹⁸³ The defendant also testified that she, too, had abused Wesley by “hitting him, pulling his hair, and striking him in the head several times.”¹⁸⁴ That evening Wesley was forced to sleep on a small trunk.¹⁸⁵

When Wesley defecated in his pants for the third time, Chris kicked him from the bedroom to the bathroom and threatened to place him in a tub full of hot water.¹⁸⁶ Wesley refused to get in the tub, but suddenly the defendant stated that she heard a “bop, splash, and nothing.”¹⁸⁷ Later that evening, they both attempted to feed the child, but Wesley began to vomit and lost consciousness.¹⁸⁸ Three hours later, the couple rushed Wesley to the hospital, but the emergency room physicians pronounced the child’s death after they were unable to resuscitate him.¹⁸⁹

On appeal, the defendant contested her conviction by offering the testimony of a psychiatrist who diagnosed her as suffering from induced psychotic reaction, abuse psychosis, and battered woman syndrome.¹⁹⁰ A psychiatric social worker, who began seeing the defendant on a weekly basis following her son’s death, asserted that the defendant also suffered from

176. See generally Whitcomb, *supra* note 56, at 32 (stating that the mother’s interests and her children’s interest are not always compatible during the abusive relationship).

177. *Sepulvado*, 655 So. 2d at 624.

178. See generally *Domestic Violence and Title III*, *supra* note 34, at 3 (arguing that the “first family violence agencies in the late nineteenth century focused mainly on child abuse” even though such violence has been directed to both women and children).

179. *Sepulvado*, 655 So. 2d at 625.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.* at 626.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at 627.

brain damage which affected her cognitive ability to determine right from wrong.¹⁹¹ The defense's final expert witness, a psychologist and the president of a family violence organization, "testified that the defendant suffered from 'post traumatic stress disorder' (PTSD)¹⁹² and 'dependent personality disorder.'"¹⁹³

Contrary to the defense's expert witnesses, the state's experts testified that because Chris¹⁹⁴ did not have a psychotic dominant personality, the defense's psychiatrist was incorrect in diagnosing the defendant with induced psychotic reaction.¹⁹⁵ The state refuted the testimony of the psychiatric social worker by indicating that she did not have a medical degree and was not qualified to diagnose psychiatric illnesses.¹⁹⁶ In addition, the psychologist's testimony that the defendant suffered from PTSD was discredited by the fact that he, like the psychiatric social worker, was not a medical doctor.¹⁹⁷ More specifically, the psychologist's diagnosis resulted solely from information obtained from a biased source—the defendant.¹⁹⁸ The state's experts also suggested that BWS was not applicable to this defendant since her decision *not* to protect¹⁹⁹ her son from Chris signified her ability to make decisions that favored her.²⁰⁰

Accordingly, the appellate court rejected the defendant's insanity defense and affirmed her conviction and sentence.²⁰¹ The appellate court also noted that the defendant did not have a history of mental illness, was not taking any psychiatric medication, and had not been hospitalized for any psychiatric disorders.²⁰²

Societal awareness of BWS is not surprising, but determining how it should be applied in situations where abuse extends to third parties as in the *Sepulvado* case is especially burdensome. Therefore, offering expert testimony that promotes a spirit of helplessness rather than one of self-preservation can cause the jury to further stereotype the victim and distort the underlying theory of BWS. Usually, battered women are caught in the position of defending their truthfulness about the abuse because BWS experts depict battered women as incapable of telling the truth.²⁰³

191. *Id.*

192. BWS is commonly referred to as a sub-category of Post Traumatic Stress Disorder because it presents a recognized pattern of psychological systems. Walker, *supra* note 90, at 136.

193. *Sepulvado*, 655 So. 2d at 627.

194. Incidentally, Chris Sepulvado was tried separately, convicted of first-degree murder and sentenced to death. *See id.* at 624.

195. *Id.* at 627-28.

196. *Id.* at 627.

197. *Id.*

198. *Id.*

199. *See Jacobs, supra* note 81, at 461 (stating that mothers who fail to protect their children from their batterer have usually activated the self-preservation mechanism in their psyche).

200. *Id.*

201. *Id.* at 628.

202. *Id.* at 629.

203. *See Rebecca D. Cornia, Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women*, 8 UCLA WOMEN'S L.J. 99, 111 (1997).

Presenting BWS as a defense when the abusive partner is killed during the respite phase of the battering relationship has been another complication. This area of concern has prompted extensive legal debate.²⁰⁴ The rules of evidence do not seem to embrace the experiences of the battered woman in such situations because the evidence statutes favor the male's perspective of what is or is not circumstantial proof of an act or a defense to such act.²⁰⁵ If the jury (or judge) is intently consumed with identifying a specific incident as the catalyst for the victim's use of force, then the trier of fact may conclude that the BWS theory does not apply. Differentiating between reactionary violence from the female victim towards her male batterer, versus violence from a "female" aggressor disguised as a victim continues to baffle prosecutors as well as juries.²⁰⁶

Persistent skeptics of BWS must remember that a victim's response to the battering relationship results from a collection of specific characteristics and effects on the battered woman rather than a reaction to an individualized incident.²⁰⁷ Although only a small portion of women are actually enticed to use violence, these female defendants may not be able to persuade a jury to acquit them if they employed deadly force to ward off a relatively minor incident.²⁰⁸ Some feminist legal scholars continue to infer that women of color who attempt to proffer a BWS defense will bear a heavier burden²⁰⁹ than their white counterparts so long as the general public is unfamiliar with the complexities of domestic violence.

204. See Margulies, *supra* note 95; see also *Domestic Violence and Title III*, *supra* note 34, at 11. (discussing the inadequacy of criminal law in domestic violence cases because the victim's version of self-defense is uniquely different from traditional views).

205. This is not true in Louisiana. See LA. CODE EVID. ANN. art. 404 (West 2003); see also *State v. Rodrigue*, 714 So. 2d 203, 208-09 (La. Ct. App. 1998) (acknowledging the "domestic violence exception" in the evidence code relative to "Prior Crimes and Character Evidence"), *rev'd*, 734 So. 2d 608 (1999).

206. See Melissa Hooper, *When Domestic Violence Diversion Is No Longer An Option: What to Do with the Female Offender*, 11 BERKELEY WOMEN'S L.J. 168, 174-75 (1996).

207. See *In re J.W.*, 779 So. 2d 961 (La. Ct. App. 2001). In that case, the Office of Community Services removed the mother's three children following the death of her two-year old daughter. *Id.* at 963. The two-year old died as a result of a skull fracture and several other injuries from a severe beating, which the coroner indicated was the result of battered child syndrome. *Id.* at 963. Evidence indicated that the mother's boyfriend was the person responsible for beating the child. *Id.* Witnesses testified that the mother was aware that the boyfriend was beating her children, but she continued leaving her children in his care. *Id.* 963-64. The mother's therapist informed the court that the mother was overly passive and would not defend herself or her children against abusive men. *Id.* Witnesses also stated that after the child's death, the mother allowed a man with an extensive criminal history to have close and unsupervised contact with her other children. *Id.* at 963-64.

208. See *State v. Murphy*, 600 So. 2d 769, 770-71 (La. Ct. App. 1992) (wherein the defendant pled guilty to manslaughter and was given a fifteen-year sentence after stabbing her drunk husband twice after he told her "to get out").

209. See Jacobs, note 81, at 464-66.

4. The Batterer's Profile

Another common misconception among domestic violence researchers and counselors has surrounded the batterer's profile.²¹⁰ Ask anyone unfamiliar with domestic violence for an opinion about the profile of a batterer and, more than likely, the answer will be that all abusers are males who have received little or no formal education, are unemployed, unattractive, substance abusers, and persons who hate all women.

Although there is a temptation to agree with this description of domestic abusers, I cannot consent to such a biased description because most batterers are not unlike many of the men we know and love. The non-batterers ability to deal with stress and control is what distinguishes that him from the batterer.²¹¹ Like the drunk driver who believes that he can control his vehicle that is going off the road, the domestic abuser is under the mistaken assumption that he can control his partner. He feels that since he is the undisputed "the king of the castle," he can use *whatever* disciplinary measure he chooses to reprimand anyone who defies him.

As a former advocate with the Battered Woman's Program, I can attest to the fact that each batterer has his own unique personality. They come from all racial and socioeconomic backgrounds. Some batterers are unemployed while some are blue-collar workers and still others have prestigious careers. They are our ministers, our schoolteachers, and our physicians. They are even our elected judicial officials. Actually, there is really no magic formula to identifying a batterer because they generally try to camouflage themselves into our communities to avoid detection. I have also discovered that batterers who are summoned to court because of the victim's petition for a protective order has two general reactions: they are either overly friendly or intimidating.

After I completed one month of training with the Battered Woman's Program, I began representing victims in family court. One of the defendants in my domestic violence cases was man who stood 6'4" tall and weighed at least 300 pounds. However, his ex-girlfriend was only 5'5" tall and weighed no more than 120 pounds. Despite his height and weight, this defendant was very friendly. He politely greeted me when he entered the conference room. He listened attentively and responded to my questions in a courteous manner. He agreed not to contact the petitioner at home or at work. He also agreed not to solicit others to contact her on his behalf. He agreed to every aspect of the petition until—you knew it was coming—I told him that he would have to pay court costs.

From that moment, his entire attitude changed. He cursed the court advocate, the sheriff, the petitioner and me. He tore up the petition in my

210. This is especially true for same-sex relationships because society is not likely to accept a victim in a homosexual relationship as a victim of domestic violence because it perceives domestic violence only among heterosexual couples. In addition, the batterers in homosexual relationship use society's homophobic attitudes as a method of controlling their partner's desire to seek help from law enforcement, doctors, or social workers. See Duthu, *supra* note 69, at 28-32.

211. See *ANGRY MEN*, *supra* note 91, at 59-60.

face and told me that a protective order meant nothing to him. All I could do was imagine how the petitioner felt when he became violent at home. Initially, all batterers appear generous, friendly and cordial; but when their violence is exposed, they become insulting, belligerent, threatening, and violent.²¹²

Later that month, I encountered another defendant who, unlike the first defendant, was arrogant from the very moment he entered the room. He strolled into the conference room with a pompous grin on his face. He took a seat and looked at me as though I had missed my morning shower. He talked about how much money he was losing because he had to come to court when I asked him about his partner's injuries. Although he agreed not to contact the petitioner, he refused to pay interim child support to the petitioner for *their* four children. While I was explaining the court's procedure for handling protective orders, his cellular telephone rung. He stood up, answered the phone and immediately left the room; he did not return. The district court awarded the victim the protective order, but she was not relieved since she did not know where the defendant went or why he was so angry with me.

Battered women generally characterize their relationships as completely or mostly dominated by their male partners, whereas non-battered women viewed themselves as having relationship power.²¹³ One principal element that is usually overlooked when evaluating differences between battered and non-battered women is that once the abuse is made known to others, the abuser will try to confuse the victim by getting her to believe that she is the dominant mate.²¹⁴ He tells her that no one will ever believe her stories of abuse and no one will ever help because she is, and always will be, his.²¹⁵

As advocates, we must resurrect the victim's self-esteem, plant the seed of independence, and nurture her autonomy so she can feel confident about making decisions for her safety.²¹⁶ Above all, persons entrusted to assist victims should not succumb to the abuser's charming persona, friendly demeanor, or his desire to minimize the seriousness of *his* abuse.²¹⁷ This holds true regardless of the status, prestige, social clout, or occupation of her abuser.

212. See *id.* at 49-75.

213. See James A. Forte et al., *Asymmetrical Role-Taking: Comparing Battered and Nonbattered Women*, 41 SOC. WORK 5, 59 (1996); see also Daniel R. Clow, et al., *Treatment for Spouse-Abusive Males*, in VIOLENCE HITS HOMES 66, 70-72.

214. See Forte, *supra* note 213.

215. See *id.*

216. "Since domestic violence arrived at the forefront of many feminists' concerns, scholars have increasingly recognized that one of the issues that law and scholarship must address is the coercive and controlling nature of intimate abuse." See Seldon, *supra* note 36, at 9.

217. See ANGRY MEN, *supra* note 91, at 69, 308-10.

For instance, in *Taylor v. New Orleans Police Department*,²¹⁸ a New Orleans police officer was terminated after he broke into the home of his estranged wife and began accusing her of having an affair.²¹⁹ Officer Glenn Taylor then attempted to strangle her while dragging her around the house.²²⁰ His wife became so devastated by the altercation that she began to urinate on herself.²²¹ When Officer Taylor finally left the residence, his wife called 911 and reported the incident.²²² Three of Taylor's fellow officers responded to the distress call, and described Taylor's wife as severely frightened with several visible red marks on her neck.²²³

As expected, Officer Taylor totally denied the altercation ever happened.²²⁴ In fact, the only contact Officer Taylor admitted to having with his wife on the morning of the incident was a brief "telephone" call to her about some uniform accessories he was missing. (i.e., badge, tag, and pens).²²⁵

Following the investigation, the Appointing Authority, the administrative arm of the New Orleans Police Department, terminated Officer Taylor based on the wife's domestic violence complaint and upon Officer Taylor's untruthfulness during the investigation.²²⁶ Officer Taylor appealed his case to the Civil Service Commission, which granted Taylor's appeal and reinstated him to the police force.²²⁷ The Commission concluded that since Taylor's wife did not testify²²⁸ against Taylor concerning the complaint, the testimony of the three responding officers regarding the wife's demeanor and physical appearance was hearsay and thus inadmissible.²²⁹

Fortunately, the appellate court reversed the Commission's decision, stating that hearsay testimony was both admissible and reliable since the testimony was from police officers.²³⁰ The appellate court then concluded by stating: "[T]he public puts its trust in the police department as a guardian of its safety, and it is essential that the appointing authority be allowed to

218. 804 So. 2d 769 (La. Ct. App. 2001).

219. *Id.* at 771.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.* at 772.

227. *Id.*

228. See generally Linda G. Mills, *Intuition and Insight: A New Job Description for the Battered Woman's Prosecutor and Other More Modest Proposals*, 7 UCLA WOMEN'S L.J. 183 (1997) [hereinafter *Intuition and Insight*] (noting that nurturing and empowering victims should be the advocate's first method of prevention, otherwise domestic violence patterns will continue and the victim will be compelled to do something that she may not be ready to do).

229. See *Taylor*, 804 So. 2d at 773.

230. *Id.*

establish and enforce appropriate standards of conduct for its employees [who are] sworn to uphold that trust.”²³¹

Incidents like the *Taylor* case make it imperative that we educate law enforcement officials to recognize domestic violence, to understand the chaos that it causes to victims, and to be impartial when evaluating the substance of the complaint. Officers must also reject the legitimacy of the “this is a private matter” speech in order to uphold the trust that society has placed in them.

Police departments across this country are still debating whether to interfere in domestic violence situations since the “home” is still considered a “no-fly zone.” Further complicating this matter is the fact that if there does not exist sufficient probable cause to intrude into this sacred area, police departments run the risk of exposing itself to municipal liability for the infringement.²³² A police officer’s decision to interfere in a domestic violence or sexual assault case must not be seen as a violation of the couple’s constitutional rights²³³—the rights to life and liberty or the right to bodily integrity—but as a sign of society’s awareness of female victimization.

Understanding batterers requires a flexible assessment of their behavior. They do not conform to a specific profile. They are relatively unnoticeable in our neighborhoods, churches, and schools. They feed on our reluctance to help the victim and they will not change their behavior just because it is against the law. Therefore, it will take more than awareness of the problem to defeat this grave assault on women.

A public education approach to domestic violence, coupled with punishment that demonstrates that there are consequences for violent behavior, can be effective both symbolically and practically.²³⁴ Criminal sanctions have been used to deter unacceptable behavior, but some scholars still question their effectiveness on the low-income population.²³⁵ Until we accept that batterers are a menace to the harmony of “all” intimate relationships, our communities will always be plagued with family violence.²³⁶

231. *Id.* at 776 (citing *Brooks v. Dep’t of Police*, 787 So. 2d 1061, 1068-69 (La. Ct. App. 2001)).

232. *See Affirmative Duty to Protect*, *supra* note 62, at 52.

233. *Id.* at 56.

234. *See No Right to Choose*, *supra* note 67, at 1886-910; *see also Peled et al.*, *supra* note 46, at 9.

235. LAWRENCE W. SHERMAN ET AL., *POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS* 30 (1992).

236. Society is less likely to accept the fact that a woman’s husband or intimate partner has abused them if it also has to accept the fact that her abuser is someone it greatly respects, sincerely loves or holds in high esteem. *See Interview with Sarah Buel*, *supra* note 49.

a. *Abuse from the Atypical Batterer*

Let's consider the story of Jessica,²³⁷ a former victim of domestic violence, who after several hours of therapy, counseling, and numerous court appearances has become a survivor of domestic violence.²³⁸

Jessica is a registered nurse in a rural Louisiana city. She was married to David, a well-respected orthopedic surgeon. His accomplishments had won him high recognition and an enormous amount of prestige among his colleagues, friends, and family.²³⁹

Unfortunately, Jessica and her two small children also knew that this famous physician was a functional alcoholic who had physically and emotionally abused them for over five years. During her ten-year marriage, Jessica had both of her arms broken, several bruised ribs, six black eyes, and two herniated discs—all at the hands of this well-respected physician.²⁴⁰ On many occasions, Jessica's two sons—ages six and eight—were present to see these altercations, which seemed to take place anytime and anywhere.

Somehow, Jessica convinced herself that her marital problems and Derrick's drinking problem were the result of his stressful and demanding occupation.²⁴¹ Jessica would regularly take her two children to her mother's house whenever Derrick attacked her. However, Derrick would always seem to persuade Jessica to return home by making lofty promises that he would join Alcoholics Anonymous and attend marriage counseling.²⁴² Once Jessica decided to return home, Derrick would shower her and the children with expensive gifts and take them on expensive vacations to some of the

237. The stories depicted in this Article are common to many victims of domestic violence. Therefore, as a courtesy to my former clients and their counselors, I will only refer to the victims and their batterers by fictitious names.

238. See generally Jacqueline St. Joan, *Sex, Sense, and Sensibility: Trespassing Into the Culture of Domestic Abuse*, 20 HARV. WOMEN'S L.J. 263 (1997) (arguing that often, the stories of domestic violence hold the key to changing the insensitive and superficial understanding most legislators, prosecutors, and judges have towards how the victims and perpetrators of domestic violence behave and think).

239. See Asmus et al., *supra* note 106, at 159 (indicating that one of the critical elements missing from historic views of domestic abuse was a comprehensive understanding of the inter-relationships between physical and sexual violence and male power and control in domestic relationships).

240. "[M]ental health costs related to abuse of women must be staggering [when one considers that] . . . [t]he effects of emotional abuse [or psychological effects of any abuse] are even more severe than the effects of physical abuse." Joan Zorza, *Women Battering High Costs and The State of the Law*, in 28 CLEARING HOUSE REVIEW 383, 384 (1994).

241. Although the "[v]ictims, family members and professionals are clear that violence perpetrated by strangers is wrong and dangerous, yet they seem to adopt a double standard when that same level of abuse is inflicted by an intimate partner;" thus, creating the victim's attitude of disbelief about her own degree of harm. See *Fifty Obstacles*, *supra* note 49; see also Interview with Ayn Stehr, Director of the Capital Area Family Violence Intervention Center, Inc., and legal consultant to the Louisiana Protective Order Registry, in Baton Rouge, Louisiana.

242. "[Batterers] tend to deny and minimize their culpability for mistreatment and feel little responsibility to change it. They often agree to enter treatment only when their partner has threatened to leave the relationship." Brian Jory, et al., *Intimate Justice: Confronting Issues of Accountability, Respect, and Freedom in Treatment For Abuse and Violence*, 23 J. MARITAL & FAM. THERAPY 399 (1997) (citing R. Almeda, et al., *Violence in the Lives of the Racially and Sexually Different: A Public and Private Dilemma*, 5 J. FEMINIST FAM. THERAPY 99, 99-126 (1994)).

world's most exotic and romantic countries. Their utopias, however, were always short-lived.

One day, Derrick went to the hospital where Jessica worked and started yelling at her about food that she had thrown away the night before. Jessica noticed that her husband reeked of alcohol, but she tried to calm him down in order to prevent her co-workers and her patients from panicking. Despite her efforts, Jessica was pushed into a vacant closet, and thrown face first against the wall. Derrick then took the stethoscope that Jessica was wearing around her neck and began choking her. Derrick twisted the stethoscope harder and harder until Jessica passed out onto the floor. Luckily, Jessica's co-workers called hospital security when Jessica was thrown into the closet.²⁴³ Derrick was later arrested, charged with assault and battery,²⁴⁴ and ultimately released on his own recognizance after his attorney had a brief side bar with the judge and the district attorney during the bail hearing.

On the advice of her co-workers, Jessica decided to file a temporary restraining order against her husband.²⁴⁵ In her petition, Jessica sought temporary alimony, occupancy of the marital home, custody of the two minor children and child support. She also requested that Derrick be evicted from their seven-bedroom home prior to the hearing on the restraining order. The judge presiding over Jessica's petition agreed to have Derrick evicted, and scheduled the other matters for a hearing—ten days later.²⁴⁶

Derrick was escorted to the house by the local sheriffs and told to retrieve only his personal belongings.²⁴⁷ He was instructed not to talk to the victims—Jessica and the children. Despite the warnings, Derrick yelled that he was going to get Jessica fired from her job, he was not going to pay more than one thousand dollars a month in child support and he was going to delete her name from all of their checking and savings accounts.²⁴⁸ The young children looked in horror as their father was being pushed out of the front door by the sheriffs while yelling threats to their mother.

243. Lately, many employers who learn of domestic violence among its female employees have become more involved with tackling this issue in order "to keep talent, reduce absenteeism and avoid liability." Pereira, *supra* note 73; see also White, *supra* note 73.

244. See generally *State v. Hernandez*, 686 So.2d 92 (La. Ct. App. 1996) (defendant was convicted of two counts of simple battery and one count of second-degree battery when he struck his wife and two minor daughters with an extension cord because they did not leave the bedroom where he was).

245. See LA. REV. STAT. ANN. § 46:2135 (West 2003).

246. See generally *id.* § 46:2135(B).

247. See generally *id.* § 46:2135(C).

248. "Most violent men, perceived themselves . . . as having the right to protect and maintain their dyadic life. They feel entitled as well as obligated to respond to any perceived threat as a potential breach of the fine balance in their dyadic life." Zeevv Winstok, et al., *Structure and Dynamics of Escalation From Batterer's Perspective*, FAMILIES IN SOCIETY (Mar.-Apr. 2002).

Ten days²⁴⁹ later, Jessica, waiting in the courthouse for her attorney to arrive, continued to hear her husband's threats ringing in her ears. Jessica started to consider what the impact of this protective order would do to her children, her family, her career, and her marriage. She realized that enforcing this protective order against Derrick would not only anger him, but also destroy her career.²⁵⁰ Additionally, the three thousand dollar monthly mortgage, their children's tuition and other school expenses would completely exhaust her paycheck and even her small savings account.²⁵¹ She also knew that Derrick's attorney would not agree to give her anything more than what Derrick said he would give when the sheriffs were escorting him out of the house.²⁵²

Finally, Jessica's attorney arrived to the courthouse. He appeared rather young to be representing her against Derrick's high-priced lawyer. Nevertheless, she went into the semi-private conference room adjacent to the courtroom and her attorney began telling her what to expect during the hearing.²⁵³ She listened attentively, waiting for a moment to talk, but he did not allow her to voice her regret²⁵⁴ for filing the petition. Unfortunately, when he did finish speaking, the sheriff called their case and both of them ran into the courtroom.

As she approached the plaintiff's table, Jessica looked at her husband and suddenly realized that he had been a good father to their children and a great provider.²⁵⁵ She then felt uncomfortable dragging him into court to

249. See generally LA. REV. STAT. ANN. § 46: 2135(D) (West 2003).

250. A victim is already cognizant that the batterer is willing to carry out his threats; therefore a wise victim must seriously contemplate the batterer's promises of harming her and the children if she seeks help or attempts to flee the abusive home. See generally *Fifty Obstacles*, *supra* note 49, at 20.

251. There are numerous explanations that have been discovered to explain why a battered woman decides to stay in her abusive relationship. Psychiatrists and social workers have indicated that patriarchal notions regarding gender roles, economic dependency on the male partner, and lack of alternative housing have all contributed in some way or another to the entrapment of battered women. See generally THE VIOLENCE OF MEN, *supra* note 24.

252. See generally JESSICA PEARSON & NANCY THOENNES, DIVORCE MEDIATION: REFLECTIONS ON A DECADE OF RESEARCH IN MEDIATION RESEARCH: THE PROCESS AND EFFECTIVENESS OF THIRD PARTY INTERVENTION (1989); Andree G. Gagnon, *Ending Mandatory Mediation for Battered Women*, 15 HARV. WOMEN'S L.J. 272, 273 (1992) (stating that in the past, battered women have been encouraged to seek mediation as a way to resolve domestic abuse and avoid public humiliation; but, studies have shown that "if the mediator does not condemn the behavior" or if abuse contaminates the mediation process, then the batterer believes "that his behavior is acceptable" and the battered woman is again disempowered); Calaf, *supra* note 73, at 171 (reneging on promises to provide child care is a frequent tactic used by batterer's to sway the victim from prosecuting her petition for divorce or protection).

253. See *No Right To Choose*, *supra* note 67, at 1891 (arguing that prosecutors should never let the victim's level of cooperation be the determining factor in their decision to prosecute).

254. Teri Jackson, *Lessons Learned From a Domestic Violence Prosecutor*, PROSECUTOR'S BRIEF, at 23 (1990) (commenting that prosecutors should always view the victim of domestic violence as a potential liability to the case—especially when there is a reasonable probability that the victim may recant her story or continue having contact with the defendant).

255. See generally *Intuition and Insight*, *supra* note 228, at 196-97 (arguing that advocates "must become aware of the special emotional issues battered women are likely to face . . . because battered women enter the system particularly vulnerable and shattered, and because the perpetrators often are

broadcast their personal problems before a room full of strangers. Her attorney stood to make his appearance, but before he could fully state his name on the record, Jessica grabbed his arm and told him that she did not want to proceed with her petition. Her attorney gave her a blank stare and looked at the judge and the opposing attorney in total disbelief.²⁵⁶

When the judge discovered the reason for the commotion, he began to chastise Jessica for wasting the court's time with her frivolous petition. The judge did not inquire into why she decided to dismiss her petition and he exhibited even less concern over the allegations she made in her petition.²⁵⁷ He just continued to belittle her by pointing his gavel at her and telling her that she is the reason why police officers are reluctant to get involved in domestic abuse cases.²⁵⁸

Consequently, he ordered her to pay court costs and attorney's fees as a penalty for her decision. When Jessica agreed to pay the additional costs, the judge let out a deep breath and dismissed the petition. Unbeknownst to him, the judge and those present in the courtroom had just introduced Jessica to a symptom of domestic abuse that is normally overlooked by many state actors, (i.e., judges, attorneys and court advocates) in family courts—separation assault.²⁵⁹

Nothing is more disheartening to a victim than a judge who is unsympathetic or condescending towards her while in the presence of the batterer and other observers.²⁶⁰ Some judges do not appreciate that violence is a learned control method that society—not the victim—has reinforced.²⁶¹ The pain of domestic violence can be further realized when a judge, upon hearing the victim's testimony and seeing the damaging evidence against the batterer, arbitrarily decides to give the abuser a *strong* verbal admonition

inextricably intertwined in most, if not all, aspect of their lives); Sarah Gill, *Dismantling Gender and Race Stereotypes: Using Education to Prevent Date Rape*, 7 UCLA WOMEN'S L.J. 27, 30-31 (1996).

256. "The portrait of battered women as pathologically weak—the court's version of what feminists have told them—therefore holds particular dangers for battered women with children." See *Legal Images*, *supra* note 113, at 4.

257. See generally Candace J. Heisler, *Evidence and Other Information Sources in Domestic Violence Cases*, PROSECUTOR'S BRIEF, Summer 1990, at 24-26 (proposing that some prosecutors believe that the most successful domestic violence cases are the ones where prosecutor's case does not totally depend upon the victim's version of the incident).

258. *Id.*; see also *Killing Her Softly*, *supra* note 38, at 597-98.

259. Mahoney depicts separation assault as the dangers a battered woman faces when she ultimately decides to leave a violent relationship. See *Legal Images*, *supra* note 113, at 6. It is a cultural name intended to explain "the particular assault on a woman's body and volition that seeks to block her from leaving." *Id.* It also encompasses the retaliation she endures when she is determined to isolate herself from her abuser. *Id.*; see also Selden, *supra* note 36.

260. See Ellen K. Solender, *Report on Miscommunication Problems Between the Family Courts and Domestic Violence Victims*, 19 WOMEN'S RTS. L. REP. 155, 156 (1998) (explaining that "judges simply do not believe that all the violence is unprovoked").

261. *Id.* at 156.

instead of imposing serious sanctions.²⁶²

So what caused such a miscarriage of justice for Jessica? Was it her attorney who seemed to have formulated his opinion about how the case should be handled before consulting with his client? Or, was it the judge, who placed Jessica under the spotlight of shame and embarrassment by forcing her to understand that she is the reason police officers are overworked and the judicial system is ineffective? Society would argue that Jessica's situation is largely due to her own indecisiveness and her inability to leave her abuser. According to society, she is the culprit—not her husband. She is considered weak, helpless, and often viewed as mentally unstable.

Many psychologists, social workers, and abuse counselors believe that it was a combination of all of the above. Jessica probably could have benefited from counseling before making a unilateral decision to dismiss her request for a protective order. Becoming so consumed with her financial instability, she unconsciously trivialized the emotional and physical abuse from her husband. Was it the most appropriate choice for Jessica? Maybe, but no one truly knows what was best for her since Jessica was not told that she had other alternatives besides staying or leaving.²⁶³

Jessica's attorney may have been more concerned with his reputation before the court than his client's financial and emotional safety. Obviously, the judge's attention was drawn to wasted financial resources that Jessica consumed to get the protective order. In dismissing her petition, Jessica was able to salvage her marriage, but at the cost of compromising her ability to put an end to the abuse. She again made herself vulnerable and easily manipulated by her spouse's uncanny determination to control and dominate her actions.

This time, the batterer and the legal system manipulated Jessica and minimized the extent of her abuse. This is why seminars and conferences that are offered to social workers, counselors, and family law practitioners should stress the importance of preparing a plan of safety²⁶⁴ with the victim. Above all, advice that starts with "what I would do if I were you" should be strictly prohibited. Advocates must acknowledge the abusers' constant use of manipulation, and recognize that sometimes others promote abuse towards victims.²⁶⁵

262. See *ANGRY MEN*, *supra* note 91, at 306.

263. See generally Peled, *supra* note 46, at 13 ("Social workers should attempt to understand women's subjective perceptions and choices without regard for the values and stereotypes of others; these values may be benign, but are of little practical use and often in contradiction to women's sense of autonomy and self-determination."); *Killing Her Softly*, *supra* note 38.

264. Peled, *supra* note 46, at 13.

265. In *State v. Schultz*, 817 So. 2d 202, 206 (La. Ct. App. 2002), defendant was charged with three counts of cruelty to a juvenile after spraying pepper spray in her children's eyes. During trial, the defendant testified that she was severely abused by her husband and children during marriage. *Id.* She indicated that prior to her divorce from her husband (who was a physician), "she had twelve pregnancies, seven children, four miscarriages and one stillborn child." *Id.* Her husband would regularly abuse her in her children's presence, and her children would laugh at her. *Id.* She even testified that her children would spit on her, threaten her with knives, and choked her. *Id.* On the

II. SOLUTIONS TO DOMESTIC VIOLENCE

A. Civil Protection Orders

Louisiana has implemented a means to obtain civil protection orders (CPO) as a mechanism to offer immediate relief to the victims of domestic violence.²⁶⁶ In 1979, the Louisiana legislature acknowledged the existence of violence as a social epidemic and amended Title 46 of the Louisiana Revised Statutes to include a new chapter entitled “Protection from Family Violence Act.”²⁶⁷

This amendment consisted of Louisiana Revised Statute sections 46:2121 through 46:2125.²⁶⁸ The legislators who authored this piece of legislation realized that the reaction of state government (i.e., law enforcement) to domestic violence was untimely, apathetic,²⁶⁹ discriminatory, and in desperate need of a shot in the arm. After approving the amendment, the Louisiana legislature earmarked certain funds to the Department of Health and Human Resources to establish services specifically tailored to remedy issues relative to marital and family violence.²⁷⁰

The same year that Title 46 was amended, the legislature repealed Article 2404 of the Louisiana Civil Code, the state’s “head and master” statute.²⁷¹ The legislature’s decision to repeal this statute came as a result of the Fifth Circuit’s decision in *Kirchberg v. Feenstra*.²⁷² In *Kirchberg*, the wife contested the execution of a mortgage agreement created over the community home.²⁷³ The Fifth Circuit opined that the agreement was void because Article 2404 was unconstitutional.²⁷⁴ The court further stated that Article 2404 “clearly discriminates against women as managers or co-managers” of the community estate.²⁷⁵ The reviewing court also ruled that

date of the incident, she stated that she was merely defending herself against her abusive children.
Id.

266. LA. REV. STAT. ANN. § 46.2121–.2137 (West 2002).

267. *See* 1979 LA. ACT 746 § 1.

268. *See id.*

269. “Congress is doing its part by enacting legislation like the VAWA I. However, the judiciary and law enforcement are dealing with domestic violence inadequately. They still hold the view that families should not be interfered with by the state.” Acikalin, *supra* note 21, at 1060.

270. *Id.*

271. This statute authorized the husband, as head and master of the marriage, to alienate and distribute community assets without his spouse’s prior approval. *See* LA. CIV. CODE ANN. art. 2404 (West 1971). Article 2346 replaced Article 2404 effective on January 1, 1980. *See* LA. CIVIL CODE ANN. Art. 2325-2376 (West 1979).

272. 609 F.2d 727 (5th Cir. 1979).

273. *Id.* at 729-30.

274. *Id.* at 734.

275. *Id.*

the State of Louisiana failed to articulate a plausible reason why Louisiana law would place certain burdens on the wife being a manager of the community assets and not to place those burdens on the husband.²⁷⁶ I am certain that the Fifth Circuit would not have added this statement to its opinion if it knew that the Louisiana legislature formerly repealed Article 2404, with an effective date of January 1, 1980.²⁷⁷

As the issue of domestic violence began to take center stage in the media, the citizens of Louisiana suddenly realized that current family law statutes were wholly inadequate in reaching the goals of protecting abused women in familial relationships.²⁷⁸ Accordingly, Chapter 28 of Title 46 of the Louisiana Revised Statutes was revised a second time.²⁷⁹ The second revision gave women the opportunity to receive relief from their abusive spouse without having to seek relief in criminal court.²⁸⁰

At that time, state law enforcement agencies were handling domestic abuse complaints with less vigor than complaints between strangers.²⁸¹ The policies discriminated against abused women by discouraging them from reporting the abuse.²⁸² This new civil remedy allowed abused²⁸³ victims to not only free themselves from the battering relationship, but they could also evict their abusive partners from the community home and accept interim spousal support and interim custody and support for their children—if applicable.²⁸⁴ Through the combined efforts of two prominent state representatives—Diana Bajoie and Mary Landrieu—Louisiana citizens were now able to receive temporary judicial relief that would be both immediate²⁸⁵ and easily accessible.

276. *Id.* (the expenses discussed in the opinion referred to the costs of retaining an attorney and drafting a non-traditional marriage contract for couples wanting to designate the wife as the manager of community assets).

277. The *Kirchberg* decision was rendered on December 12, 1979, nineteen days before the issue would have been moot.

278. See LA. REV. STAT. ANN. § 46:2131 (West 2002).

279. 1982 LA. ACTS 782 § 2.

280. See LA. REV. STAT. ANN. § 46:2131.

281. Juthani, *supra* note 62, at 54.

282. *Id.*; see also *Affirmative Duty to Protect*, *supra* note 62, at 65-67 (stating that the presence of police officers can cause the victim to detrimentally rely of their presence but *also* increase her risk of danger if the police arbitrarily declines to exercise its duty to protect).

283. Louisiana defines domestic violence as those acts which:
include, but [are] not limited to, physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another. [This definition also includes adult abuse that has been] committed by an adult child or grandchild.

LA. REV. STAT. ANN § 46:2132 (West 2003).

284. See *id.* § 46:2135 (A).

285. In 1992, the Louisiana legislature implemented the Post-Separation Family Violence Relief Act that was designed to provide protection to the battered spouse and her children following the divorce proceeding. LA. REV. STAT. ANN. § 9:361-9:369 (West 2002). The Louisiana legislature guaranteed its citizenry that the courts would not award sole or joint custody of children to the perpetrator of family violence without having the abusive party complete a treatment program. See *Hick v. Hicks*, 733 So. 2d 1261 (La. Ct. App. 1999); see also *Morrison v. Morrison*, 699 So. 2d 1124 (La. Ct. App. 1997). Unfortunately this statute is of no value to those victims who are not married to

Louisiana Revised Statute Title 46 section 2136(A) was intended to bring about a cessation of the abuse through the granting of a civil protection order.²⁸⁶ The victim begins the process of obtaining a protective order by filing a petition requesting such a protective order.²⁸⁷ The petitioner has to allege sufficient facts to warrant court intervention.²⁸⁸ If sufficient cause was shown, the court will issue a temporary restraining order to the aggrieved party, which expires twenty days thereafter.²⁸⁹ On the date that the temporary protective order expires, the district court would schedule a rule to show cause for the defendant to contest the granting of a protective order in favor of the abused party.²⁹⁰ If the petitioner prevailed at the *rule nisi*, she could be given a maximum of eighteen months²⁹¹ of violence-free living.

While the restraining order is in effect, law enforcement officials are encouraged to use "all reasonable means to prevent further abuse," including arresting the abuser.²⁹² Although Louisiana does not employ mandatory arrest policies, the State has allowed its officers to use wide discretion in interpreting what is a proper course of action to prevent further abuse when responding to a domestic complaint.²⁹³ Advocates have become very concerned with the police's use of discretion in domestic violence cases because officers will either issue a useless warning to the batterer or arrest both parties.

1. Disadvantages of Louisiana's CPO Statute

As legal counsel for numerous victims of domestic violence, I have witnessed the relief and utter joy that the victims exhibited when receiving a CPO. The restraining order gave them "the right" to be left alone and to evict their abusive partner from the home. Their reactions were priceless. Some women wept and some celebrated with elated family members who supported them throughout the turbulent relationship. Others decided to copy the order and distribute it to family members, friends, co-workers, employers, and church members as proof of their partner's violent behavior.

Sometimes their excitement was short-lived as I pulled them away from

their abuser.

286. See LA. REV. STAT. ANN. § 2136 (West 2002).

287. *Id.* § 2136(E).

288. See *id.* § 46:2134.

289. *Id.* § 2136(B).

290. See *id.* § 46:2135.

291. Originally, the successful petitioner was awarded a permanent restraining order that lasted for six months, but that was later amended to eighteen months in 1982. See *id.* § 46:2136(F); Interview with Barbara Davis, Director of Education and Training, Battered Women's Program, Baton Rouge, La., May 22, 2003.

292. LA. REV. STAT. ANN. § 46:2140 (West 2002).

293. See *id.*

elated family and friends to explain that the piece of paper they were carrying was just that—a piece of paper. It had no magical powers and was virtually meaningless if they failed to accept the responsibility that it gave to them. I reiterated to them that long-sheets of paper with signatures and certification seals do not generally deter batterers from further violent behavior because abusers are not usually rational, reasonable, or law-abiding citizens.²⁹⁴ I explained that it was now up to them to make the decision to stop the violence. The batterer was not going to stop out of respect for the legal system, but there would be services available to assist them whenever they were no longer willing to negotiate with violence. In fact, it was at this moment that I had to encourage them to be their strongest.²⁹⁵

CPOs, although quite helpful for those victims in need of immediate relief, are normally not effective if the sanctions or penalties associated with violating these CPOs are not “sure, equitable and swift.”²⁹⁶ Linden Gross describes restraining orders and orders of protection as “knee jerk responses” that have no real effect on reducing violence other than giving the victim a false sense of victory over her abuser.²⁹⁷ Thus, counselors, social workers, and women’s advocacy groups are to be very cautious and should not leave the victim with a “false sense of security” simply because the court awarded her a restraining order.²⁹⁸

Another inadequacy I discovered with CPOs was in its application to the abused woman. Undoubtedly, the overall purpose behind the domestic violence complaint is to disclose that the victim’s intimate partner is violent and extremely dangerous—so dangerous that the victim needs the courts to intervene into her relationship. It was necessary to have the batterer removed from the home and ordered not to have any contact with the victim or her family.²⁹⁹ However, a CPO does not forbid the victim from caring for her partner, and it does not penalize *her* from contacting him. So, when the victim makes the effort to contact her batterer, it appears to the layperson that her partner is not the monster she portrayed him to be.

In April 2002, I represented a woman named Michelle (a fictitious

294. See RICHARD L. DAVIS, *DOMESTIC VIOLENCE: FACTS AND FALLACIES* 87 (1998). “Any abuser who is absolutely determined to batter or kill his partner will not be deterred by a piece of paper ordering him not to. Only locking these people up can protect the victim.” Peter Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 *FAM. L.Q.* 43, 45 (1989).

295. See *Empowering Battered Women*, *supra* note 5, at 263; see also Keilitz, *supra* note 116, at 79-84.

296. Keilitz, *supra* note 116, at 80-83.

297. See GAVIN DEBECKER, *THE GIFT OF FEAR* 192 (1997); see also Davis, *supra* note 294.

298. *Id.*; see also Alison Bass, *The War on Domestic Abuse*, *BOSTON GLOBE*, Sept. 25, 1994, at A1.

299. In *Wise v. Wise*, 833 So. 2d 393, 395 (La. Ct. App. 2002), the petitioner alleged that during her marriage the defendant would place a plastic bag over the petitioner’s head and hold it there until she stopped fighting. Fortunately, the petitioner would pretend to be unconscious so that the defendant would free her. *Id.* Upon hearing the evidence, the district court ordered the defendant to stay at least 100 yards from the petitioner’s residence. *Id.* at 393; see also David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 *OHIO ST. L.J.* 1153 (1995).

name) who filed for a restraining order against her boyfriend, Donald. During my interview with Michelle, she explained that she desperately needed protection from Donald, whom she described as a complete terror to her and their six-year-old daughter. Michelle appeared so afraid of Donald that she wanted the court advocate to stand guard in the conference room for fear that Donald would infiltrate the room and beat her for forcing him to come to court to answer for his actions.

Donald, on the other hand, gave me the standard denial of every allegation in Michelle's complaint. He even questioned Michelle's need for a protective order since she had called him just three days after he was served with her complaint. He indicated that Michelle wanted to meet with him to see if they could salvage their relationship. Shocked by his sincerity and candor to my questions, I decided to have another interview with Michelle.³⁰⁰

Michelle conceded that she called Donald to her home in hopes of saving their relationship. Unfortunately, I declined to represent her because the judge, despite her honesty, would not understand why she would voluntarily call her abusive partner days after receiving a temporary restraining order.³⁰¹ After all, he was the person who had terrorized her family for over five years. Internally, I knew that the court would not understand that Michelle's decision derived from Donald being the major source of income for the family. Michelle was unemployed and incapable of paying the rent on her own and had a child in private school. Donald, on the other hand, was a laborer in a chemical plant whose yearly salary was in excess of \$50,000.

According to the court, Michelle had no sufficient grounds to disregard the temporary restraining order. Contacting her batterer after filing the petition would have been reprehensible in the eyes of the legal system—regardless of her intent to seek a truce or reconciliation with her abuser. I totally disagree with this viewpoint.

The court should be mindful that the abused woman still loves her husband despite his violent nature. She really wants to forgive him. She is not returning to him out of fear, but from love because she remembers when he was not mean or abusive. She wants to be a good wife; she just does not want him to abuse her anymore. So, when she voluntarily contacts him, she is not doing it out of curiosity—but fear. She wants to know if he is sincerely sorry for what he has done. She also wants to go back to the way things were when he loved her with his heart and not his fists.

300. See generally Finn, *supra* note 294, at 45 (stating that a civil protection order is highly susceptible to fraud).

301. Lack of sufficient services and personnel have also been cited as possible causes for low efficiency in domestic violence offices. Symposium, *Advocating for Victims of Domestic Violence, Panel Discussion*, 20 WOMEN'S RTS. L. REP 73, 76 (1998).

Another disheartening aspect of Louisiana's CPO statute is the fact that judges can only award the abused spouse a maximum of eighteen months protection from her batterer.³⁰² Of course, this is an extremely short period of time in which an abused woman must retain an affordable attorney, complete divorce proceedings, obtain sufficient support for her children, and start a life free of threats and physical abuse. The seriousness of the abuse, as well as the length of the abuse generally determines how long the judge will grant a protective order for the victim. Unfortunately, Louisiana judges normally grant the petitioner a maximum of one year of protection.³⁰³ The original CPO statute only allowed the victim to have a protective order for no more than six months.³⁰⁴ Although the time has increased to eighteen months, it is still not long enough for the woman to totally rid herself of the threat of abuse from her ex-partner.

B. Mandatory Intervention Policies

1. Mandatory Arrests

Another solution implemented to eradicate the pervasiveness of domestic violence is the policy of mandatory arrests.³⁰⁵ The policy behind mandatory arrests was to defeat the notion that government should not interfere in family affairs and dictate to the husband how to rear his children or maintain control of his family.³⁰⁶ As mentioned earlier in this Article, the privacy of the home has always been the invincible³⁰⁷ fortress that law enforcement personnel point when society begins to demand justice for the victims of domestic abuse.³⁰⁸

Encouraged by relentless feminist organizations and faced with several well-publicized civil lawsuits by the victims of domestic violence, law enforcement agencies abandoned their passive approach to domestic violence in favor of a more victim-friendly policy that promoted intolerance for intimate abuse.³⁰⁹ The case of *Thurman v. City of Torrington*³¹⁰ placed the term "domestic violence" on the lips of police chiefs, mayors, and legislators across this country in the early 1980s.³¹¹

In *Thurman*, the victim brought a civil rights action against the city and its police department for the police department's failure to protect her

302. LA. REV. STAT. ANN. § 46:2136(F) (West 2003).

303. Interview with Ayn Stehr, *supra* note 241.

304. See LA. REV. STAT. ANN. § 46:2136(D) (West 1992); Interview with Barbara Davis, *supra* note 291.

305. See *Mandatory Arrest and No-Drop*, *supra* note 6.

306. *Id.* at 161-62.

307. See *generally Affirmative Duty to Protect*, *supra* note 62.

308. See *No-Drop Prosecution*, *supra* note 14, at 209.

309. See *Mandatory Arrest and No-Drop*, *supra* note 6.

310. 595 F. Supp 1521 (D. Conn. 1984).

311. See Vito Nicholas Ciraco, *Fighting Domestic Violence with Mandatory Arrest, Are We Winning: An Analysis in New Jersey*, 22 WOMEN'S RTS. LAW REP. 169, 174-75 (2001).

despite the numerous complaints and telephone calls she made for protection from the threats and assaults of her estranged husband.³¹² The facts surrounding this lawsuit read like an excerpt from a wrestling match shown on prime-time television. Threats, name calling, and persistent beatings took place directly in the presence of others, including a police officer.³¹³ The abusive husband was convicted of breach of peace and given a ludicrous six-month suspended sentence despite the fact that he attacked his wife in the presence of many eyewitnesses (including the police officer), abducted their son, and screamed threats at Thurman while she sat paralyzed in her parked car.³¹⁴

Fortunately, Thurman was able to secure a restraining order against her husband following this first incident, but he purposefully disregarded the order, went to Thurman's residence and demanded to see her.³¹⁵ Hoping to protect her child and delay him until the police arrived, Thurman decided to talk to him.³¹⁶ Rather than talk, her husband began stabbing her "repeatedly in the chest, neck, and throat."³¹⁷ Twenty-five minutes later, one officer responded to the distress call and witnessed Charles Thurman standing over his wounded spouse holding a knife dripping with blood.³¹⁸ Charles then ran into the victim's house, exited with his minor son and mercilessly dropped the minor on the victim.³¹⁹ Charles Thurman was only arrested and taken into custody when he threatened her while she was lying on a stretcher.³²⁰

Once plaintiffs, like the victim in *Thurman*, were successful in exposing the tolerant disposition of law enforcement, society began to accept the seriousness of domestic abuse and its effect upon not just the abused woman, but also her children, her neighbors,³²¹ her family, and her community. The attention that these cases received created a host of programs and prompted several studies in the early 1980s. One of the most publicized studies on mandatory arrest was an experiment conducted by the Minneapolis Police Department and the Police Foundation.³²² The experiment was funded by a grant from the National Institute of Justice, and was intended to instruct police how to respond to misdemeanor cases of domestic violence.³²³

312. *Thurman*, 595 F. Supp. at 1524.

313. *Id.* at 1525.

314. *Id.*

315. *Id.*

316. *Id.*

317. *Id.*

318. *Id.* at 1526.

319. *Id.*

320. *Id.*

321. See *State v. Arrington*, 788 So. 2d 1087, 1088-89 (1999).

322. See Ciraco, *supra* note 311, at 174 (detailing the various experiments designed to revamp police procedures in domestic violence situations).

323. See *id.*; see also Davis, *supra* note 294, at 133; Joan Zora, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 *NEW*

Some critics of this study were offended by law enforcement's insensitive categorization of domestic violence as "minor" or "misdemeanor" crimes.³²⁴ They complain that the prosecutor's reluctance or refusal to prosecute batterers has caused the abuse at home to escalate. Once the charges have *nolle prosequi*, batterers are prone to retaliate against their partners for having to sit in jail, hire an attorney, and talk about their personal affairs with strangers.³²⁵ Several legal scholars have stated:

Euphemisms such as "domestic disputes" or "disturbances" in police reports, "marital conflict" in counseling files and "incompatibility" in divorce pleadings trivialized the trauma women experienced. [Furthermore], [c]omments such as: "Why doesn't she just leave him?" or "If my husband hit me, I'd leave him in a second," reveal fundamentally false assumptions and misunderstandings concerning the power dynamics involved in battering relationships.³²⁶

Statistics and personal accounts from the survivors of domestic violence have overwhelmingly shown that domestic violence assault and domestic violence battery complaints were anything but minor crimes.³²⁷ Women's advocacy groups finally convinced law enforcement, prosecutors, the judicial system, and legislators (both state and federal) to acknowledge these acts for the repugnant and hideous crimes that they are. State officials came to understand that police intervention was not going to destroy the marriage institution. Instead, they perceived that violence that is overlooked, minimized,³²⁸ or otherwise condoned was a recipe for disaster.³²⁹ For that

ENG. L. REV. 929 (1994).

324. Ciraco, *supra* note 311, at 174.

325. See Seldon, *supra* note 36, at 32-33.

326. Asmus, *supra* note 106, at 121 (citing James Ptacek, *The Clinical Literature on Men Who Batter: A Review and Critique: Family Abuse and Its Consequences*, in *NEW DIRECTION IN RESEARCH* 149, 149-62 (G. Hotaling ed., 1988)).

327. Deborah Epstein has detailed some of these accounts:

[Battered women] are run over by cars and trucks. They have their teeth knocked out with hammers. They are raped with hot curling irons and large objects. They are stabbed with screwdrivers, ice picks and knives. They are beaten, choked and strangled. They are beaten in public in the streets. They are beaten in the privacy of their own homes, often in front of their children. And they are tied up and forced to watch the torture and sexual molestation of their own children . . . [These are] the atrocities that constitute domestic violence as it occurs across the country, and indeed, around the world.

Deborah Epstein, *Fighting Domestic Violence in the Nation's Capital*, 3 *GEO. J. ON POVERTY L. & POL'Y* 93, 93 (1995) (citing Sarah Buel, *The Dynamics of Domestic Violence Cases in the United States: An Overview*, in *DEFENDING BATTERED WOMEN IN CRIMINAL CASES* 1 (1993)); see also Annette Bailey, *Domestic Violence*, 3 *GEO. J. ON POVERTY L. & POL'Y* 99 (1995) (citing author's account of her experiences as the wife of an abusive addict).

328. In *State v. Whitfield*, 827 So. 2d 1196, 1197 (La. Ct. App. 2002), a fifty-two year old defendant was charged with second-degree battery, aggravated false imprisonment, and aggravated rape after he fondled his female companion, ripped her clothing, and had sexual intercourse with a knife at the victim's throat. After raping the victim, the defendant held her captive in his home for over an hour. *Id.* When the defendant entered a plea of guilty to attempted second-degree battery, the State dismissed the aggravated false imprisonment and aggravated rape charges. *Id.* The district court then imposed a fine of \$750, and gave him a five-year sentence; however, half of his sentence

reason, the Attorney General of the United States issued a report recommending that arrests be made the standard treatment in all cases of misdemeanor domestic assault.³³⁰

Supporters of this intervention model/strategy believe that empirical data from the Minneapolis study is proof of the effectiveness of mandatory arrests in the fight against domestic violence.³³¹ To them, arresting batterers and holding them strictly accountable for their deviant behavior communicates to would-be offenders that domestic violence is a serious offense that is no longer permitted.

Although proponents of mandatory arrest policies concede that the woman is permanently stripped of her right to determine her partner's fate once the 911 call is made, they also maintain that it would be ridiculously optimistic for police officers to expect a woman who has been punched, beaten, raped, burned, embarrassed, assaulted, stabbed, or hospitalized to make an informed decision about her safety.³³² In fact, one might suspect that the best indicator of the woman's desire to arrest her abuser would be the 911 call made immediately following the trauma. Through mandatory arrest, the woman is given immediate relief with the added bonus of avoiding an emotional decision that she may regret the minute officers leave the premises.

Mandatory arrest policies have placed domestic violence on the same footing as stranger violence. It encourages victims to recognize that the state will support their efforts to leave the battering relationship. Furthermore, police officers that might otherwise be captivated by the batterers' charming, charismatic personality are now compelled to make the arrest once probable cause of domestic abuse can be verified. Mandatory arrest policies remove the victims from the decision-making process by having officers make the decision to arrest based on probable cause rather than on the victim's spontaneous wishes.³³³ Some law enforcement agencies have also found 48 to 72-hour hold orders to be effective in deterring future violence.³³⁴

was suspended. *Id.* He was also ordered to "undergo anger management counseling, write a letter of apology to the victim" and pay her \$200 in restitution for pain and suffering. *Id.* The sentence was imposed *after* the district court discovered that the defendant had a history (i.e., conviction for second-degree battery in 1984, misdemeanor assault causing bodily injury in 1995, and two dismissed assault and battery charges) of battering and assaulting his domestic female partners. *Id.* at 1198. On appeal, the defendant argued that his sentence was excessive. *Id.* at 1199.

329. See Asmus, *supra* note 106, at 122.

330. See U.S. ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE, U.S. DEPT. OF JUSTICE FINAL REPORT 10-26 (1984).

331. *But see* Zora, *supra* note 323 (noting that subsequent studies have indicated that mandatory arrest policies can increase the prevalence of domestic violence among some ethnic groups).

332. See Ciraco, *supra* note 311, at 171.

333. Asmus, *supra* note 106, at 151-52.

334. Interview with Sarah Buel, *supra* note 49.

On the other hand, many women's advocacy groups have expressed severe disappointment with the implementation of mandatory arrest policies. They argue that arresting batterers and having them to spend a night or two in jail may not be the most appropriate response to every complaint of domestic violence. For example, a police officer's decision to arrest the male spouse simply because he embarrassed his mate when she depleted their checking account may appear to be overzealous. Yet, if her husband could lose his job once she calls 911, she may think twice before picking up the telephone—regardless of the bruises.

Instructing officers to arrest someone—anyone—after responding to a domestic violence complaint increases the chances that she too may be arrested. Ideally, the realization that domestic violence is no longer considered a “private” matter should be encouraging in itself.³³⁵ Nevertheless, policies that encourage compliance rather than careful, cautious discretion actually duplicate the very control from which the victim is seeking refuge.³³⁶ It may even expose the victim to more severe forms of abuse once her batterer is released or has posted bail.³³⁷

Opponents to mandatory arrests contend that mandatory arrest policies disregard the victim's opinion, preventing her from reaching an autonomous state.³³⁸ Overzealous prosecutors have unfairly labeled her severely abused and tortured when in fact she may not have endured any serious agony or physical scarring. Mandatory arrest policies have taken the victims of domestic abuse very seriously³³⁹—so seriously that they have totally disregarded their wishes and ignored their feelings about what should happen to their abusers. Such policies are nothing more than control tactics that convey to her that she is weak, confused, mentally ill or too incompetent to determine what is in her best interest. She is again reduced to the status of a child who needs a protector—like the women in Ancient Rome.³⁴⁰ Arresting her partner may also complicate her efforts to seek custody of her children, and may involve the Department of Social Services or Children Services because she and her batterer were arrested for domestic abuse.

2. No-Drop Prosecution

Another strategy introduced by women's advocacy groups and employed by a number of district attorney offices has been the no-drop prosecution policies.³⁴¹ Under this particular strategy, prosecutors are the ultimate decision-makers as to the batterer's fate.³⁴² Limited deference is

335. Asmus, *supra* note 106, at 122-23.

336. See Ciraco, *supra* note 311, at 177.

337. See Eggen, *supra* note 59 (stating that “nearly 10% of the nation's 15,000 annual homicides involve the killing of a spouse or partner” and “[a]lmost all victims are women”).

338. *Killing Her Softly*, *supra* note 38, at 581-83.

339. *Id.* at 558.

340. See Murray, *supra* note 17, at 2 and accompanying text.

341. See, e.g., *Mandatory Arrest and No-Drop*, *supra* note 6, at 181-85.

342. *Id.*

given to the wishes of the victim since she is temporarily classified as too traumatized to even comprehend the seriousness of her injuries.³⁴³

While the abuser remains in the state's custody, prosecutors presume that the victim will feel so emotionally responsible for the fate of her family that she may minimize the seriousness of her injuries or recant her statements to the police in order to reconcile with her partner and salvage her relationship—as Jessica did.³⁴⁴ Prosecutors, in jurisdictions where no-drop policies are operational, are now trained to turn a deaf ear to the victim's reasons for not wanting to move ahead with prosecution because she will inevitably jeopardize her safety by requesting a dismissal of her partner's charges.³⁴⁵

Theoretically, the victim should not be placed in the driver's seat for the prosecution since she is too intoxicated with fear and anxiety to think rationally about her safety; and her license to act independently of her spouse/intimate partner has been temporarily suspended.³⁴⁶ Thus, state attorneys have been trained to use more proven tactics of securing a conviction in domestic violence cases.³⁴⁷ Using graphic photographs of the victim's injuries, medical records from the victim's prior incidents, and detailed testimony³⁴⁸ from neighbors, family members, and co-workers in lieu of having the victim to take the stand have been quite effective for the prosecution.³⁴⁹

Additionally, advocates propound that no-drop policies are non-discriminatory and viewed more as an equalizer by treating defendants in cases involving domestic violence and defendants in cases involving stranger violence similarly.³⁵⁰ Consequently, proponents of no-drop prosecution policies genuinely and unequivocally believe that convicting the abuser is the "best" option available to the victim considering that it fosters the state's paramount interest—terminating the battering.³⁵¹

a. Disadvantages to No-Drop Policies

Prosecutors may taunt batterers with their conviction statistics and policies of intolerance, but they soon find themselves powerless against

343. *Id.* at 181-82.

344. *See supra* notes 237-65 and accompanying text.

345. *See Mandatory Arrest and No-Drop, supra* note 6, at 181.

346. *See Kirsch, supra* note 5, at 391; *see also* Leslie A. Hagen, Assistant United States Attorney (Western District of Michigan), DOMESTIC VIOLENCE: BEST PRACTICES IN PROSECUTION, COLLABORATING TO STOP VIOLENCE AGAINST WOMEN, SEVENTH ANNUAL CONFERENCE, Baton Rouge, La., Mar. 12, 2003.

347. *See generally Mandatory Arrest and No-Drop, supra* note 6.

348. *See generally Seldon, supra* note 36, at 20.

349. *See Mandatory Arrest and No-Drop, supra* note 6, at 181-82.

350. *See Seldon, supra* note 36.

351. *See Mandatory Arrest and No-Drop, supra* note 6, at 182-83.

those abusive men who have defeated prosecution because they have memorized contrition speeches and given their battered mates the false hope of having a violence-free relationship. Some opponents of no-drop policies suggest that law enforcement officers have become too distracted with quashing the overt reactions to domestic violence (i.e., domestic violence complaints, protective orders, etc.).³⁵² Instead, law enforcement should seek to dispense with the “covert” causes of domestic violence (i.e., the abuser’s need to control and dominate his female partner while suppressing her self-esteem, self-worth, and freedom to live without abuse).³⁵³

Women who have endured years of abuse are under insurmountable financial and emotional pressures when their violent mates are convicted for actions that she made known to the outside world. Prosecutors have harassed them to testify or spend time in a cell next to their abuser. Ruthless defense attorneys hound them to dismiss the charges by telling them that their children will not become orphans if they would just tell the prosecutor that “this was just a big mistake.”³⁵⁴ She must also contend with calculating how she is going to pay her partner’s attorney’s fees, the rent/mortgage, and the children’s expenses. Even if the batterer is temporarily out of the home, the victim needs more than simply a “cooling off period” or “some leverage” against her abuser. Therefore, the victim’s socioeconomic background can counteract the deterrent effects of mandatory intervention programs.³⁵⁵

The prosecutor’s insistence that the woman prosecute her abuser because this is the only way to erase violence from her life will stop once they accept the stark reality that the victim is more of a hostage than an equal partner in a loving relationship.

To further illustrate this point, consider the story of a woman and her twelve-year old daughter who go into a local bank to make a deposit. While standing patiently in line, the woman notices that the man standing directly behind her is wearing a black ski mask and holding a shotgun. The woman grabs her daughter and holds her close to her bosom so that her daughter would not be as terrified as she is of this gunman. The gunman orders everyone onto the floor except for this woman, who is told to stand in the middle of the bank and disrobe. Terrified and embarrassed, the woman stands in this public place wearing her underwear while the gunman straps a stick of dynamite to the small of her back and tapes it into position. He then attaches four sensors from the dynamite and to four areas of her body—two sensors on each side of her brassiere and two sensors just above her waistline.

The gunman commands her to get dressed, deliver a note to the police officers who are directly outside of the bank, and return without causing an incident. He warns her not to attempt to deactivate the explosive herself because that will trigger the detonator. As an additional incentive, the

352. See generally *Mandatory Arrest and No-Drop*, *supra* note 6.

353. See Asmus, *supra* note 106, at 122.

354. See generally *Mandatory Arrest and No-Drop*, *supra* note 6.

355. See Ciraco, *supra* note 311, at 178.

gunman grabs the woman's daughter, kisses her on the forehead, and reminds her that if she does manage to escape her daughter will be his forever. The woman slowly exits the bank, and when she gets a safe distance away from the front door, she hands the note to the police officer and tells him everything that has happened.³⁵⁶

Would you, as the police officer, encourage her not to return to the bank after delivering the note? Or, would you instruct your explosives expert (i.e., the prosecutor) to disarm the explosive attached to the woman's back?

In this scenario, the gunman's threat is a manifestation of separation assault. The acts of verbally threatening this woman with either physical injury or losing custody of her daughter are simply tools that a batterer uses to destroy her will to leave him or to live independently of him.³⁵⁷ This is exactly what happened to Jessica when she decided to dismiss her request for a protective order.³⁵⁸ Like Jessica and the woman in the above illustration, the battered woman is blamed for staying in the relationship and her decision to relinquish control to her intimate partner may be seen as an act of betrayal to all who have committed themselves to securing her safety.³⁵⁹

b. Alternatives to No-Drop

Some prosecutors have digressed from the stern no-drop policies of other jurisdictions and have decided to implement a more flexible version of the no-drop policy.³⁶⁰ For instance, some prosecutors in an Indiana county have found that deferring prosecution of the batterer on a condition that he seek domestic violence counseling and agree to not contact the victim or engage in any future violence is effective.³⁶¹ Generally, recommendations for probation—not jail time—have been suggested.³⁶²

A major flaw in this alternative is that prosecutors are unable to discern if the batterer has fully entered a state of contrition for his actions since batterers usually agree to any condition, stipulation, or term imaginable just to avoid serving time. Batterers usually resort to using violence as their means of communication because they lack the necessary training to deal

356. My use of this illustration was derived from Robbins' statement that the batterer has the "power, gradually established through the use of violence and intimidation, to coerce his victim to shield him from police and court intervention." See *No-Drop Prosecution*, *supra* note 14, at 214 (quoting Asmus, *supra* note 106).

357. See generally *Hicks v. Hicks*, 733 So. 2d 1261 (1999).

358. See *supra* notes 237-65 and accompanying text.

359. Linda Little, *Gestalt Therapy with Females Involved in Intimate Violence*, in *VIOLENCE HITS HOME* 49.

360. See *Mandatory Arrest and No-Drop*, *supra* note 6, at 181-83.

361. See Kirsch, *supra* note 5, at 387-388 (generally, prosecutors would recommend probation for convicted batterers instead of jail time so that the prosecutors can exert some leverage over them).

362. *Id.*

with their anger.³⁶³ In addition, prosecutors often fail to properly track the batterer's progress with his probation or certain conditions of his probation because other offenses are given more priority than cases dealing with domestic violence.³⁶⁴ When the batterer is allowed to escape responsibility for his violent behavior he will either portray himself as "Mr. Nice Guy"³⁶⁵ to the victim or he will ensure that the victim "never" alerts the police about any subsequent abuse.³⁶⁶

Other prosecutors have found that sympathizing with victims usually stimulates their cooperation while causing them to reflect more realistically on what life with their abuser would be like if they declined to hold him accountable for his criminal behavior. However, attorneys who have used this approach concede that sympathizing with victims requires that they spend a large amount of time with them—time that is in short supply because they have enormous caseloads. Many prosecutors could benefit from having a separate domestic violence or sex crimes unit, but scarce financial resources have made this option unattainable.³⁶⁷

III. DOMESTIC VIOLENCE LEGISLATION

Rather than orchestrate another administrative policy to combat domestic violence, Louisiana opted to attack this social disease with legislation.³⁶⁸ Technically, Act 1038 does not change Louisiana's battery statute.³⁶⁹ It only requires prosecutors to prove that the victim and the defendant live or used to live in the same residence at the time of the altercation.³⁷⁰ Of course, the premise behind this legislation was to classify the domestic abuser as a criminal while allowing law enforcement agencies across the state to collect, record, and distribute this data to federal agencies in hopes of justifying the need for future domestic violence surveys like the Minneapolis experiment discussed earlier.³⁷¹

Throughout our discussion of Act 1038 and its impact in the domestic violence genre, there will be a recurring theme that Louisiana jurists, prosecutors, and victims' advocate groups must bear in mind when assisting the victims of domestic abuse:

In order for the battered woman to accept personal responsibility for her safety, it is important to confront her with the reality that her

363. See *ANGRY MEN*, *supra* note 91.

364. See *generally id.*

365. *Id.* at 303-304.

366. See *generally id.*

367. Interview with Ayn Stehr, *supra* note 241.

368. LA REV. STAT. ANN. § 14:35 (West 2003).

369. See *id.*

370. *Id.*

371. See *supra* note 322 and accompanying text.

well-being and safety are *her responsibility*, not one she can assume someone else will accept.³⁷²

Act 1038, which became effective on August 15, 2003, creates a separate, yet distinct, section to Title 14 of the Louisiana Revised Statutes to create the crime of domestic abuse battery.³⁷³ As mentioned earlier, Act 1038 merely specifies the crime of battery among household members.³⁷⁴ Act 1038 does not include children in its definition of "household members."³⁷⁵ Considering that Act 1038 was specially designed to address violence between intimate partners and not child abuse, the definition was written to include as many female victims as possible. Notwithstanding the exclusion of children from this definition, homosexual couples and couples in dating relationships that have not lived together were also excluded.³⁷⁶

On June 3, 2003, supporters of House Bill 849 (i.e., Act 1038) appeared before the House Committee Judiciary to address the rising problem of domestic violence in Louisiana.³⁷⁷ During the discussion, an amendment to the bill was recommended to expand the definition of household members to include couples who lived "in the same residence within five years" of the abuse in question. The committee welcomed the amendment because it would make a realistic impact on those Louisiana³⁷⁸ citizens who have had to endure domestic violence in relationships that have ended before the abuse was perpetrated.

Data from the Bureau of Justice Statistics reflects that between 1993 and 1999, women who were between ages 20-24 and ages 25-34, and were also separated from their spouses were more likely to experience intimate partner violence than any other age categories.³⁷⁹ Divorced women experienced domestic abuse at the second highest rate (78 intimate partner victimizations

372. MARY ANN DOUGLAS, THE BATTERED WOMAN SYNDROME. DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE 32 (D. Sonkin ed. 1987) (emphasis added); see also Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195 (1986).

373. 2003 LA. ACTS 1038.

374. *Id.*

375. *Id.*

376. *See id.*

377. Ed Anderson, *Panel Approves Domestic Abuse Bill; Household Beaters Face Felony Penalties*, TIMES-PICAYUNE, June 4, 2003, at 2.

378. *Louisiana Ranks 4th in Murdered Women: Ninety-one Percent Killed by Acquaintances*, THE ADVOCATE, Sept. 27, 2003, at 4B.

379. U.S. Department of Justice, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: INTIMATE PARTNER VIOLENCE AND AGE OF VICTIM, 1993-1999. These statistics excluded sample groups with fewer than 10 cases. *Id.* Women ages 20-24 that were separated from their abusive husbands received 151 victimizations per every 1,000 women in this category whereas women ages 25-34 who were also separated from their abusers received 118 victimizations for every 1,000 women in this age category. *Id.*

per 1,000 females in the 20-24 age group) during this six-year period, and women who never married were the third highest group.³⁸⁰

Jerry Jones, a vocal advocate for House Bill 849 (also known as Act 1038), testified at the Judiciary hearing that his office had taken an active stance against domestic abuse during his administration.³⁸¹ Jones has attacked domestic violence in his district by specifically targeting domestic abusers during arraignment hearings and plotting the offender's progress with probation and community service.³⁸² Yet, he has not had the cooperation of local judges who continue to sentence repeat offenders to misdemeanor jail terms.³⁸³ This sentencing policy has dampened the morale of his prosecutors and was very disheartening to the victims.³⁸⁴

He declared that abusers have become acquainted with the loopholes in the criminal justice system.³⁸⁵ They have learned the demeanor of certain judges towards domestic violence and are unmoved by the preposterous penalties they serve for beating, slapping, punching, and threatening their intimate partners.³⁸⁶ Jones further expressed extreme frustration with advising women that the present criminal statutes bind him to classify their horrific bouts with intimate partner violence as just misdemeanor or minor offenses of the law.³⁸⁷ Although Jones admitted that employing a no-drop prosecution policy is necessary to promoting a position of intolerance, he could not overemphasize the exorbitant expenses his administration has incurred in prosecuting a string of misdemeanor assault and battery offenses for the victims in his district.³⁸⁸

Many defenders of domestic abuse legislation, like Jones, strenuously disagreed with any advocacy organization or agency that oppose the use of criminal legislation in the anti-violence arsenal.

A. *The Survivors' Testimony*

To solidify his position before the House Judiciary Committee, Jones, who was formally introduced to the committee to deliberate on the inadequacies with the present criminal statutes in domestic violence cases, presented two survivors of domestic violence—one of whom was Christine.³⁸⁹

Christine and her husband were high-school sweethearts.³⁹⁰ She was an only child and her husband grew up in a foster home.³⁹¹ Christine was

380. *Id.*

381. Interview with Jerry L. Jones, District Attorney for the Fourth Judicial District Court, Ouachita Parish (June 3, 2003).

382. *Id.*

383. *See generally* Asmus, *supra* note 106.

384. Interview with Jerry Jones, *supra* note 381.

385. *Id.*

386. *Id.*

387. *Id.*

388. *Id.*

389. Interview with Christine (July 6, 2003).

390. *Id.*

pregnant at the age of fourteen and at age sixteen she quit school after the eighth grade.³⁹² Christine and her husband then decided to get married.³⁹³

Immediately after she agreed to marry him, Christine remembered the violence starting.³⁹⁴ They would get into heated arguments that ended with him sitting on top of her chest and pinching her until she cried.³⁹⁵ Christine would hit him on the arm, slap him, and even tried running from him, but he would continue abusing her until she surrendered.³⁹⁶ Her husband's violent behavior continued after they were married.³⁹⁷

She tried to solicit help from her husband's foster brother, but that too proved unsuccessful.³⁹⁸ Her husband attempted to choke her mother when she tried to intervene, so Christine decided not to get outside help for fear that the violence would escalate.³⁹⁹ He forced her to abandon all of her childhood friends.⁴⁰⁰ Christine later learned that he tried to sleep with her female friends and did not want her to find out.⁴⁰¹ Christine's mother was banished from their house and told to never return.⁴⁰² Her husband prohibited Christine from working, but required her to give him a report of where she went and who she saw when he got home from work.⁴⁰³

She did not want to call the police for fear that they would not arrest him or he would be arrested and later released, thus making the violence much worse for her and her children.⁴⁰⁴ Neither her neighbors nor her church members detected anything wrong in her relationship.⁴⁰⁵ To the world, they were the perfect family. She kept her children (one boy, three girls) looking immaculate every Sunday to avoid being beaten that afternoon.⁴⁰⁶ She kept an adequate supply of make-up to cover her black eyes and the bruises that were all over her body.⁴⁰⁷

Later, Christine indicated that her husband's violent behavior would be triggered by the slightest event.⁴⁰⁸ If she walked in front of the television

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.*

395. *Id.*

396. *Id.*

397. *Id.*

398. *Id.*

399. *Id.*

400. *Id.*

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. *Id.*

408. *Id.*

and blocked his view, he would beat her.⁴⁰⁹ If she greeted her neighbors with a smile, he would beat her for flirting.⁴¹⁰ If the appliances weren't cleaned properly, he would beat her.⁴¹¹ Christine became so imprisoned in her home that he even had the children give him a report of who "mommie" talked to that day.⁴¹² Being so fearful of their father, they told him everything in order to avoid being beaten.⁴¹³

One day, Christine's mother invited her to a group meeting for domestic violence.⁴¹⁴ Christine decided to attend since her husband was out of town.⁴¹⁵ Because she was so isolated from society, Christine truly believed that no one would be there since "she was the only one" who had experienced such violence.⁴¹⁶ Not only was the meeting crowded, but she also learned about getting protective orders, seeking assistance from battered women shelters, and filing criminal charges against abusers.⁴¹⁷ Christine decided to use what she learned and secured a protective order against her husband after taking shelter at a local YWCA.⁴¹⁸ Unfortunately, her husband located her, took her vehicle while she was in the shelter and forced her to return home by threatening their daughter.⁴¹⁹

Because he violated the protective order, the local judge issued an arrest warrant for Christine's husband.⁴²⁰ When he learned of the warrant, he took their children and held them hostage in his mother-in-law's house for over eight hours.⁴²¹ Christine ended her story by saying that her husband killed her mother and shot her twice in the back.⁴²² Although her children were physically unharmed, Christine indicated that her children were still suffering from the emotional trauma her husband caused them.⁴²³

Fortunately, Christine's husband is now a permanent resident of the Louisiana State Penitentiary, serving a life sentence for first-degree murder, attempted first-degree murder and three counts of aggravated kidnapping.⁴²⁴

409. *Id.*

410. *Id.*

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

420. *Id.*

421. *Id.*

422. *Id.* In *State v. Jackson*, 774 So. 2d 1046, 1048 (La. Ct. App. 2000), defendant/boyfriend was given a life sentence after he stabbed his girlfriend and her mother after the girlfriend failed to pick him up from his job. The mother survived, but the girlfriend bled to death after the blade from the defendant used broke off in the victim's back. *Id.* The defendant continued stabbing his girlfriend and her mother until a neighbor forced the defendant to stop at gunpoint. *Id.*

423. Interview with Christine, *supra* note 389.

424. *Id.*

Christine, on the other hand, received her GED and now works in law enforcement.⁴²⁵ She is also a mentor to hundreds of girls in her parish.⁴²⁶ She has told her story of abuse to many high school students and some students have told her how appreciative they were to hear her story and to realize that they were not the only ones to have experienced family violence.⁴²⁷

When I asked Christine about Act 1038, she was very excited that the legislature had considered passing such a statute.⁴²⁸ She also stated that this statute would be a large help to victims in Louisiana who believed, as she did, that domestic violence only happens in isolated areas and to certain families.⁴²⁹

Christine's story was not only moving but it brought to light many of the misconceptions that permeate the field of domestic violence. She credited the legislature for its boldness and for unanimously deciding to criminalize the actions of these *secret* offenders.⁴³⁰ But it must also be noted that Act 1038 does possess some notable benefits for Louisiana citizens that may not be detectable to laypersons.⁴³¹

Specifying that a simple battery offense will be punished sends a clear message to the public that victims of domestic violence can, will, and should seek refuge in the criminal justice system. Mandating certain penalties for first, second, third, and fourth offense violators also limit the judge's discretion. Having mandatory penalties for domestic abusers takes the pressure away from those victims who are regularly threatened by their partner to dismiss criminal charges. Women's advocacy groups as well as former and present prosecutors find the legislature's mission of attempting to rehabilitate⁴³² first-time male offender refreshing since it is obvious that the legislature wants to salvage the family unit.

Another important caveat to Act 1038 that has romanced many legislators and their constituents into accepting this piece of legislation has been the graduated penalties associated with violence committed upon pregnant⁴³³ women and violence committed in the presence of minor

425. *Id.*

426. *Id.*

427. *Id.*

428. *Id.*

429. *Id.*

430. *Id.*

431. *See* 2003 LA. ACTS 1038.

432. Interview with Sarah Buel, *supra* note 49; *see also* Mary Beth Williams, The Treatment of Traumatic Impact of Family Violence: An Integration of Theoretical Perspectives, in *VIOLENCE HITS HOME* (arguing that the goal of therapy is to empower both partners by helping them obtain a sense of control in their lives: the batterer/man is encouraged to recognize that he too is a victim of his own rage and the victim/woman is empowered to develop a clear sense of her "bottom line" with regard to the abuse).

433. The first-time offender is to serve a sentence of no less than "thirty days without benefit of

children.⁴³⁴ To suggest that the percentage of children affected by domestic violence is staggering would be an understatement. For this reason, the drafters of Act 1038 intentionally constructed this statute to mirror the graduated penalties incurred by intoxicated motorists convicted under Louisiana's DWI statute.⁴³⁵

B. Disadvantages of Act 1038

Like the other resolutions discussed in this Article, Act 1038 also has certain negative characteristics that may not be so inviting to victims.

First of all, there is a strong possibility that police officers responding to domestic abuse complaints will be predisposed to arrest suspected batterers under Louisiana Revised Statutes Annotated Section 14:35.3 rather than under a more appropriate statute.⁴³⁶ In other words, an accused batterer may be charged with domestic violence battery for hitting his spouse/intimate partner over the head with a crystal vase rather than aggravated⁴³⁷ or second-

suspension of sentence” when the offender knew that the victim was “pregnant at the time of the commission of the offense.” 2003 LA. ACTS 1038. “A second or subsequent conviction” under this section requires the offender to serve “six months without [the] benefit of suspension of sentence.” *Id.*; see also *Civil Images*, *supra* note 7, at 1047 (citing THE BATTERED WOMAN, *supra* note 83, at 105-06); S. Jackson, Who's Crazy Here? Battered Woman's Syndrome and Male Violence 54-55 (1988) (unpublished manuscript) (stating that “[b]attering often begins or becomes more acute when a woman becomes pregnant”).

In *State v. Knightshed*, 783 So. 2d 501, 503 (La. Ct. App. 2001), the defendant “was convicted of aggravated battery against his wife . . . and sentenced to ten years at hard labor.” This defendant used a knife to “cut his [pregnant] wife along the left side of her neck, leaving a four-inch laceration;” he was even “overheard saying ‘Oh, that’s my wife, I cut that bitch.’” *Id.* at 505; see also Andrea D. Lyon, *Be Careful What You Wish For: An Examination of Arrest and Prosecution Patterns of Domestic Violence Cases In Two Cities In Michigan*, 5 MICH. J. GENDER & L. 253, 260-61 (“Studies of battered women place the number of battered women who are assaulted during pregnancy between twenty-five and sixty-three percent.”).

434. The minimum mandatory sentence *shall not* be suspended whenever a minor child twelve years or younger is present at the residence during the time that the offense occurred. LA. ACTS 1038; see also Sarah M. Buel, *Domestic Violence and the Law: An Impassioned Exploration for Family Peace*, 33 FAM. L. Q. 719, 733-34 (1999) (Buel gives a thorough analysis of the consequences of awarding the batterer joint or sole custody of the children, namely that the custody decree increases the “risk that the batterer will physically, sexually, and/or emotionally abuse the children,” and could “use the children as leverage to coerce the victim to return.”); *cf.* *State v. Schultz*, 817 So. 2d 202, 206 (La. Ct. App. 2002). See generally *Hicks v. Hicks*, 733 So. 2d 1261 (1999).

435. See LA. REV. STAT. ANN. § 14:98 (West 2003).

436. See *Hicks v. Hicks*, 733 So. 2d at 1265 (the court clearly noted “that forced sex between a husband and a wife is considered rape, [not just] a battery”); see also *State v. Probst*, 623 So. 2d 79 (La. Ct. App. 1993); Jill E. Hasday, *Contest and Consent: A Legal History of Martial Rape*, 88 CAL. L. REV. 1373 (2000). See generally Raquel K. Bergen, Ph.D., *Wife Rape: Understanding the Response of Survivors and Service Providers*, COLLABORATING TO STOP VIOLENCE AGAINST WOMEN, SEVENTH ANNUAL CONFERENCE, Baton Rouge, Louisiana, March 11, 2003 (stating that men have generally used their relationship to the victim (i.e., as a husband) as a “fool-proof” exemption from prosecution or as a license to rape, but that “license” was revoked in 1993 when marital rape became a crime in all fifty (50) states).

437. See LA. REV. STAT. ANN. § 14:34 (West 2003) (stating that a person convicted under this statute “shall” be fined no more than \$5,000 and/or imprisoned “for not more than ten years”).

degree battery⁴³⁸—offenses that carry stronger punishments for first offenders. Thus, the decision to arrest may be based solely on the complainant's relationship to the suspect, rather than on the specific facts surrounding the incident.

Second, Act 1038 limits the state's prosecutorial power to altercations between heterosexual couples.⁴³⁹ The definition of "household members" does not speak to abuse committed by children towards their parents⁴⁴⁰ or grandparents, nor does it contemplate the existence of an abusive relationship between siblings in an extended family relationship.⁴⁴¹ Act 1038 also does not contemplate abuse in a dating relationship.⁴⁴² Customizing the statute to accommodate the experiences of the majority is presumed to be the function of a democratic system of government. But in the context of domestic violence, defining "household members" to include only members in a heterosexual relationship may require future legislative discussion. Undoubtedly, same-sex relationships are a reality in our culture because domestic violence does not discriminate in terms of socioeconomic status, racial or ethnic backgrounds, or sexual orientation; therefore, our understanding of its effect on intimate relationships should also be non-discriminatory.

Third, the successful passage of Act 1038 may further incite lobbyists, prosecutors, and lawmakers to submit future proposals for domestic violence assault, second-degree battery, and rape or murder statutes. Such legislation can cause an over-saturation of crimes that are duplicative of those presently listed in the state's criminal code. Similar legislation could demean the effectiveness of the current statutes and cause jurists to question the legislative intent behind passing a separate category of crimes.

Another disadvantage with Act 1038 is that the penalties outlined in subsections C through F give the district courts more discretion when sentencing domestic offenders than in cases involving violence among strangers.⁴⁴³ For instance, a person convicted of simple battery of a child

438. See *id.* § 14:34.1 (offenders "shall" be fined no more than \$2,000 and/or imprisoned "for not more than five years").

439. Battering is not just an offense in heterosexual relationships. See, e.g., *Lavender Bruises*, *supra* note 69.

440. In *Paschal v. Hazlinsky*, 803 So. 2d 413, 415 (La. Ct. App. 2001), the plaintiff /mother filed for a protective order against her two daughters under the Domestic Violence Assistance Act pursuant to Louisiana Revised Statute Title 46 section 2136. The plaintiff sought the protective order after her daughters struck her in the chest with the front door. *Id.* The impact left a large bruise on the plaintiff's chest. *Id.* The hearing officer granted the mother's request and the appellate court affirmed. *Id.*

441. See LA. ACTS 1038.

442. See *id.*

443. See Seldon, *supra* note 36, at 43-44; see also Katherine M. Schelong, *Domestic Violence and the State: Responses to and Rationales for Spousal Battering, Martial Rape, & Stalking*, 78 MARQ. L. REV. 79, 108-10 (1994).

welfare worker is given a maximum fine of five hundred dollars, a sentencing range of fifteen days to six months in prison without the benefits of probation, parole, or suspension of sentence.⁴⁴⁴ A person convicted of battery on an infirm person can be given the same maximum fine, but the offender could also be imprisoned between thirty days and six months or both.⁴⁴⁵ The fine for battery of a schoolteacher is no more than \$1,000 and the sentence can range from fifteen days to six months.⁴⁴⁶

The first-time batterer convicted under the domestic violence battery statute can be fined between three hundred to a thousand dollars, and sentenced between ten days and six months.⁴⁴⁷ However, the domestic batterer can have his sentence suspended by the district court if he serves two days in jail, performs community service, and participates in a court-approved domestic abuse prevention program.⁴⁴⁸ What a deal!

C. Review of Act 1038⁴⁴⁹

Without a doubt the field of domestic violence has benefited from Louisiana's bold stance against the *secret* abuser. Attorneys with the Louisiana District Attorney's Association and with the various domestic violence service organizations are optimistic about Act 1038 and its intended impact on domestic abuse.⁴⁵⁰ They believe, as do I, that imposing penalties that punish domestic abusers for committing violence on their intimate partners is certainly a needed and welcomed component to our penal code.⁴⁵¹ In addition, punishing batterers for exposing minor children to violence will help society to start revising some of the stereotypical gender roles that young children are taught in pre-school.⁴⁵²

Still, Act 1038 attempts to implant morality and self-respect among heterosexual couples by legislation.⁴⁵³ Though the gesture is commendable, the legislature's responses to domestic violence will remain woefully inadequate until it accepts the fact that domestic violence is resistant to transformation without mandatory educational programs.⁴⁵⁴ The battles against domestic violence cannot be won by passing tailored statutes and ordinances. It's our attitude and cultural understanding of violence in the context of gender roles that has to change. Legislation cannot do this. Policies that simply instruct state actors to change their attitudes will also

444. See LA. REV. STAT. ANN. § 14:35.1(B) (West 2003).

445. See *id.* § 14:35.2(C).

446. See *id.* § 14:34.3(B).

447. See *id.* § 14:35.3(C).

448. *Id.* § 14:34.3

449. 2003 LA. ACTS 1038.

450. See Interview with Sarah Buel, *supra* note 49.

451. *Id.*

452. See Davis, *supra* note 294.

453. See generally 2003 LA. ACTS 1038.

454. Melanie Randall, *Refugee Law and State Accountability for Violence Against Women: A Comparative Analysis of Legal Approaches to Recognizing Asylum Claims Based on Gender Persecution*, 25 HARV. WOMEN'S L.J. 281, 285 (2002).

fail. The persistence of archaic social attitudes and negative stereotypes has seriously weakened “the impact of modern anti-violence laws, as most police, prosecutors, and courts continue to give domestic violence prosecution low priority.”⁴⁵⁵ In essence, passing laws and implementing policies without changing cultural biases is like painting a house in the pouring rain—it defeats the purpose.

Can legislation tell an intimate partner the difference between being over-protective and being abusive? Does Act 1038 advise the abuser of the devastating effects of psychological terror in the family unit? Will stern penalties be imposed upon the convicted batterer if judges refuse to believe that domestic violence crosses all cultural and socioeconomic boundaries?

I, along with many other legal scholars, believe that relief for the victim will only come once the state actors in our justice system are compelled to attend domestic violence training.⁴⁵⁶ After all, can those who are ignorant of the cunning devises of domestic violence crush the stigma of violence? Consequently, the issue of domestic violence should supercede all issues in state judicial and gubernatorial campaigns, and permanently invade the law school curriculum. Intense public pressure on legislators and media exposure⁴⁵⁷ on the consequences of domestic abuse should be a societal norm.

The main antidote for snakebites has always been that serpent’s venom. Likewise, altering the effects of domestic violence will encompass not only educating judges and attorneys, but also educating the batterer and having all of them to become intimately familiar with the psychological struggles of the abused victim.

Just as the drunk driver does not attempt to alter his/her behavior unless he is faced with educational, therapeutic, and penal intervention, the domestic abuser will not see how his monstrous behavior has damaged the family structure without submitting to this three-phased system of intervention. Ideally, citizens cannot realize the devastation caused by domestic violence unless they also understand that the victims and their batterers are not unlike many of us—they are educated, employed, and sometimes have no history with drugs, alcohol or prior abuse.⁴⁵⁸

455. See *No-Drop Prosecution*, *supra* note 14, at 208.

456. See, e.g., Lynn H. Schafran, *There’s No Accounting for Judges*, 58 ALB. L. REV. 1063; see also *Interview with Buel*, *supra* note 49; *Interview with Stehr*, *supra* note 241.

457. Josh Noel, *Tear Gas, Dog End Murder Suspect’s 3-Hour Standoff*, THE ADVOCATE, July 31, 2003, at B1. A special response team was summoned to assist the local police department in apprehending a nineteen-year-old suspect accused of beating his twenty-two year old girlfriend to death. *Id.* The suspect was believed to have beaten his girlfriend on a regular basis during their two-year relationship. *Id.* Witnesses familiar with the couple’s relationship indicated that the suspect had kicked his girlfriend until she was unconscious. *Id.*

458. See *VIOLENCE HITS HOME*, *supra* note 35, at 66.

Act 1038 does address placing first-time offenders in a domestic abuse treatment program, but does not contemplate sending lawyers and judges through a similar program.⁴⁵⁹ Unless the family practitioner, judge, or judicial candidate is made aware of the seriousness of domestic abuse then the abused woman will have little incentive to bring her cause to court. Moreover, her advocate will forever strip the victim of her autonomy if they persist in giving instructive advice rather than enlightening the victim on her safety options.⁴⁶⁰

Multidisciplinary training sessions that teaches identification of abuse, and mandated referral procedures and intervention skills are imperative to any domestic violence-training program.⁴⁶¹ Therapists should also be diligent in detecting abuse in the family structure when neither the abuser nor the abused has identified violence as the root cause of the marital discord. The therapist, as part of their mission to end violence, must also forsake their desire to make the victim co-responsible for the occurrence of family violence.⁴⁶²

Likewise, the family mediator should not hesitate to acknowledge the presence of abuse and to hold the abuser accountable for their actions otherwise the abuser would assume that his behavior towards his partner is a normal part of all intimate relationships. The mediator's reluctance can also make the abuser feel empowered to use whatever actions he finds necessary to maintain control over his partner.⁴⁶³ The mediator's reluctance could encourage abusers to monopolize conversations, purposefully break objects in the home, and threaten or physically abuse their partners just to reiterate his authority in the home.⁴⁶⁴

While the abuser is engaged in this mediation/conjoint therapy⁴⁶⁵ session with his partner, he becomes extremely familiar with the language of these programs. He applies these terms to his benefit and paints himself as the

459. 2003 LA. ACTS 1038.

460. As part of the victim's safety plan, counselors should instruct their clients to: (1) practice time-out techniques; (2) observe physical cues in their partners; (3) determine where they can seek immediate, emergency help if necessary; and (3) compile and preserve all necessary documents she made need in case she needs to leave the battering relationship. See Stith, et al., *supra* note 35, at App. A.

461. Williams, *supra* note 432, at 347.

462. M. Taggart, *The Feminist Critique in Epistemological Perspective: Questions of Context in Family Therapy*, 11 J. MARITAL & FAM. THERAPY 113-26 (1985).

463. See Brain Jory, et al., *Intimate Justice: Confronting Issues of Accountability, Respect, and Freedom in Treatment for Abuse and Violence*, J. MARITAL & FAM. THERAPY 399 (1997) (stating that only 41% of family therapists recognized the existence of domestic violence in a relationship where a family member was killed; further, 55% of family therapists saw no need for immediate therapeutic intervention for violence).

464. *Id.*

465. See *Civil Images*, *supra* note 7, at 1083 (stating that mediation is just one solution society has proposed to end violence in the home, but to totally destroy society's tolerance of abuse towards women the perception that strange violence is more egregious and gruesome than violence against an intimate partner has to be permanently annihilated); see also Naomi Cahn, *Defining Feminist Litigation*, 14 HARV. WOMEN'S L.J. 1 (1991); Junda Woo, *Mediation Seen As Being Biased Against Women*, WALL ST. J., August 4, 1992, at B1.

true victim.⁴⁶⁶ His partner then becomes so confused by these mental charades that she begins to believe that leaving the abusive environment would not only be offensive to her relationship, but would duplicate the type of violence her abuser claims to have endured in past relationships.⁴⁶⁷

Statutes are powerless against this type of terrorism. Further, a reactive criminal justice system will have little to no effect on the reduction of domestic abuse unless state actors are trained to detect these abstruse mechanisms of control.⁴⁶⁸ Education, on the other hand, provides the most appropriate response to defeating domestic violence in the home. It is with education that advocates will be able to reach the abuser and convert his anger into respect for his mate.⁴⁶⁹ Getting batterers (or rather former batterers) to understand that violence is no longer “cool” or acceptable in any relationship can be a promising first step towards ending violence.⁴⁷⁰

IV. CONCLUSION

Knowing that our legislature saw domestic violence as an important issue and worthy of discussion during its regular session is very satisfying. Victim advocates have expressed great optimism over Act 1038 and look forward to working with the local prosecutors toward correcting some of the shortcomings that exist in prosecuting domestic violence cases. After all, abusers and potential abusers must perceive the criminal justice system’s intolerance for domestic abuse before they can experience true rehabilitation.

With all due respect to our dear legislature, Louisiana (or any other state for that matter) is not in need of another statute, regulation, or policy portraying disgust for domestic violence or support for the abused woman. What is needed is a clearer understanding of this issue and the destructive psychological effects it causes. Education, as opposed to legislation, proposes a more promising result for deterring future violence. Without adequate training for state actors regarding the minute, intricate details of domestic abuse, those involved in this field will remain skeptical about any cure that descends from the judicial or legislative systems.⁴⁷¹ Even police

466. See Woo, *supra* note 465.

467. *Id.*; see also ANGRY MEN, *supra* note 91.

468. See Davis, *supra* note 294.

469. See, e.g., Lynn H. Schafran, *There’s No Accounting for Judges*, 58 ALB. L. REV. 1063 (1995).

470. See Lisa Capone, *Anti-Violence Video Features Area Men*, BOSTON GLOBE, June 23, 2002, at 1.

471. See Ann D. Carden, *Wife Abuse and the Wife Abuser: Review and Recommendation*, 22 COUNSELING PSYCHOLOGISTS 539 (1994).

officers have admitted to being powerless against domestic crimes that are controlled by impulse, emotion, desperation, and anger.⁴⁷²

Hence, the cure for domestic violence must be cultural rather than legal.⁴⁷³ This educational approach to domestic violence should be visible in all early childhood education programs because it is here that male children learn how to be strong, competitive, violent, and unfeeling.⁴⁷⁴ It should also dominate all other issues in alcohol-related programs. More importantly, it should be engraved in the law school curriculum,⁴⁷⁵ promoted in political debates, and bolstered in judicial campaigns.⁴⁷⁶

Adequately understanding how battered women are viewed in Louisiana is imperative to a successful understanding of how to suppress the common misconceptions surrounding the abused woman.⁴⁷⁷ Only with early and adequate education can potential abusers learn alternative patterns of behavior that will promote harmony as oppose to anger or rage.

472. KATHLEEN J. FERRARO, ET AL., *IRRECONCILABLE DIFFERENCES: BATTERED WOMEN, POLICE AND THE LAW* 29 (1993).

473. See Davis, *supra* note 294 (citing Erica Goode, et al., *Domestic Violence Is A Serious Problem for Women*, in *DOMESTIC VIOLENCE* (Karin L. Swisher, ed.)).

474. *Id.* at 106; see also Capone, *supra* note 470.

475. In August, 2003, Southern University Law Center was the first law school to open a Domestic Violence Clinic in Louisiana.

476. See Schafran, *supra* note 469.

477. See Hendricks, *supra* note 4.