

Police Training and the Effectiveness of Minnesota "Domestic Abuse" Laws

Maria K. Pastoor*

Woman-battering was uncovered by feminists in the early 1970s.¹ "Private" beatings of women in their houses as well as other oppression of women by men became an issue of public concern. Attempting to change oppression into safety, feminist activists created support groups, shelters, *pro se* law clinics, and crisis hotlines.² Activists have lobbied within the criminal legal system to improve its response to battered women. They have obtained many needed changes in the law, especially in

* Maria K. Pastoor is a J.D. candidate at the University of Minnesota. Ms. Pastoor provided advocacy for battered women while working for Battered Women's Services within the Minneapolis City Attorney's office and the Hennepin County Attorney's office from June 5, 1983 through Aug. 12, 1983. She explained criminal prosecution to battered women, investigated cases, assisted women in initiating prosecution of the men who abuse them, and accompanied them to court. Ms. Pastoor also intervened with prosecutors, probation officers, and judges to obtain conditions of release and sentences necessary to protect battered women.

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1. Erin Pizzey, *Scream Quietly or the Neighbors Will Hear* (1974); Letty Cottin Pogrebin, *Do Women Make Men Violent?*, Ms., Nov., 1974, at 49, 55. Kathy McAfee & Myrna Wood, *Bread and Roses* in *Voices from Women's Liberation* 415, 421 (Leslie Tanner ed. 1970); see also Susan Schechter, *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement* 32 (1982).

2. Women's Advocates, one of the first organizations solely for battered women, was begun in 1973 by a consciousness raising group in St. Paul, Minnesota. Its first activities were to write a divorce rights handbook and to organize a legal information telephone service. Del Martin, *Battered Wives* 197-205 (1981) (citing correspondence with Sharon Vaughn, Training and Technical Assistance Coordinator, Minnesota Coalition for Battered Women, and newsletters of Women's Advocates); Susan Schechter, *Women and Male Violence* 62 (1982) (citing communications and interviews with Sharon Vaughn and Women's Advocates, *Women's Advocates: The Story of a Shelter* (1980)).

Region XI Battered Women's Consortium, *Shelters Resources Programs for Battered Women and Their Children of Violent Partners* (undated pamphlet available from the consortium at 435 Aldine, St. Paul, Minnesota 55104) lists current resources located in the seven-county Minneapolis/St. Paul metropolitan area of Minnesota.

Minnesota.³ Battered women have also confronted the criminal system by suing unresponsive police, prosecutors, and court personnel. Despite these many efforts, a battered woman still cannot count on the police to aid her.

The police do little to help women get out from under the violence their boyfriends and husbands inflict on them.

On the evening of Aug. 4 [1983] I heard a loud thud followed by screaming coming from a nearby house. I picked up my phone and dialed 911. The screaming continued, along with male shouting, for about 30 minutes. My initial relief in knowing the police were on their way turned into helplessness as the beating continued. I sat on my front steps for a full hour, living each moment as if I were the woman whose cries I heard. Finally I gave up and went into the house. Fifteen minutes later, the police arrived.

As I watched through my neighbors' uncurtained window, the police officers stood shyly in the doorway, politely addressing the couple as if they were dinner guests and not law-enforcement officers called to the scene of a crime. A cheery "good night" was heard as the police left.⁴

This incident typifies the way Minneapolis police handle calls to assist battered women. It also typifies police conduct throughout the United States.

Men of every class and race beat women of every class and race.⁵ Twelve percent of all married women in this country are beaten by their husbands.⁶ Despite numerous laws which purport to prohibit these beatings,⁷ institutional disregard of appallingly large numbers of battered women continues.

In this article, I note the lack of police enforcement of laws prohibiting woman-battering, especially in Minnesota. I examine how this lack of enforcement encourages acts of violence against women by men, and how it reinforces other forms of violence against women. Where efforts to eliminate enforcement problems have been made, I assess their effectiveness. Finally, I investigate current Minnesota law enforcement training programs. After analyzing the ways these programs encourage

3. See *infra* notes 44-73 and accompanying text.

4. *Domestic Violence*, Minneapolis Star & Tribune, Aug. 26, 1983, at 10A, col. 5 (letter of Maxine Pegors, a former battered woman).

5. Minnesota Department of Corrections, Minnesota Programs for Battered Women 1981 Update 35-40 (1981).

6. Diana Russell, *Rape in Marriage* 89 (1982).

7. See *infra* notes 44-73 and accompanying text. See also, 5 Response 10-11 (1981). This periodical categorizes domestic abuse legislation in all 50 states, from Arkansas and South Dakota, which have no laws specifically addressing woman-battering, to North Carolina, which mandates arrests in some circumstances.

poor police response, I recommend changes in police training as a necessary step toward eliminating woman-battering.

I. The Problem

A. The Police

Police do not treat woman-battering as a crime. Battered women in Minnesota and throughout the United States are familiar with the August 4th scenario. The police, if they choose to appear at all, assume the role of polite intruders. The Minneapolis police did not treat the August 4th assault as a crime. They treated the couple's home as a place in which they did not belong. The polite, shy behavior showed an extreme reluctance to "interfere," or use law enforcement powers. Illustrations of police disregard for women are endless. For example, in another Minneapolis incident occurring on October 18, 1983, a woman's ex-husband threatened her adult children with a knife while she tried to remove her belongings from the ex-husband's home. He then threatened to harm her, brandishing the knife. When the police arrived, they merely took away the knife and told him to leave the premises. The officers later discovered that her ex-husband had been convicted of killing a former wife.⁸ The women in each example learned that the police would not assist them. The men learned the acceptability of assaulting women.

Police actions, which guard the inviolability of the home and family, maintain the dominance of men within these spheres and perpetuate men's beliefs that violence toward women is not wrong.⁹ Police fail to treat woman-battering as a crime throughout the United States.¹⁰ Their actions not only reinforce woman-batterers' beliefs that assaultive behavior is acceptable, but also constitute failure to enforce criminal laws.¹¹ For many battered women, these police failures mean

8. Telephone interview with Cheryl Howard, Battered Women's Services, Hennepin County Attorney's Office (Feb. 15, 1984).

9. See *infra* notes 38-43 and accompanying text.

10. See *infra* notes 11-15. The director of a Chicago program for battered women stated the battered woman's view of these practices: "Overwhelmingly, women say they get poor response from police." Barbara Brotman & Philip Wattley, *State Domestic Violence Law Fails to Stand up to Abusers*, Chicago Tribune, June 26, 1983, at 2-1, col. 1 (quoting Marge Jozsa).

11. Officers even aggravate situations by refusing to treat woman-batterers' behavior as criminal. A Wayne County, Michigan, Sheriff's Deputy, for example, describes his colleague's response to a battered woman:

There was a husband and wife confrontation, they were arguing and the husband became violent. He started breaking the furni-

repeated violence.¹²

Police training is in part responsible for officers' failure to treat these incidents as crimes. One training guide, for example, suggests that the officers ask one party to leave if they fear violence may begin again as soon as they leave.¹³ Such an unenforceable request cannot be relied upon to keep the man away from the woman. Another training manual instructs police to introduce themselves upon arriving at the scene, to explain that they have come because a disturbance has been reported, and to ask if they may come in—the essence of politeness, not criminal apprehension.¹⁴ The manual further advises

ture up. At this point, the officer entered the house. . . . [T]he woman showed the officers what the man did, she says he broke up all the furniture. So the officer . . . responded by saying 'well it's his house, his furniture, it's his community property. He can do whatever he wants to it. If he wants to, he could burn it; it's his just as well as yours.' The end result was kind of funny because the officers left, and in a short while they got a call back, the same people. As they approached the house, there was a big bonfire out in the front lawn. The man . . . took them literally for their word; he had hauled all the furniture out in the front lawn and set it on fire.

Sue Eisenberg & Patricia Micklow, *The Assaulted Wife: "Catch 22" Revisited*, 3 Women's Rts. L. Rep. 138, 157 n.222 (1977).

12. An attorney for Brooklyn Legal Services Corporation described this incident of police failure to protect a woman from repeated violence:

A woman who had experienced 14 years of beatings from a husband who neither supported her and their seven children nor regularly resided with them had gotten 1-year Family Court injunctions against his assaults seven times. Frequently, when the police responded they told her to file a violation petition, requesting the court to hold her husband in contempt.

Marjory Fields, *Wife Beating: Government Intervention Policies and Practices* 228, 235, in U.S. Commission on Civil Rights, *Battered Women: Issues of Public Policy* (1978) [hereinafter cited as USCCR, Public Policy]. Here, the police referred the battered woman to an institution that could not respond to her immediate need for protection from her husband's violence. Not until this man nearly killed his wife did the police finally arrest him:

They did not arrest him until the night they found her dazed and dripping blood from a large head wound. Her husband had smashed her in the head repeatedly with a chair. He had inflicted several stab wounds with a screwdriver. She had lumps on the back of her head where her husband had hit her head against the floor.

Id.

13. Police Science Services, Inc., *Domestic Disturbances: A Professional Procedures Program* 18 (1977) (instructor's guide).

14. John Enger & Bradley Herberg, *Domestic Violence Instructor's Outline* 3 (undated and unpublished manual) (Enger and Herberg are officers with the University of Minnesota Police Department).

Although police need not break down the door to every domestic call, they would generally have probable cause to do so from the initial call for help. Probable cause could be based upon the information given by the caller to the dispatcher (e.g., screams, threats, sounds of blows). Dispatchers should ques-

officers to show that they come as counselors, and not as enforcers of laws.¹⁵

Police articulate several reasons for their failure to enforce the law in this area. They claim that calls from battered women are none of their business.¹⁶ Police believe that they often make matters worse by intervening, and that they are largely ineffective in such situations.¹⁷ Consistent with these attitudes, one researcher found that police dispatchers under-report violence against battered women and that patrol officers

tion callers to elicit such information. Police should assume caller reliability. Most people view battering as normal. See *infra* notes 38-43 and accompanying text. Therefore, the few people who do call police are likely to have adequate cause to take the "abnormal" step of calling the police. Criminal statutes prohibit false reporting of crimes. Emergency call-in systems such as 911 systems, record the source of all calls. These records provide considerable legal and social deterrence to false reporting.

Officers can also base probable cause upon similar observations when they arrive at the scene. Probable cause of continuing danger to a woman necessitates immediate action to protect her. See Henry McCarr, 7 Minnesota Practice: Criminal Law and Procedure 90-91 (1976) (Police may enter private premises, without warrant, under exigent circumstances such as "reports of violence and other distress.").

15. Enger & Herberg, *supra* note 14, at 5.

16. One officer stated that "[t]he calls, if there's no violence, are none of my business anyway; and if neither one wants you there, they're really none of my business." James Walter, *Police in the Middle: A Study of Small City Police Intervention in Domestic Disputes*, 9 J. Police Sci. & Ad. 248, 253 (1981). Not surprisingly, one researcher of police attitudes notes that "police have historically taken the position that it was not their responsibility to intervene in domestic conflicts," Eva Buzawa, *Police Officer Response to Domestic Violence Legislation in Michigan*, 10 J. Police Sci. & Ad. 415, 415-16 (1982), even though approximately 15 to 40% of all calls to police are from battered women. U.S. Commission on Civil Rights, Under the Rule of Thumb: Battered Women and the Administration of Justice 12 & n.1 (1982) [hereinafter cited as USCCR, Rule of Thumb] (citing Elizabeth Connick, Jan Chytilo, & Andresa Person, *Battered Women and the New York City Criminal Justice System* (paper delivered at the Annual Meeting of the Law and Society Association and the Institute for Social Analysis Research Committee on Sociology of Law, 1980) and *Hearing Before the U.S. Commission on Civil Rights*, (Phoenix, Arizona, Feb. 12-13, 1980) (testimony of Asst. Police Chief Donald Lozier); Donald Black, *Police Encounters and Social Organization: An Observational Study* (1968), cited in Nancy Loving, *Responding to Spouse Abuse & Wife Beating: A Guide for Police* 126 n.1 (1980) (disturbance disputes, environmental conflicts, disturbances caused by mentally ill or intoxicated persons, and other disturbances comprise 20% of calls to police).

17. As one officer admitted: "I just go in as a neutral observer. I try to reason with the people. Most times, if I can't reason with them, the best thing to do is to get out of there. The only thing that would happen is for me to make things worse. Most people want you over there as a referee." Walter, *supra* note 16, at 253.

What "neutrality" means to women is that injuries to us either are not taken seriously or are not perceived at all. Neutrality is impossible. Everyone has a point of view and the invocation of neutrality is a dishonest effort to hide that point of view.

do not take seriously calls regarding "domestic disturbances."¹⁸ Police attitudes match police action.

One reason for these attitudes may be that police identify more with aggressive men who batter than with battered women. Like women-batterers, police are overwhelmingly male.¹⁹ Police are trained to use physical coercion which itself reinforces aggressive and dominating masculine roles.²⁰ This aggressive orientation makes police more likely to sympathize with men who use physical force to dominate women than with battered women. One officer has indicated that police themselves may batter women even more than do other men.²¹

Police rarely arrest men who batter women. Despite both criminal assault and "domestic abuse laws," woman-battering remains non-criminal when police fail to arrest. A Minnesota statute requiring arrest of batterers in limited circumstances became effective June 1, 1983.²² For several months after that date Minneapolis Police Chief Anthony Bouza failed to mandate that arrests be made in the appropriate circumstances.²³ A November 29, 1983 incident illustrates the effect of this policy decision. On that day, a man broke into the house of a woman who had been his lover, violating a protection order. That ac-

18. Nan Oppenlander, *Coping or Copping Out: Police in Domestic Disputes*, 20 *Victimology* 449, 452-53 (1982). Although Oppenlander observed police minimization of violence, she, too, minimizes violence: "[s]ome of the incidents coded as arguments [in contrast to assaults] may have involved lesser degrees of violence, such as pushing, shoving, throwing objects, or slapping." *Id.* at 463 n.3.

19. Ninety-seven percent of law enforcement officers are men. Loving, *supra* note 16, at 28. Ninety-eight percent of spouse abusers are men. R. Emerson Dobash & Russell Dobash, *Violence Against Wives* 246 (1979) (study found 791 instances of wife assault and 12 instances of husband assault).

20. James Bannon, *Law Enforcement Problems with Intra-Family Violence* 1 (presentation to the American Bar Association Convention, Aug. 12, 1975) (reprinted by American Friends Service Committee, Women's Issues Program, 2161 Massachusetts Ave., Cambridge, Mass. 02140):

It is amazing to me that we are unaware of the extreme paradox of delegating to police officers the role of arbiters of family disputes. Of all the non-athletic occupations none is so absorbed with the use of physical coercive force as that of the police officer and none requires a more thorough socialization in the masculine image.

21. Detroit Executive Deputy Police Chief James Bannon, *quoted in* Jane O'Reilly, *Wife Beating: The Silent Crime*, *Time*, Sept. 5, 1983, at 24.

22. Minn. Stat. § 518B.01 subds. 2, 13, and 14 (1982 & Supp. 1983) requires police to arrest when probable cause exists that an order for protection, restraining the abuser or excluding him from the residence, has been violated.

23. Sharon Schmickle, *'Duluth model' of compulsory arrests is different attack on domestic abuse*, *Minneapolis Star & Tribune*, Aug. 28, 1983 at 1A, col. 2 ("Bouza said he will adopt a policy that encourages more arrests but does not mandate them.").

tion alone constitutes a criminal misdemeanor.²⁴ The man waved around a knife and assaulted the woman with his fists. When the police arrived, they told her that they *could not* arrest him.²⁵ The police ignored the fact that arrest was required by statute for probable cause of such a violation.²⁶ Only on March 9, 1984, did Minneapolis Police Chief Bouza finally issue a new policy. Arrests are now "expected" in many circumstances. If officers do not arrest they must give sufficient reasons for not doing so in their report of the incident.²⁷ Past practice somewhat diminishes hopes that the new policy will improve police response to battered women. In the past, Minneapolis police, like their peers in other U.S. cities, have disregarded similar policy determinations by legislatures.²⁸ One hopes that the police will not ignore this one as well. Past practice also indicates that police follow their chief's judgment in these matters more than that of the "civilian" legislators. If the Minneapolis police chief implements this policy by appropriately re-educating every Minneapolis police officer on proper responses to battered women, the policy might successfully assist and protect battered women.

Police fail to arrest for many reasons. One reason is the

24. Minn. Stat. § 518B.01 subd. 14 (1982 & Supp. 1983). Orders for protection are civil orders which, among other things, restrain a man from harming or threatening to harm a victim of abuse. Minn. Stat. § 518B.01 subd. 6 (1982 & Supp. 1983). See also *infra* notes 54-64 and accompanying text.

25. Telephone interview with Cheryl Howard, Battered Women's Services, Hennepin County Attorney's Office (Feb. 15, 1984).

26. See *supra* note 22.

27. Minneapolis Police Department Special Order, Addition to Departmental Manual Section 6-507.1 (Feb. 29, 1984) (effective March 9, 1984). Relevant portions state:

Arrests, based on probable cause, pursuant to Minnesota State Statute 629.341, are expected if any of the following circumstances exist:

- 1) Visible signs of injury or impairment.
- 2) Dangerous weapon involved.
- 3) Officer's belief that violence will continue.
- 4) Officer's prior knowledge of offender's violent behavior.
- 5) Obvious violation of an order for protection.

An arrest is also possible, pursuant to Minnesota State Statute 629.341, if either, or both of the following circumstances exist:

- 1) Alleged assault—No signs of injury.
- 2) Victim alleges to be in fear of immediate bodily harm.

In determining the appropriate course of action in domestic abuse cases, a primary concern of the officer is the protection of all from further acts of violence.

In all cases of Domestic Violence or alleged acts of Domestic Abuse, an Offense Report shall be completed. If no arrest is made, the Offense Report shall clearly show sufficient reasons for not making the arrest.

28. See, e.g., *supra* notes 24-26 and accompanying text.

training they receive.²⁹ Another reason is the amount and use of police discretion which rests in the decision to arrest.³⁰ Perhaps the most important reason police fail to arrest woman-batterers is their disregard for both the danger battered women face and the limited options women have to control the violence perpetrated upon them. This disregard may stem from the similarities between the masculine roles of policemen and woman-batterers, or from police fear of invading another man's domain—his home. I return to these issues later in this discussion.

B. Prosecutors and Judges

Police officers and their department administrators are not the only legal enforcers who ignore the situation of battered women. Prosecutors and judges, in particular, often ignore or trivialize the harm battered women suffer. Lack of response from these legal officers reinforces the messages men and battered women receive from "polite" police response. Lack of response from prosecutors and judges also affirms police inaction. At best, legal officers are consistent, at worst, criminal.

Prosecutors manifest their lack of concern in several ways. They sometimes refuse to charge men with any crime even when asked to do so by the victim.³¹ Prosecutors also routinely fail to charge crimes by woman-batterers at the appropriate level of severity.³² Prosecutors have set up mediation programs

29. See *infra* notes 202-215 and accompanying text.

30. Many officers believe that they need discretion to tailor their response to individual circumstances. They believe that they can best judge the appropriate response. One officer criticizes and explains this attitude: "[P]olice officers would like to retain their discretion. . . . It is my belief that their discretion is used before . . . determining whether or not the evidence supports the arrest. . . ." Letter from James Lindsay, Chief of Police, Brooklyn Center, Minnesota, To Whom It May Concern (March 14, 1983) (Submitted to the Minnesota Senate Judiciary Committee for *Hearings on S.F. No. 240*, 73d Sess. (1983)). See also Lawrence Sherman and Richard Berk, *The Specific Deterrent Effects of Arrest For Domestic Assault* 20 (July 25, 1983) (unpublished paper available from the Police Foundation, Washington, D.C.).

31. USSCR, Rule of Thumb, *supra* note 16, at 33 (Prosecutors "often accord low priority to cases involving domestic violence. The rate of prosecution . . . drops sharply when there is a prior or present relationship between the alleged assailant and the victim. Some prosecutors hesitate to file charges against abusers, based on the belief that domestic violence is a noncriminal, personal matter or that prosecution would adversely affect the parties' marriages." (headings omitted)).

32. *Id.* at 34. In June, July, and August, 1983, most Hennepin County and City of Minneapolis prosecutors with whom I came in contact generally charged a batterer who had inflicted substantial physical injuries with fifth de-

to remove battered women's cases from their sight.³³ When requested to do so by battered women, prosecutors readily dismiss charges, without attempting to determine whether the

gree misdemeanor assault, even though the appropriate charge was really first, second, or third degree felony assault. Fifth degree assault is an act done "with intent to cause fear in another of immediate bodily harm or death," or an act which "[i]ntentionally inflicts or attempts to inflict bodily harm upon another." Minn. Stat. § 609.224 (Supp. 1983). "'Bodily harm' means physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02 subd. 7 (1982). Fifth degree assault carries a maximum sentence of 90 days and/or a \$700 fine. Minn. Stat. § 609.02 subd. 3 (Supp. 1983).

Felony assaults require greater bodily harm than misdemeanor assaults, and may involve use of a weapon. Assault inflicting substantial bodily harm is a third degree felony assault. Minn. Stat. § 609.223 (1982). Second degree assault is committed by "[w]hoever assaults another with a dangerous weapon but without inflicting great bodily harm." The maximum penalty is five years imprisonment and/or a \$5000 fine. Minn. Stat. § 609.222 (1982). An act which inflicts *great* bodily harm is first degree assault, subject to imprisonment for a maximum of ten years and/or a fine of \$10,000. Minn. Stat. § 609.221 (1982). "'Substantial bodily harm' means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member." Minn. Stat. § 609.02 subd. 7(a) (1982). "'Great bodily harm' means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm." Minn. Stat. § 609.02 subd. 8 (1982).

Prosecutors rarely charge woman-batterers with felonies. One woman, for example, was stabbed numerous times with a knife. The Hennepin County Attorney refused to charge the man with second or third degree assault even though the man had used a weapon and caused her substantial physical harm. The county attorney declined to prosecute at the felony level because the man claimed that he stabbed the woman to defend himself against a knife attack by her. The man had *no* knife wounds or any other indications of assault. She stated she had not assaulted him. Another woman was beaten over the head with a tire iron. Her injuries required numerous stitches. Again the Hennepin County Attorney failed to prosecute. Both these incidents occurred in 1983. Interview with Cheryl Howard, Battered Women's Services, Hennepin County Attorney's Office (Jan. 17, 1984).

The misdemeanor/felony line affects more than the sentence for the crime. In Hennepin County, felonies receive much more investigation by the police, more careful attention from prosecutors, and more consultation with the victim regarding the disposition of the case.

33. These programs mediate "disputes" and obtain dismissal of criminal assault charges against men who batter. Dianna Stallone, *Decriminalization of Violence in the Home: Mediation in Wife Battering Cases*, 2 Law & Inequality 493 (1984); Lisa Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 Harv. Women's L.J. 57 (1984). For a description and criticism of a typical diversion/mediation program see USCCR, Rule of Thumb, *supra* note 16, at 70-75. The commission found that "[p]rosecutors often use informal hearing procedures to screen out spouse abuse cases. Such informal settings tend to produce an atmosphere of fear and coercion for abuse victims, frequently result in no criminal action against defendants, and minimize any implication of wrongdoing by abusers. . . . Mediation and arbitration . . . are still used as substitutes for prosecution in some jurisdictions." *Id.* at 75-76 (emphasis added).

assailant has coerced or threatened the woman to make the request.³⁴ In sum, prosecutors refuse to see battering of women as a serious problem.

When prosecutors dismiss charges at the coerced "request" of a battered woman, they reinforce the man's control over the woman. The man learns that prosecutors either are ignorant or will ignore his threats against a woman. He also learns that such threats eliminate his risk of criminal penalties. By failing to detect and prosecute coercion of the victim (who is also the primary witness), prosecutors implicitly approve the man's controlling behavior and reinforce it by allowing his threats to succeed.

Judges also fail to recognize and punish the harms woman-batterers perpetuate. Judges allow prosecutors to charge felony-level crimes as misdemeanors.³⁵ They rarely sentence woman-assaulters to serve jail time.³⁶ When a man violates the conditions of his release or probation, many judges fail to revoke his probation.³⁷ Judges do not tell men who batter that their behavior is criminal.

C. Violence Against Women

Placing women-battering within the larger context of all

34. USCCR, Rule of Thumb, *supra* note 16, at 27-28. This situation illustrates that advantages women gain in the legal system often are turned against us. Women need to influence prosecutors to stop woman-batterers. Once woman-batterers recognize this, they sometimes coerce battered women into requesting dismissals of their cases.

35. See *supra* note 32.

36. In Minneapolis, Minnesota, for example, only 3 of 51 offenders sentenced for misdemeanors in the last half of 1983 actually served time in jail. Battered Women's Services Quarterly Summary Case Statistics 3 (1983) (unpublished compilation on file at Battered Women's Services, C-2100 Government Center, Minneapolis, Minn. 55487). When time is served, the offender may most often be a man of color and/or poor. One judge, for example, sentenced an offender to 60 days in jail because the offender was a Peruvian immigrant living off his wife's AFDC. In Judge Henry McCarr's chambers, Municipal Court, Minneapolis, Minnesota, July, 1983.

37. A judge can sentence a man to 30 days, but stay actual imposition of the jail time on condition that the man fulfill certain requirements of probation. The judge could require that the man stay away from his ex-wife's house, or that he not commit other crimes. When a judge imposes jail time on a man because he has violated the conditions of his probation, the man's probation is revoked.

Judge Sheryl Ramstad Hvass was an encouraging counterexample to the judicial inaction I witnessed. Judge Hvass refused to dismiss charges against a woman-batterer, despite a "request" to do so from the woman, and pressure from the prosecutor. She continued the man's arraignment to allow time for the prosecutor to obtain the written complaint requested by the defendant. Hennepin County Municipal Court, First Division, arraignment, July, 1983.

violence against women aids our understanding of the attitudes and actions of legal officers. Violence against women and girls is so systemic and pervasive that any terrorism against women appears normal, and therefore invisible. Nearly all women have experienced male violence or the fear of such violence. Specific forms of male violence against women which have been documented include pornography, rape, incest, sexual harassment, and woman-battering.³⁸ Many men inflict sexual aggression upon women and children in more than one form. Men who batter women, for example, often consume pornography³⁹ and force women to do pornographic acts.⁴⁰ Many husbands who beat wives also rape them.⁴¹ Indeed, acts of subordination are thought to be erotic.⁴²

When men harm individual women, they harm women as a group. Men hostilely dominate women as a group by beating us, raping us, and torturing us. These acts define women as subordinate objects for men's sexual aggression. The pervasiveness of that definition makes it appear normal for us to have those acts perpetuated upon us. When police do not perceive harm against battered women, when men beat women, both groups of men are merely treating women in accordance with women's socially defined, subordinate position. The fol-

38. Andrea Dworkin, *Right-Wing Women* 209 (1983); *Public Hearings on an Ordinance to Add Pornography As Discrimination Against Women, Before the Minneapolis City Council Government Operations Committee*, (Dec. 12-13, 1983) (pornography); Diana Russell, *The Politics of Rape* (1975) (rape); Louise Armstrong, *Kiss Daddy Goodnight* (1978) (incest); Catharine MacKinnon, *The Sexual Harassment of Working Women* 25-55 (1979) (citing Claire Safran, *Redbook Magazine*, Nov. 1976, and Dierdre Silverman, *Sexual Harassment: Working Women's Dilemma*, 3 *Quest: A Feminist Quarterly* 15 (1976-1977) (reporting data from Working Women United Institute as among the first to discuss publicly sexual harassment)); Minnesota Department of Corrections, *supra* note 5, at 30 (woman-battering).

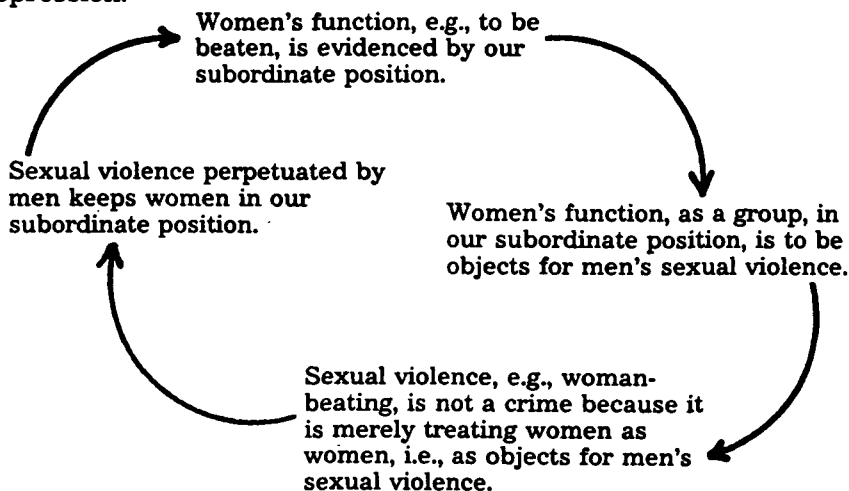
39. Irene Diamond, *Pornography and Repression: A Reconsideration of "Who" and "What"*, in *Take Back the Night: Women on Pornography* 201 (Laura Lederer, ed. 1980).

40. Louise Armstrong, *The Home Front: Notes from the Family War Zone* xii (1983) (A study by the Battered Women Research Center in Denver, Colorado found that 41% of battered women had been forced to insert objects into their vaginas, engage in group sex, have sex with animals, or play bondage games.).

41. In 37% of marriages in which wife beating occurred, wife rape also occurred. Ten percent of all women ever married have been raped and beaten by their husbands. Russell, *supra* note 6, at 89-90.

42. See, e.g., Hank Londoner, *More Than Her Fair Share*, *Penthouse*, Nov. 1983, at 84, 100-01 (photograph of nude, prone women wearing chains on earlobes, wrist, and ankle). See generally Andrea Dworkin, *Pornography: Men Possessing Women* (1981). Although both men and women perceive this sexiness and judge themselves according to this standard, men have the ultimate power to enforce the standard of sexiness.

lowing model⁴³ illustrates the circularity of this systemic oppression.



Feminists hope that eliminating forms of sexual violence will break this oppressive cycle. To that end, I now evaluate attempts to eliminate woman-battering.

II. Efforts to Eliminate the Problem

A. Legislative Efforts

State legislation specifically covering battered women's needs ranges from the non-existent,⁴⁴ to statutes providing police with probable cause arrest powers,⁴⁵ to statutes requiring police to arrest in certain circumstances.⁴⁶ Many states have created a civil action by which a woman can obtain an order restraining her abuser.⁴⁷ Some states provide only for battered women's shelters and the keeping of anonymous data by certain agencies likely to come in contact with battered women.⁴⁸

The Minnesota legislature has passed increasingly specific

43. See Dworkin, *supra* note 38, at 210-11.

44. For example, Arkansas, Delaware, Oklahoma, South Carolina, and South Dakota have no such laws. Even in states with no laws addressed specifically to battered women's needs, criminal assault statutes and laws prohibiting property damage and trespass can and should be used to assist battered women.

45. See, e.g., Alaska Stat. § 12.25.030(b) (1983).

46. See, e.g., N.C. Gen. Stat. § 50B-4(b) (Supp. 1981).

47. See, e.g., N.C. Gen. Stat. § 50B (Supp. 1981); Minn. Stat. § 518B.01 (1982).

48. See, e.g., Conn. Gen. Stat. §§ 17-31 K(a), 17-273, 4-66 c(b)(4) (West 1984).

and strict laws in an effort to correct the lack of police enforcement of criminal statutes against woman-batterers. In 1978 the legislature specifically empowered police⁴⁹ to arrest a man upon "probable cause to believe the person [sic] within the preceding four hours has assaulted his spouse or other person with whom he resides, although the assault did not take place in the presence of the peace officer."⁵⁰ The statute required observable physical injury or impairment of the victim.⁵¹ The legislature also enacted an immunity clause, still in effect, which prohibits civil suits against individual officers *arresting* in good faith.⁵² This clause, however, does not prohibit suits against individual officers for *failing to arrest*.⁵³

Later, in 1979, the legislature created a civil action for an order for protection. Criminal charges need not be brought to obtain a protection order. A woman obtains an order by submitting a petition to the family court. The court must assist women in writing and filing the petition, must allow the woman to proceed without the expense of an attorney,⁵⁴ and must waive court filing fees if the woman is poor.⁵⁵ Courts must inform women of these rights. Women must allege specific acts of abuse in their petition. Women in immediate danger of harm may also obtain temporary *ex parte* orders for protection.⁵⁶ The family court holds a hearing within fourteen days after issuing an order, to determine whether or not the abuse occurred and if so, what relief is appropriate.⁵⁷ Orders for protection may restrain a party from harming or threatening to harm the victim

49. Giving more power to police does seem an incongruous solution to battered women's lack of power. Suing police for selective enforcement of existing laws might be one way to empower women and not simultaneously give more power to women's oppressors.

50. Act of Apr. 5, 1978, ch. 724, 1978 Minn. Laws 772 (codified as amended at Minn. Stat. § 629.341 (1982 & Supp. 1983)). Prior to 1978, police could not arrest for misdemeanor assaults without a warrant. Minn. Stat. § 629.34 (1982).

51. Minn. Stat. § 629.341 (1982) (amended 1983).

52. Minn. Stat. § 629.341 subd. 2 (1982 & Supp. 1983).

53. See, e.g., *Nearing v. Weaver*, 295 Or. 702, —, 670 P.2d 137, 142-43 (1983). This decision was based on an Oregon statute similar to current Minnesota legislation. See Or. Rev. Stat. § 133.315 (1983).

54. Minn. Stat. § 518B.01 subd. 4(d) (1982).

55. *Id.* at § 518B.01 subd. 4(e). To proceed without payment of these costs, a woman must state in an affidavit that she is unable to pay the fees. Then the court must find that her petition is not frivolous. Unless the court finds the woman's affidavit to be untrue, she is allowed to proceed without payment of the costs. Minn. Stat. § 563.01 subd. 3 (1982).

56. Minn. Stat. § 518B.01 subd. 7. An *ex parte* order for protection is an order for protection issued by the court without providing the abusive man an opportunity to be heard.

57. Minn. Stat. § 518B.01 subds. 5-7 (1982).

of abuse, exclude the abusive man from the home, and award temporary support, child custody, and visitation.⁵⁸ The statute requires the local sheriff and police to "accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order for protection."⁵⁹ The family court can and sometimes does make other specific orders for police assistance for the battered woman's protection.⁶⁰

The 1979 statute empowered women. It empowered police and prosecutors to focus on batterers: Men who violate orders for protection are subject, at least in theory, to criminal misdemeanor charges and civil contempt of court.⁶¹ The statutes empowered poor women by making the courts available to them. Most directly, women may now choose civil relief in their efforts to escape battering and avoid the difficulty of convincing prosecutors to file criminal charges.

In April, 1983, the legislature expanded the police arrest powers, and required new mechanisms to ameliorate police response to battered women. Arrest is now *required* when a police officer has probable cause to believe that a man has violated an order for protection which restrains him or excludes him from the residence:

A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section restraining the person or excluding the person from the residence, if the existence of the order can be verified by the officer.⁶²

The family court *must* forward orders for protection to the woman's local police precinct or sheriff's office.⁶³ This provision eliminates police inability to confirm the existence of a protection order as an excuse for police inaction. Police no longer have to observe physical injury of women to arrest men for

58. *Id.* at § 518B.01 subd. 6.

59. *Id.* at § 518B.01 subd. 9.

60. *Id.* at § 518B.01 subd. 6(g). The Hennepin County Family Court, for example, has ordered police to carry out its orders granting women child custody and possession of automobiles. Telephone interview with Cheryl Howard, Battered Women's Services, Hennepin County Attorney's Office (May 24, 1984).

61. Minn. Stat. § 518B.01 subd. 14 (1982).

62. Minn. Stat. § 518B.01 subd. 14(b) (Supp. 1983). This law took effect June 1, 1983. Act of May 21, 1983, ch. 226, § 3, 1983 Minn. Laws 794, 796. Battered women's activists attempted to obtain legislation mandating arrests for all incidents of abuse, but were unsuccessful. Interview with Susan Knollenberg, Communications Coordinator, Minnesota Coalition for Battered Women, in St. Paul, Minnesota (Oct. 26, 1983).

63. Minn. Stat. § 518B.01 subd. 3 (Supp. 1983).

non-order violations: A man can be arrested for threatening a woman, even if he does not physically harm her.⁶⁴ This provision recognizes some battered women's experience. Verbal threats and some physical abuse are injurious but do not leave visible injuries. Bruises, for example, may not be apparent for several hours after the blows that caused them. Police *must* make written reports on every assault or threat against a battered woman.⁶⁵ Such reports make it easier to document patterns of abuse should the woman decide to institute legal action for a subsequent incident of abuse. Police *must* advise victims of the availability of shelters. Police must also advise victims of their legal rights and remedies.⁶⁶ The statute also requires 1985 police recruits to receive an unspecified type of police training for handling "domestic violence" cases.⁶⁷

Despite these improvements in the law, the Minnesota police response to battered women remains grossly inadequate. The police department has resisted implementation of the new legislation.⁶⁸ Police still sometimes refuse to arrest because, they claim, they are not empowered to do so.⁶⁹ They refer women to agencies that cannot help them with their immediate need, protection from imminent harm.⁷⁰ Police do not always write reports.⁷¹ When they do, they often exclude important information, such as whether the woman has previously been

64. Minn. Stat. § 629.341 subd. 1 (Supp. 1983) (effective June 1, 1983).

65. Minn. Stat. § 629.341 subd. 4 (Supp. 1983).

66. Minn. Stat. § 629.341 subd. 3 (Supp. 1983).

67. *Id.* at § 629.341 subd. 5. ("Upon request of the board of peace officer standards and training to the bureau of criminal apprehension, the subject matter of at least one training course must include instruction in the subject matter of domestic abuse. Every basic skills course required in order to obtain licensure as a peace officer must, after January 1, 1985, include at least three hours of training in handling domestic violence cases.").

68. *See supra* notes 4, 8, 22-28 and accompanying text.

69. Police have told battered women that a man no longer at the scene of a crime cannot be arrested, a man in "his" home cannot be arrested, that police cannot help women who call them frequently, and "mere threats" are not cause for alarm. Interviews with battered women, Minneapolis, Minnesota (June, July, and Aug. 1983).

70. *Id.* Police told one woman, who was authorized by an order for protection to enter her husband's home to obtain her belongings, to contact Battered Women's Services for help in gaining entry to the house.

71. Telephone interview with Cheryl Howard, Battered Women's Services, Hennepin County Attorney's Office (Feb. 15, 1984) (A Minneapolis police officer, ostensibly investigating a shot fired through a woman's door by a man who beat her, failed to write a report about the incident or save the bullet for evidence. After Ms. Howard urged him to search for the bullet, it was found on the floor of his squad car.).

beaten by the man.⁷² Battered women cannot depend upon police to use their full powers to assist in recovering belongings left at the abuser's residence.⁷³ Whether through ignorance, incompetence, or intentional resistance, police have failed to implement the Minnesota legislature's intent to ensure proper police assistance for battered women.

B. Other Efforts

If ignorance of the law causes police failure to implement statutory safeguards, police retraining may solve some of these problems.⁷⁴ If police inaction is based in active resistance, civil penalties may motivate implementation of statutory safeguards. Battered women can, as they have in other states, sue police departments, municipalities, and individual police officers in civil actions for damages, injunctions, and for civil rights violations.⁷⁵ The Minnesota legislature has created a statutory duty to protect battered women. Minnesota police individually and collectively have breached this duty. Battered women in Minnesota could sue police in tort for damages and for injunctive relief.⁷⁶ Women could also sue under section 1983 for deprivation of various fourteenth amendment rights.⁷⁷

In some states, police departments in large cities have been sued by battered women in class actions for injunctive relief and damages. Most suits require continuing supervision of police action. Even after law suits police actions may not improve. The consent decrees settling two major suits, for example, found discriminatory patterns and practices of denying battered women police protection and legal assistance. The decrees required substantial continuing efforts to monitor police

72. Author's review of Minneapolis police reports throughout June, July, and Aug. 1983.

73. Interviews with battered women, Minneapolis, Minnesota (June, July, and Aug. 1983).

74. See *infra* notes 91-215 and accompanying text on police training and notes 219-232 and accompanying text for constructive proposals to eliminate lack of police enforcement of legal protections for battered women.

75. See generally Margo Cooper, *Duties and Enforcement Mechanisms for the Rights of Battered Women*, 16 Suffolk U.L. Rev. 937 (1982) (detailed analysis of litigation theories available to battered women); Laurie Woods, *Litigation on Behalf of Battered Women*, 5 Women's Rts. L. Rep. 7 (1978); Pauline Gee, *Ensuring Police Protection for Battered Women: The Scott v. Hart Suit*, 8 Signs 554 (1983).

76. *Nearing*, 295 Or. at —, 670 P.2d at 140-41. See also Cooper, *supra* note 75, at 959-60; Gee, *supra* note 75, at 561; Woods, *supra* note 75, at 22.

77. Cooper, *supra* note 75, at 969-79, explains constitutional remedies under which actions can be brought by battered women. See also Woods, *supra* note 75, at 18-20; Gee, *supra* note 75, at 558-61.

compliance.⁷⁸ Plaintiff's counsel in one case noted that the attitudes which originally gave rise to the practice of arrest-avoidance in wife-assault cases are independently deeply ingrained in members of the police force. *They are not likely to be eliminated by a mere change in regulations.* Thus, it requires protracted efforts by plaintiff's counsel and battered women's advocates to insure compliance with the terms of any settlements.⁷⁹

Civil damage actions have also been brought by individual battered women against police. In one pending case a battered wife is suing the police department and county for failing to arrest when a temporary protection order and arrest warrant had been issued.⁸⁰ In another suit, a deceased battered woman's estate settled for monetary damages from the City of Fairbanks.⁸¹ The suit alleged negligent failure to investigate and prosecute a man, despite a battered woman's report to the police that he had kidnapped, assaulted, raped, and extorted her.⁸² Similarly, the Oregon Supreme Court recently held that law enforcement officers who knowingly fail to arrest are potentially liable for harm to the intended beneficiaries of protection orders, battered women.⁸³

Lawsuits have somewhat improved police response to bat-

78. *Bruno v. Codd*, 90 Misc.2d 1047, 396 N.Y.S.2d 974 (Sup. Ct. 1977), *rev'd in part, appeal dismissed in part*, 64 A.D.2d 582, 407 N.Y.S.2d 165 (App. Div. 1978), *aff'd*, 47 N.Y.2d 582, 419 N.Y.S.2d 901, 393 N.E.2d 976 (1979); *Scott v. Hart*, No. C076-2395 (N.D. Cal. filed Oct. 28, 1976). See also Woods, *supra* note 75, *passim*; Gee, *supra* note 75, at 562; Laurie Woods, *Litigation on Behalf of Battered Women*, 7 Women's Rts. L. Rep. 39, 44-45 (1981) (abstract and update of first article).

79. Woods, *supra* note 75, at 31 (emphasis added).

80. *Barnes v. Nassau Co.* (Nassau County Ct., N.Y. Sup. Ct., filed 1982). The case currently is in discovery. Telephone interview with Meg O'Regan-Cronin, Attorney with The Center For Women's Rights, Inc. (Oct. 16, 1984).

81. Telephone interview with Peter Aschenbrenner, plaintiff's attorney, Fairbanks, Alaska, by Susan Carlson (Aug. 15, 1984). The State of Alaska, also a defendant, was found not liable. Aschenbrenner declined to give the specific amount of the settlement with the City of Fairbanks, but characterized it as "modest."

82. The complaint alleged, among other things, that the police and prosecutor imposed sex-discriminatory conditions of prosecution upon battered women. Jeanette Tedesco reported the crimes against her on April 2, 1979. Assistant District Attorney James Doogan conditioned prosecution on Tedesco passing MMPI, psychiatric, and polygraph examinations. Before she could complete the examinations, Tedesco was killed by Charlie John Walton, the batterer. Complaint, *Tedesco v. Alaska*, No. 4FA-81-593 Civ. (Alaska S. Ct., 4th Jud. Dist., filed May 19, 1981).

83. *Nearing v. Weaver*, 295 Or. 702, —, 670 P.2d 137, 139 (1983). Compare Minn. Stat. § 518B.01 subd. 14(a) *supra* note 62 and accompanying text with Or. Rev. Stat. § 133.310(3) (1977) ("A peace officer shall arrest and take into custody without a warrant when [he] . . . has probable cause to believe that the person to be arrested has violated the terms of the order."). Henrietta Nearing told po-

tered women. They have at least required police departments to notice the problem of battering in economic terms. They have also resulted in some official changes in policy. Changes, however, have not been sufficient to overcome ingrained patterns of police behavior.

Methods other than court action or legislation have been used to attempt to eliminate the lack of police enforcement of criminal statutes against woman-batterers. One new approach is known as the intervention project. Former battered women and their advocates designed and implemented the first Domestic Abuse Intervention Project to coordinate, unify, and improve the response to battered women from police, prosecutors, courts, and human service agencies.⁸⁴ All participating institutions changed their policies and actions to control woman-batterers more effectively. These changes relieved battered women from responsibility for enforcing the law.⁸⁵

As part of the intervention project, police generally must arrest where probable cause exists. Police notify a battered women's shelter when a woman-batterer is arrested. Shelter staff then send a male advocate to the jail to discuss the situation with the abusive man. Discussions focus on his violence and its consequences. The shelter sends female advocates to visit the victim in her home, to provide referrals, and to explain the criminal system. Probation officers recommend appropriate strict sentences, and judges follow through on the recommendations.⁸⁶ The intervention project staff follows up on complaints of problems in the coordinated efforts, monitors attendance of woman-batterers at court-mandated counseling, and facilitates periodic meetings of the area's counselors.⁸⁷

The intervention project approach to gain police enforcement of crimes against battered women has had some difficulty maintaining appropriate police response. When the intervention project in Duluth, Minnesota changed from experimental

lice several times that her husband had violated the protection order she had obtained against him, yet they refused to arrest him. 670 P.2d at 139-40.

84. Ellen Pence, *The Duluth Domestic Abuse Intervention Project*, 6 Hamline L. Rev. 247 (1983). The project was funded by private foundations and coordinated by Minnesota Program Developments, Inc., a non-profit corporation. See also Steve Novack & Burt Galaway, *Research Methodology for the Domestic Abuse Intervention Project* (1982).

85. Pence, *supra* note 84, *passim*.

86. All these procedures are described in Pence, *supra* note 84.

87. Pence, *supra* note 84, at 269. In theory, the coordinating staff can leave and the project would continue to function since it utilizes institutions already in existence. *Id.* at 262-63.

to permanent, compliance with the probable cause arrest policy dropped significantly. Intensive "time-consuming" monitoring of police action was required to correct this problem.⁸⁸ However, arrests are now at an all-time high of approximately twenty per month.⁸⁹ The project director attributes this in part to administrative and supervisory officers' support of the mandatory probable cause arrest policy.⁹⁰

As the recent scenario in Minneapolis illustrates, legislators cannot implement concerns embodied in statutes. Likewise, courts and police departments may issue statements supporting battered women but the people who write these policy statements do not show up at the doorway when a battered woman has called for help. Payment of legal fees and civil penalties may inform some legal enforcers that poor enforcement is not in the interest of police departments or municipalities. Political and official pressure from higher ups may change practices at the same time it reinforces resentment towards women. Additionally, whether battered women sue for injunctive relief, obtain favorable legislation, or negotiate changes in police department policy, it is they who must assert massive efforts to supervise the police to insure that police practices actually change. Adapting law enforcement training might overcome these problems with current efforts to enforce the laws prohibiting woman-battering. Re-educating police officers might more effectively, more positively, and less expensively (for battered women) change police behavior.

III. Minnesota Police Training

Only police can respond to emergencies twenty-four hours a day. This makes them very important to battered women. When violence is imminent, only police can respond immediately with maximum legal authority to prevent or stop beatings.⁹¹

Law enforcement training influences actual police response. We can expect police to assist battered women when police accurately understand battered women's situation.

88. *Id.* at 259.

89. Telephone interview with Ellen Pence, Director of the Domestic Abuse Intervention Project in Duluth, Minnesota (March 26, 1984). (Pence noted that police training is not a significant aspect of the Duluth project).

90. *Id.*

91. Although civilians may also take legal actions, such as making a citizen's arrest, only police may arrest on probable cause without having witnessed the crime, and only police can actually take suspects into custody.

Training may either educate or misinform police about battered women.⁹² Nationwide, existing police training discourages arrest and misinforms police about woman-battering.⁹³ Without proper training, police may circumvent mandatory arrest policies set by their administrators or state legislators. With education, police may respond appropriately, even without a mandatory arrest policy.

Changing the training that law enforcement students receive would begin to eliminate police practices harmful to battered women. At best, training about battered women is woefully inadequate. In Minnesota students typically receive four hours of academic⁹⁴ and four hours of skills training about the situation of battered women.⁹⁵ At worst, training reinforces misogynist attitudes and practices. Indeed, police training itself is one source of harmful attitudes that must be changed. Training could break officers' deeply ingrained practice of avoiding arrest.

In Minnesota, the Peace Officers Standards and Training Board (POST Board) tests and licenses peace officers and certifies training programs throughout the state. Trainees must complete an academic program available at twenty-two colleges and vocational-technical institutions.⁹⁶ The curriculum typically requires a major in law enforcement and other "distribution"

92. Two researchers writing in a police publication explain that if "police are trained not to make arrests in wife beating cases, then it's not surprising that they do as they were trained." Roger Langley & Richard Levy, *Wife Abuse and the Police Response*, F.B.I. L.Enforcement Bull., May 1978, at 6.

93. Loving, *supra* note 16, at 31 (citing Daniel Saunders, *The Police Response to Battered Women: Predictors of Officers' Use of Arrest, Counseling or Minimal Force* (1979) (doctoral dissertation, University of Wisconsin)).

94. Interview with Officer Jim Moeller, White Bear Lake, Minn. Police Dept., in White Bear Lake, Minnesota (Dec. 8, 1983).

95. Interview with Lieutenant Jim Clark, Eden Prairie, Minn. Police Dept., in Bloomington, Minnesota (Nov. 7, 1983); Minnesota Board of Peace Officer Standards & Training, *Facts About the Minnesota Peace Officer Standards & Training Board 2* (undated leaflet). [hereinafter cited as POST FACTS].

Continuing education is also required for all licensed police officers. 6 Minn. Rules 6700.0900 subp. 2 (1983). Training programs conducted by police and sheriff departments themselves *may* be approved for continuing education credits by the Minnesota Board of Peace Officers Standards & Training (POST). 6 Minn. Rules 6700.0900 subp. 3 (1983). In this article I discuss only the initial academic and skills training approved by the POST Board. Insufficient resources prevented a thorough investigation of the numerous training programs conducted for current officers or new hires from other police jurisdictions. Initial training represents minimum standards for peace officer licensure articulated by state government. As a standard, these practices are significant. All police training based on these standards may benefit from this discussion.

96. Minn. Stat. § 626.843 (1982 & Supp. 1983); Minnesota Board of Peace Of-

courses from a variety of disciplines.⁹⁷ Trainees must then

Officer Standards and Training, Institutions Offering Basic Peace Officer Training (July 12, 1983) (unpublished list).

97. See, e.g., the law enforcement curriculum at Lakewood Community College, White Bear Lake, Minnesota:

LAW ENFORCEMENT

Minnesota law now makes it possible for a student to become licensed as a peace officer through a curriculum of education and training offered prior to hiring by a police agency. The law enforcement program at Lakewood is Minnesota Board of Peace Officer Standards and Training (POST) approved and offers an educational program which prepares students for entry into a skills course. Upon completion of the Lakewood program, students are eligible to take the first portion of a licensing examination and apply for entry to a skills course. Upon completion of the skills course and the remaining portion of the POST licensing examination, graduates are eligible for employment and licensure.

General Requirements: Associate in Arts Degree (A.A.)

1. At least 91 earned credits of college level courses.
2. A grade point average of 2.0 or better for the 91 credits the student applies toward the degree.
3. Competence in writing, computation, and reading. See Section IV for details.

CAREER COURSES—31 credits:

- LawE 101—3 credits—Introduction to Law Enforcement
- LawE 102—1 credit—Orientation to Skills Training
- LawE 109—3 credits—Introduction to Juvenile Justice
- LawE 110—3 credits—Police and Community
- LawE 111—3 credits—Police Administration and Organization
- LawE 112—3 credits—Police Operations
- LawE 113—3 credits—Criminal Behavior
- LawE 114—3 credits—Criminal Law
- LawE 115—3 credits—Criminal Evidence and Procedure
- LawE 116—3 credits—Criminal Investigation
- LawE 117—3 credits—Introduction to Criminalistics

GENERAL EDUCATION COURSES—a minimum of 60 credits of college level courses from the six general education areas listed below (English courses below 121 and Math courses below 111 do not count toward this requirement):

1. *Behavioral Science*—a minimum of 9 credits from the following:
 - Anthropology
 - Psychology 125 and 145 required
 - Political Science
 - Sociology
2. *English*—minimum of 10 credits as listed below:
 - Courses must be numbered 121 or above.
 - Composition—Engl 121 required
 - Literature—minimum of one course
3. *Humanities*—minimum of 9 credits from at least two of the following areas:
 - Art, Art History, Art Studio
 - Philosophy
 - German
 - Spanish
 - Humanities
 - Speech—Spch 111 required
 - Music
 - Theatre

(NOTE: A maximum of 4 credits in performance activities: band, choir, orchestra, theatre, and private music may be applied to this requirement.)
4. *Mathematics/Science*—minimum of 9 credits from the areas listed below with at least one course in science, and math competence.
 - Biology
 - Natural Science
 - Chemistry
 - Physics
 - Mathematics (Math 111 and above apply toward this category)
5. *Physical Education/Public Health*—minimum of 5 credits from the areas listed below with at least one course in Physical Education:
 - Physical Education
 - Public Health—PubH 102 and 104 required
6. *Social Science*—Minimum of 6 credits from the following areas:
 - American Studies
 - History
 - Economics
 - International Relations
 - Geography

ELECTIVES—sufficient courses to make a total of 90 college level credits from the areas listed above.

pass the academic portion of the board's licensing examination.⁹⁸ Students then complete a skills course of practical training exercises, available at three institutions.⁹⁹ Trainees must pass the skills examination at the end of the eight week course.¹⁰⁰ The POST Board finally licenses the trainee when a law enforcement agency hires him.¹⁰¹ The agency may conduct additional training, which may be POST Board approved for continuing education credits.¹⁰²

I will now examine three categories of police training: the family, crisis intervention, and arrest. These subjects form the major content and context of trainer teaching on battered women. Before considering changes for these training programs, I comment on the pervasive misogyny in police training classes. Although this analysis centers on Minnesota courses, it applies to all similar content in other jurisdictions.

A. Family

Police often refer to woman-battering as a "family" matter.¹⁰³ Police training materials discussing battered women manifest many ideas about both the family as a hierarchy and the proper response to women and children as part of that hierarchical family. I discuss these two subjects to show how police training materials hold battered women responsible for their own injuries, and how police are trained not even to see a battered woman's injuries.

1. The Hierarchy of the Family

According to training materials, woman-battering is a crime against the family.¹⁰⁴ I begin analyzing the family with an outline of how the family is organized, the place of men, women, girls, and boys within it, and how it maintains and reproduces male power at the expense of women and children.

In a hierarchical family men are more important and more powerful than women and girls. Women take care of men's and

98. POST FACTS, *supra* note 95, at 2.

99. *Id.*; Institutions Offering Basic Peace Officer Training (July 12, 1983) (unpublished list) (Hibbing Area Vo-Tech Institute, Alexandria Area Technical Institute, or the Law Enforcement Training Center in Bloomington, Minn.).

100. POST FACTS, *supra* note 95, at 2.

101. *Id.*

102. *See supra* note 95.

103. For example, the Minneapolis police department has a "family violence" unit which handles battered women's complaints.

104. *See infra* note 116 and accompanying text.

boys' emotions, and their physical, including sexual, needs. This situation is especially common among battered women. One man who works at a counseling service for abusive men explains:

She is supposed to know about feelings and relationships. Women are nurturers and caretakers. Men expect this and when something bad happens, men blame women for it. If she can't figure it out, she isn't doing her job. . . . If she loves me, she will understand me. If she doesn't understand, she's not doing her job, she's a *bad wife*.¹⁰⁵

The husband reasons that if his wife is bad, he is justified in hitting her. Because he is a man, he has the power to destroy what he does not like.¹⁰⁶ And since actions in which he exercises power are sexy to him, beating his wife is a *sexually* violent experience for him.¹⁰⁷ The husband treats the wife consistently with the social definition of woman: She is the subordinate object for the husband's sexual aggression.¹⁰⁸ Consistent with the social definition of women, the wife may passively accept the male aggression inflicted upon her.¹⁰⁹ Beating a woman is normal within the family hierarchy.¹¹⁰ Similarly, children, especially girls, are also treated as appropriate objects for male sexual aggression. Thus, we find incest

105. Schechter, *supra* note 1, at 221.

106. Andrea Dworkin, *Pornography: Men Possessing Women* 129-53 (1981) (male sexual pleasure "is inextricably tied to victimizing, hurting, exploiting.")

107. *Id.* at 69; *Pornography is a Battered Woman's Issue*, 4 Minnesota Coalition for Battered Women News, No. 2, 1984, at 11 ("Many women say that after they have been battered, the man wants sex. They wonder 'How could he expect me to, after he has done this to me; how could he expect me not to be upset, like nothing has happened?'") (quoting testimony from Minneapolis Pornography Hearings, *supra* note 38, at Session II).

108. See *supra* notes 38-43 and accompanying text; Russell, *supra* note 6, at 261-65.

109. See *supra* notes 39-43.

110. *Id.* Domination of women might not be normal within Black, Native American, or Chicano cultures, were they uninfluenced by western whites. However, the more integrated people of color become, the more pressure they have to accept the dominant white culture's social definition of men and women. Woman-battering results. Anita Bracy Brooks, *The Black Woman Within the Program and Service Delivery Systems for Battered Women: A Cultural Response*, in Minnesota Department of Corrections, *Battered Women: An Effective Response* (1980); Iola Columbus, Sharon Day-Garcia, Bonnie Wallace & Mary Ann Walt, *Battering and the Indian Woman*, in Minnesota Department of Corrections, *Battered Women: An Effective Response* (1980); Maria Rios, Eulalia Smith & Frances Zamora, *Battering and the Chicana*, in Minnesota Department of Corrections, *Battered Women: An Effective Response* (1980). Additionally, institutionalized racism may pressure men of color to assert what dominance they can over women of color. Brooks, *supra*, at 4; Columbus, *supra*, at 3. However, beating women is normal whether they are white women or women of color. More importantly, racism does not decriminalize battering.

perpetrated by fathers upon their daughters within the family hierarchy.¹¹¹

This hierarchy supports the dominance of men as a group over women and girls as a group. In the nuclear family, men feed off women caretakers, gaining the energy which sustains their male power. In the nuclear family all men and boys, women and girls, learn and assume their respective dominant and submissive positions in wider society.¹¹² Indeed, men and women regard the family hierarchy as "sacred and instrumental to the maintenance of a civilized social order."¹¹³ The social order which the nuclear family maintains is one in which men oppress women.¹¹⁴ The dominance of men in the nuclear family maintains the dominance of men at large. Not surprisingly, police officers are reluctant to interfere on behalf of battered women within the hierarchical families which maintain male police power.

Societal imperatives to "keep the family together"¹¹⁵ result in the maintenance and intensification of male power. "Keeping the family together" means preserving a hierarchy designed to support men and their dominance at the expense of women's subordination. Thus, when society claims to support "the family," it really supports *men*, since men, and not women, benefit from social support for the family. "The family" is men because it centers on male power and the men who exercise it.

Police training about the family exists in the social context of nuclear families supporting, maintaining, and being male, for men. The POST Board and the Minnesota legislature categorize crimes into two sub-groups. There are "crimes against the family,"¹¹⁶ and "crimes against the person."¹¹⁷ Training materi-

111. Louise Armstrong, *Kiss Daddy Goodnight* (1978); Florence Rush, *The Best Kept Secret: Sexual Abuse of Children* (1980).

112. Schechter, *supra* note 1, at 228-29. ("Women's proper role is to nurture men, and alleviate their emotional burdens. The mythology states that 'good' wives, who cater to their husbands' every need, have a happy family life. The woman alone is responsible for the success or 'failure' of the marital relationship.")

113. Loving, *supra* note 16, at 6. See also Del Martin, *Battered Wives* 36 (1981) ("[M]arriage is the mechanism by which the patriarchy is maintained.").

114. See *supra* notes 38-43 and accompanying text.

115. Loving, *supra* note 16, at 6-7. The imperative to preserve the family is analyzed in Louise Armstrong, *The Home Front: Notes From the Family War Zone* 4-6, 11-12 (1983).

116. Crimes against the family are bigamy, adultery, incest, non-support of wife or child, and domestic abuse (woman-battering). Minnesota Board of Peace Officer Standards and Training, *Learning Objectives for Post-Secondary*

als describe woman-battering as a crime against the family. Bigamy, adultery, non-support, incest, and woman-battering are all crimes against the family.¹¹⁸ Assaults of various degrees are crimes against the person.¹¹⁹ The actual acts which make up woman-battering are often the same acts criminalized by assault laws. These acts are sometimes prosecuted as assaults. Despite the similarity of the injurious actions, the POST Board and the Minnesota legislature see woman-battering as a crime committed against the *family*, rather than as a crime committed against *people* who are overwhelmingly *women*. Women are not seen as *human beings* who are *assaulted* when beaten by "family" men.

How does criminal injury to a *family* come about? Since a family is the man in it,¹²⁰ injury to a family occurs when the man is injured. Such injury could occur when a woman does not take care of the man, especially his emotions. A woman's job is to smooth over disagreements, and if all else fails, to end the argument by submitting to her husband. If she does not submit, and her husband subsequently beats her, *she* caused what police and training materials refer to as the "domestic dispute." Injury to the family could occur when the woman does not meet the man's physical needs according to his dictates,

Courses in Law Enforcement 9-10 (July, 1982) (available from State Register and Public Documents Division, 117 University Ave., St. Paul, Minnesota 55155) [hereinafter cited as Academic Courses Objectives]; Minn. Stat. §§ 609.355-.38 (1982 & Supp. 1983). "Domestic abuse," is defined as "(i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (ii) criminal sexual conduct . . . or (iii) intrafamilial sexual abuse . . . committed against a minor family or household member by an adult family or household member." Minn. Stat. § 518B.01 subd. 2(a) (Supp. 1983). Women and children, especially girls are the family and household members who are bodily injured, assaulted, threatened, and raped. Schechter, *supra* note 1, at 214-15. Domestic abuse is woman-battering.

The Minnesota statute hides the problem it purports to address by claiming that "domestic abuse" is the problem, and not woman-battering. The gender-neutral statute implies that men and women are equal, and that they are both victims of violence. This failure to understand and acknowledge male dominance impairs the effectiveness of the statute. See *id.* at 3. Gender neutral statutes can be valuable, however, because they often address women's injuries that previously went unacknowledged by the legal system.

117. Crimes against the person include assault, robbery and kidnapping. Academic Courses Objectives, *supra* note 116, at 7; Minn. Stat. §§ 609.221-609.265 (1982 & Supp. 1983). See generally Act of May 17, 1963, Ch. 753 headings, 1963 Minn. Laws 1185, 1202, 1205 (Minnesota Legislature created categories of crimes against the family and crimes against the person).

118. See *supra* note 116.

119. See *supra* note 32 for a description of Minnesota assault statutes.

120. See *supra* note 115 and accompanying text.

e.g., have his dinner ready on time. Thus, injury to the man/family is generally caused by women, especially those who refuse to stay in their subordinate position. Classifying woman-battering as a "crime against the family" sets up women to take the blame for woman-battering, because they are the ones responsible for the "health" of the family.

Since women cause these injuries to the family, they are often blamed for them. It is not enough for the POST Board and the Minnesota legislature to define battered women as outside the class of *people* (against whom assaults are committed). Now police blame these non-people for their own injuries, along with those to their children. One classroom lecturer appropriately commented that police should look out for children more often than they do.¹²¹ However, he then went on to hold women responsible for whatever psychological harm comes to children. In a society where women are still expected to be the primary caretakers of children, he claimed that when "both" parents work, children often have no one to talk to during the important after-school hours.¹²² He also claimed that when "both" parents work they become "stressed," thereby upsetting their children.¹²³ Women who must work for wages outside their homes or some privileged women who have taken the small step outside their subordinate position in the home are blamed for undocumented psychological damage to their children.

Police training promotes the notion that police should help keep families together, no matter what the cost to women and children. This attitude and practice reinforces and comes from the family's role in maintaining male power. One lecturer speculated that arresting a woman-batterer could be the last straw "that pushes a couple toward divorce."¹²⁴ The lecturer assumed that it is better for a woman to stay with a man who beats her than to disrupt the family relationship by divorcing him. Police are taught to refer couples involved in "domestics" to agencies whose purpose is to keep the relationship intact. One referral common among police trainers is marriage coun-

121. Skills class lecture by Lieutenant Jim Clark, Eden Prairie, Minn. Police Dept., in Bloomington, Minnesota (Nov. 7, 1983) [hereinafter cited as Clark lecture].

122. *Id.*

123. *Id.*

124. Academic class lecture by Sergeant James Moeller, White Bear Lake, Minn. Police Dept., in White Bear Lake, Minnesota (Dec. 8, 1983) [hereinafter cited as Moeller lecture].

seling.¹²⁵ Finally, a training manual indicates that one purpose of interviewing parties to a "domestic disturbance" is to discover things that might lead to "reconciliation."¹²⁶ As these examples show, training materials invite police to respond to battered women in a way that encourages keeping "the family" together. Police acting upon these instructions will not only keep particular women in danger, but they will also perpetuate an institution in which men subordinate women.

2. Police Response to the Family

Not only does police training encourage police to keep women subordinate within their families, it teaches police to respond to battered women, who are victims of "family crimes," differently from victims of other types of crimes. The different response is warranted by the existence of the woman within a family, that is, by her relation to men. I will discuss the possession of women by men within the family, and how police are trained not to see physical injury to a woman because she is seen only as a possession.

In marriage relationships many men regard "their" women as property, with which they can do as they please.¹²⁷ The man has the right to control the woman "by virtue of having penetrated her with his penis."¹²⁸ Legal marriage is not necessary to establish ownership of a woman. Once a man gains sexual access to a woman, he may beat her, rape her, and control her every movement.¹²⁹

125. See, e.g., Clark lecture, *supra* note 121; Moeller lecture, *supra* note 124. Lt. Clark mentioned both battered women's shelters and marriage counselors as referrals. Sgt. Moeller suggested referring couples to marriage counselors, as well as to clergy, Catholic charities and other unspecified "social services." Shelters were conspicuously absent from his list of examples. Neither officer suggested referrals to divorce attorneys or legal aid services.

126. Police Science Services, *supra* note 13, at 13. "Don't tell the second party what the first one has said unless it is the sort of thing that may help lead to a reconciliation." *Id.* at 51.

127. Schechter, *supra* note 1, at 218-19 ("Although men no longer legally own women, many act as if they do. . . . Law and tradition continue to conspire to view the husband as head of the household. . . . [A]ll men see themselves as controllers of women.'").

128. Russell, *supra* note 6, at 261. "Some women accept the idea of themselves as the property of their lovers even though they might hate them. They have 'committed' themselves to them and feel that they have to accept any abuse, including rape." *Id.* at 265. Dworkin, *supra* note 106 at 21-22: "The owning and impregnating of a woman in marriage or in some form of concubinage (however informal) are seen as mastery of spending without purpose, the first clear proof that masculinity is established as an irrefutable fact. . . ."

129. Russell, *supra* note 6, at 227-236, 261.

Prostitutes, for example, are owned and controlled by the pimps who organize sexual access to them. Like more conventional husbands, pimps beat their prostitutes to maintain control over them.¹³⁰ A pimp may control his woman's every movement. Similarly some battered women report that their abusers control their movements by watching them constantly.¹³¹ Police and others in society accept battering of prostitutes as normal for them, both as prostitutes and as women. The prostitute's function, an especially female function, is to be accessible to nearly any man for nearly every sort of sexual activity for a price.¹³² Sexual accessibility is the prostitute's only function.¹³³

Police attitudes towards women victimized by crime are determined by who possesses those women. One police executive notes that police discriminate against battered women and define them as both less than "first-class" victims and as sexual possessions:

The only criteria that law enforcement agencies use [to assess a woman's worth and credibility] is prior sexual access. Once that definition has been determined to exist then from that moment forward the criminal justice system treats her as a second-class victim. She doesn't even have the rights, the limited rights that a female victim would have ordinarily in any other assault case.¹³⁴

In other words, once a man penetrates a woman with his penis, his ownership of her makes her a second-class victim in the eyes of police charged with investigating any crime the man may have committed against her. The police defer to the woman's owner, in effect allowing him to do with her as he

130. Approximately 58% of prostitutes in the Minneapolis/St. Paul metropolitan area are beaten by their pimps. Enablers, Inc., *Juvenile Prostitution in Minnesota* 74 (1978). See, e.g., Linda Lovelace, *Ordeal* (1980).

131. See, e.g., Lovelace, *supra* note 130; Interviews with battered women, Minneapolis, Minnesota (June, July, and Aug. 1983).

132. A former prostitute testified before the Minneapolis City Council that many men engage prostitutes to do sexual activity that they cannot do with their wives. "Men witness the abuse of women in pornography constantly, and if they can't engage in that behavior with their wives, girlfriends or children, they force a whore to do it." Minneapolis Pornography Hearings, *supra* note 38, at Session II.

133. Contrast and compare married women, for whom sexual accessibility, legally acquired, is one of many functions. See Kathleen Barry, *Female Sexual Slavery* 142-51 (1979) (describes interdependence of prostitution and female sexual slavery in the family; notes similarity of pimps and abusing husbands) and *id.* at 230 (marriage and prostitution are the primary institutions in which female sexual slavery is practiced).

134. James Bannon, *Response of James Bannon in USCCR, Public Policy*, *supra* note 12, at 27.

pleases. A possession has no credibility when she asserts that her man has committed a crime against her.

Similarly and in support of these attitudes and practices, police are trained to accord battered women no credibility. Instead, police are encouraged to identify with the man. One manual shows the officers at the scene of the crime interviewing the man first.¹³⁵ *He* is the one to whom they first look to determine what happened before they arrived. *He* is the owner who can explain intelligibly his possession. The interviewing officer is to make an ice-breaking "gesture of kindness" toward the man, such as offering him a cigarette.¹³⁶ Finally the manual shows the officer telling the man "I know just how you feel," ostensibly to "put the man at ease."¹³⁷ These procedures give the man added credibility in the police students' eyes. They also help make battered women and their injuries less important, less noticeable. Training manuals provide no such solicitude by policemen towards women. The training manual illustrates and reinforces law enforcers' identification with woman-batterers. In contrast, recruits need to use materials and hear presentations which will counter police attitudes which now accord battered women no credibility.

The POST Board further renders battered women's injuries invisible by grouping the crime of woman-battering with the crimes of bigamy and adultery.¹³⁸ Authorities regard bigamy and adultery as "victimless" crimes that do not necessarily involve physical violence. For each of these crimes authorities perceive the injury as one to the family and its order, not as a physical injury to a human, a woman. This grouping perpetuates the view that woman-battering is a victimless crime, as are other "crimes against the family."

Police training could begin to change ideas about the family that are deeply ingrained in many members of society, including police officers. Instead, trainers reinforce the oppressive hierarchy of the family by encouraging students to keep families together. They also endanger battered women by encouraging them to stay within their families, and portray women as possessions with which men may do as they please. I next discuss the specific techniques, known as "crisis interven-

135. Police Science Services, *supra* note 13, at 9.

136. *Id.*

137. *Id.* at 10.

138. *See supra* note 116.

tion," by which officers are taught to implement this knowledge.

B. Crisis Intervention

Police are trained to respond to reported assaults with criminal investigation or criminal apprehension procedures.¹³⁹ Police are trained to respond to reported batterings with crisis intervention.¹⁴⁰ Felony assault investigations, for example, minimally include:

- a. Controlling and disarming suspect(s).
- b. Possible medical aid to either suspect(s) or victim(s).
- c. Separating suspects.
- d. Advisement of Miranda (where applicable).
- e. Accompanying victim(s) to hospital if the injury is serious (dying declaration).
- f. Trying to obtain preliminary statements.
- g. Protecting crime scene.
- h. Collection/preservation of evidence.
- i. Photographing evidence.
- j. Reconstruction of the crime.¹⁴¹

In contrast, crisis intervention includes the following procedures:

Determine if a crime has been committed, or if the dispute is a civil matter.

...
Attempt to find solutions to the problems.

...
Cool-off the parties. Let them talk out their problem in a reasonable manner.

...
Establish condition of disputants, i.e., sober, drunk, drugged, etc. Establish the relationship of the disputants.

...
Down play your own authority. Don't jump to conclusions or choose sides.

...
Properly "defuse" a potentially explosive situation when dealing with domestic disturbances.¹⁴²

Crisis intervention, as used by police in woman-battering situa-

139. Minnesota Board of Peace Officer Standards & Training, *Learning Objectives for Skills Courses in Law Enforcement 6* (1983) (available from State Register and Public Documents Division, 117 University Ave., St. Paul, Minnesota 55155) [hereinafter cited as *Skills Courses Objectives*].

140. Seventy-one percent of law enforcement jurisdictions in the United States use "crisis intervention" to handle "domestic disturbances." Morton Bard, *The Police and Family Violence: Police and Practice* in USCCR, Public Policy *supra* note 16 at 304, 310.

141. *Skills Courses Objectives*, *supra* note 139, at 6.

142. *Id.* at 30-31.

tions, corresponds with police actions otherwise known as counseling or mediation.¹⁴³

Crisis intervention is based on the premise that during situations specialists call crises, participants become unusually vulnerable. This vulnerability makes participants in crisis receptive to help and suggestions provided them.¹⁴⁴ Authority figures such as police may exercise special influence at this time.¹⁴⁵ Individuals in crisis, unable to maintain their usual defenses, break down mentally and physically from the severe pressures upon them. At this critical point battered women often call police. Thus, police can strongly influence the outcome of the "crisis." From a battered woman's perspective, arrival of the police would be a good time to let the woman-batterer know that assaulting women is not acceptable behavior. Police do not, however, intervene in these crises for that purpose.

The first program to implement crisis intervention for police instructed the intervening officer to

learn how the disputes came about, what each person's part was, how the parts meshed to make the problems worse, and to share this information with the family. . . . [T]he next step [is] for the officers to see if the couple could respond to the comments made by the officers about what they had observed.¹⁴⁶

This scrutiny of the woman's behavior and how it supposedly exacerbates her beatings ("problems") amounts to a search for provocation. If police find that the woman provoked the beatings, they can exculpate the man of any criminal actions.

Numerous problems arise when applying crisis intervention techniques to a battered woman's situation. Crisis inter-

143. The man who developed crisis intervention techniques for police describes *mediation* as follows: "Officers may initiate a problem solving process about the events that precipitated the dispute by focusing on the content of the conflict itself. They may suggest solutions and seek agreements or compromises." Officers who "counsel disputants" help them "to get a new, different view of the problems underlying the conflict. Going beyond the dispute at hand, officers may interpret events or advise the disputants, helping them to see their relationship in a new light and to consider constructive steps to improve it." Bard, *supra* note 140, at 306. In both "mediation" and "counseling," officers discuss problems behind the "conflict," suggesting solutions and avoiding the use of criminal sanctions against assailants.

144. *Id.* at 309; Morton Bard, *Training Police as Specialists in Family Crisis Intervention* 3 (1970); Interview with Dr. Sherwood Wilson, Assistant Coordinator for Human Services Generalist, University of Minnesota, in Minneapolis, Minnesota (Oct. 4, 1983).

145. Bard, *supra* note 140, at 309.

146. Bard, *supra* note 144, at 19 (This pilot program operated from 1967-1969 in New York City's 30th precinct).

vention is designed for an individual in crisis and works best for a basically stable man or woman suffering an unusual crisis in his or her life.¹⁴⁷ It does not work particularly well for women who are chronically "in crisis," because they are repeatedly battered by men.¹⁴⁸ In addition, intervenors must apply the techniques to the man and the woman separately and in different ways to address their specific crises. Finally, police students of crisis intervention are expected to learn all the skills necessary for proper crisis intervention in one three-credit course.¹⁴⁹ These problems and others make crisis intervention a destructive and ineffective response to battered women or abusive men.¹⁵⁰

The Minnesota POST Board requires crisis intervention training for Minnesota law enforcement officers.¹⁵¹ Mediation is the specific technique dictated for use when officers intervene in what they call a domestic crisis. Mediation can be defined as a process in which each participant, guided by the mediator, discusses his and her difficulties with the other.¹⁵² The goal of mediation is to reach an agreement in which each party makes compromises in order to improve their relationship.¹⁵³ The mediator assists the parties in finding common ground. According to published training guidelines, police are to mediate only after they determine that the disturbance is a non-criminal one.¹⁵⁴ Perhaps one reason officers do not follow these narrow, theoretical limits is because training materials give little instruction about how to determine whether a disturbance is criminal or non-criminal in a battering situation. Instructions to "take proper action" if a crime has been committed, and to "understand" citizen's arrest, disturbing the peace, trespass, and probable cause arrest, are the sole items relating to criminal actions throughout the two pages detailing

147. Wilson interview, *supra* note 144.

148. In Minnesota, 38% of battered women endure abuse for one to five years. Twenty-two percent are beaten for five years or more. Ninety-two percent of women living in shelters had been previously assaulted. Minnesota Department of Corrections, *supra* note 5, at 41-42.

149. Wilson Interview, *supra* note 144.

150. See *supra* notes 146-48 and accompanying text.

151. Skills Courses Objectives, *supra* note 139, at 30-31. These objectives "outline a minimum level of information to be provided at skills schools certified by the POST Board." *Id.* at Introduction by Mark Shields, Executive Director of the POST Board.

152. Bard, *supra* note 140, at 306.

153. *Id.*

154. Skills Courses Objectives, *supra* note 139, at 30-31 ("The student will understand the basic techniques of fact finding and mediation in dealing with non-criminal domestic disturbances.").

procedures for "crisis intervention."¹⁵⁵ Actions to protect the welfare of the battered woman are not considered.¹⁵⁶ Whether or not a crime is committed, materials instruct officers to let the parties "talk out their problem in a reasonable manner" and to "[a]ttempt to find solutions to the problems."¹⁵⁷

Mediation also exacerbates the problem of woman-battering. Since police instructors and their students believe that mediation helps both the battered woman and the abusive man, officers will use arrest and other ways of invoking the criminal process that *do* help battered women less frequently.¹⁵⁸ Mediation may "help" the abusive man by not penalizing him, but one must doubt whether an abusive man can change his behavior without realizing that it is wrong. In this way mediation only serves to maintain the systematic beating of women by men.

Mediation is an entirely ineffective and inappropriate means of dealing with woman-battering. The crucial question is, "*What* is mediated?"¹⁵⁹ Police training materials presume that verbal arguments cause battering and that specific actions cause verbal argument. Verbal argument prior to battery, and

155. *Id.*

156. *Id.* Appropriate acts would include medical care, arrest, advising the victim of her rights, and offering to transport her to the nearest shelter. See also notes 219-232 and accompanying text.

157. Skills Courses Objectives, *supra* note 139, at 30-31.

158. One study found that "[m]ediation appears to be a way to avoid arrest in the majority of domestic assault cases in which it is used." Oppenlander, *supra* note 18, at 461.

159. Another important question is between *whom* does the mediation take place? Mediation takes place between two persons of unequal power. Women have little or no economic, political, social, or sexual power. Men do. Any agreement reached between a man and a woman must be expected to reproduce the power differential between them. For example, an "agreement" might consist simply of promises from the woman to keep the house tidy and have dinner ready at an appointed hour, and promises from the man, not to beat her. The agreement reinforces the woman's subordinate status as caretaker of the man, and fails to prohibit the man from beating the woman. Mediation takes place between a battered woman and the man who terrorizes, abuses, and controls her. That control will be exercised by the man and felt by the woman in a mediation session where the mediator wrongly views the parties as equals. Unless the mediator can focus on the man's violence toward the woman, and make the man understand that *it is wrong*, mediation fails to assist battered women. To be effective, the mediator must exercise power over the man to remedy the power imbalance between the man and woman. Specifically, since mediation imposes no legal sanction and does not inform the battered woman of what legal rights she does have, mediation harms women. See Schechter, *supra* note 1, at 161. See also Janet Rifkin, *Mediation From a Feminist Perspective: Promise and Problems*, 2 *Law & Inequality* 21 (1984).

even battery are negotiable topics for mediation.¹⁶⁰

Verbal arguments, however, seldom precede a battery.¹⁶¹ Despite this fact, information given during police training continues to promote the idea that woman-battering grows out of verbal disputes which should be mediated. For instance, one instructor defined domestic disturbances as arguments between participants known to each other.¹⁶² He later claimed that the recruits should not think of domestic situations as two people fighting, but as a situation in which officers should provide counseling by listening and giving a little advice.¹⁶³ Such counseling by police does not necessarily focus on the man's violence. It does not take battered women seriously as victims of violent crime and it holds no legal sanction. Similarly, a recent police training film reinforces mediation as appropriate means of "crisis intervention" in battering situations. The film approvingly shows police officers asking "What's the problem here . . . what caused the fight . . . what started the fight today?"¹⁶⁴ Training materials thus persistently advocate mediating arguments, even though police are unlikely to encounter them.

The woman's behavior is not an appropriate subject for mediation. Her behavior does not cause the battering.¹⁶⁵ The man's behavior similarly is not an appropriate subject for mediation. A battered woman has no room for compromise or the working out of differences until the violence stops. She is in no position immediately after the beating to discuss with the man the problems she has because he beats her. The primary problems should be self-evident in most cases—the man subjects the woman to physical and psychological torture. Police must be trained to see a battered woman's problems and to take immediate steps to stop the violence against her. They should not provide an abusive man with an opportunity to discuss the woman's supposedly provocative behavior.

Other aspects of police training also hamper police re-

160. See, e.g., Police Science Services, Inc., *supra* note 13, at 13; Enger & Herberg, *supra* note 14, at 7.

161. Martin, *supra* note 113, at 50 (citing J.J. Gayford, *Wife Battering: A Preliminary Study of 100 Cases*, Brit. Med. J., Jan. 25, 1975, at 195.).

162. Clark lecture, *supra* note 121. The instructor also told the class that most role-plays would consist of "just arguing." But see *infra* notes 175-77 and accompanying text.

163. Clark lecture, *supra* note 121.

164. Ernie Steck, *Domestic Disturbances: Officer Safety & Calming Techniques*, (University of Minnesota Film Resources 1983).

165. See *infra* note 181 and accompanying text (man's thoughts and behavior cause battering).

sponse to battered women. Police respond to battered women as if the women are not injured. Police training about "domestic disturbances"¹⁶⁶ helps keep battered women's injuries invisible. The term "domestic disturbance" indicates that the POST Board does not notice criminal acts against women. *Who* is thought to be "disturbed"? The abusive man? The battered woman? The neighbors? In the 1983 Minnesota Board of Peace Officer Standards and Training, Learning Objectives for Skills Courses in Law Enforcement, women are not mentioned in the entire section on crisis intervention.¹⁶⁷ The term "domestic disturbances" helps hide the reality that *women are injured*.

Erasing the reality that *women are injured* and emphasizing "disturbances" confuses the officer's task of determining whether the incident is a criminal matter, a civil matter, or neither.¹⁶⁸ This erasure and emphasis enable officers to hear threats to a woman as part of a non-criminal argument and not as assaults. Similarly, the erasure and emphasis prompts officers to perceive nearly any words or action by a woman as provocation rather than as the cries of an injured citizen.¹⁶⁹ These perspectives contribute to officers' failure to identify assaults upon the woman as criminal. Indeed, the outlined procedures for keeping the peace, letting both parties talk out their problems, attempting to find solutions to the problems, and approaching "disturbances," "crises," and "family disputes"¹⁷⁰ characterize incidents of woman-battering in such a way that officers are unlikely to perceive a physical assault or threatened physical assault upon a woman as a crime.

Police training erases the reality that *women* are injured in more specific ways. Police training neglects to represent battering as a crime against women. While reciting data that in approximately ninety percent of domestic calls women are the victims, one instructor gave a counter-example in which he claimed a woman instigated "the whole thing and beat the tar

166. Skills Courses Objectives, *supra* note 139, at 30-31; Enger & Herberg, *supra* note 14, at 2 (refers to a "family dispute," "domestic quarrels," and "family trouble calls"); Police Science Services, *supra* note 13, at title page.

167. Skills Courses Objectives, *supra* note 139, at 30-31. Officers are referred to as "he/she," but note the reality that 97% of police officers are men. Loving, *supra* note 16, at 38.

168. Skills Courses Objectives, *supra* note 139, at 30 ("Determine if a crime has been committed, or if the dispute is a civil matter. . . . If a crime has been committed, take proper action. If no crime has been committed, try reasoning."). Enger & Herberg, *supra* note 14, at figure 1. See also *supra* notes 120-22 and accompanying text.

169. Police Science Services, *supra* note 13, at 6.

170. Skills Courses Objectives, *supra* note 139, at 30-31.

out of a man."¹⁷¹ Such examples take the focus away from the battered woman and fail to teach students about the significance of violence against large numbers of women. The instructor's incantation that men, too, are hurt harms women who are trying to do something about their injuries by focusing on the exception rather than the norm.

Specific investigative questions provided to trainees also erase women's reality. The questions have no relevance either to understanding the battered woman's situation or to discerning criminal activity. Questions take the following form: "How long has the couple been married? How long have they lived in their present home? How long has the interviewee held his or her present job?"¹⁷² Training manuals teach officers to ask about the "cause" of the present friction.¹⁷³ The officer will never discover criminal acts if he seeks causes of criminal activity. More importantly, during his discovery the battered woman remains unaided, her injuries ignored.

The trainees must be instructed in *criminal* investigation. Appropriate investigatory questions include: Did he hit you? Where? With what? Did he shove you? Are you hurt? What did he say? How frightened are you? Has he hit you before this incident? Over what period of time?¹⁷⁴ Until instructors teach violence against women as the subject of real criminal investigation, the police will continue to ignore battered women's injuries.

Ironically, police trainers have not ignored the potential for injuries to *officers* responding to calls from battered women. Approaching a "crisis situation" appears very dangerous indeed:

4. The student will identify the inherent dangers to an officer entering the scene of a domestic disturbance.
 - ...
 - b. Stand to the side of the doors.
 - ...
 - d. Beware of the response, "Come in."
 - ...
 - g. Have dogs secured.
 - ...
5. The student will be able to correctly identify the steps

171. Clark lecture, *supra* note 121.

172. Enger & Herberg, *supra* note 14, at 6. See also Police Science Services, *supra* note 13, at 11.

173. Enger & Herberg, *supra* note 14, at 6.

174. Such questions also validate the battered woman's experience.

to be taken in making initial contact with family disputants:

...

- b. If the disputants are violent, separate them.
- c. Visually frisk the disputants.
- d. Keep the disputants in sight while determining violence potential.¹⁷⁵

The extreme caution officers are instructed to use emphasizes the danger the situation poses for the officer, while overlooking the danger the same situation holds for the battered woman. While it is true that these calls present danger to officers,¹⁷⁶ the materials should give equal attention to the danger to the battered woman. Overlooking the danger encourages police students to believe that it does not exist. An accurate understanding of the very real danger an abusive man poses to the woman he lives with would not only help police effectively assist battered women, but should also protect the responding officers.¹⁷⁷

The suggestion that the *victim* of a crime should be frisked, in addition to the assailant, displays extreme callousness towards injured women. The characterization of *both*

175. Skills Courses Objectives, *supra* note 139, at 30-31. See also Clark lecture, *supra* note 121 (students instructed to believe that every woman-battering situation, or "domestic," will kill them and that objective of training is to prevent injuries); Police Science Services, *supra* note 13, at 3 ("[P]olice officers who respond to domestic disturbances have a high casualty rate! When people get mad enough, they may strike out at everyone who tries to interfere. That can include you.").

176. In 1983, 7.6% of law enforcement officers feloniously killed were killed while answering "domestic disturbance calls." "Domestic disturbance calls" are defined only as "family quarrels." From 1978-1982, 5.5% of officers killed were killed while responding to "domestic disturbance calls." Federal Bureau of Investigation, United States Department of Justice, Law Enforcement Officers Killed and Assaulted 16-17 (1982). Answering these calls appears more dangerous than responding to burglaries or civil disorder (e.g., riots), handling prisoners, drug related matters, mentally deranged people, or ambushes (unprovoked attacks). "Domestic disturbance" calls appear less dangerous than other disturbance calls (e.g., bar fights), robberies, attempting arrests, investigating suspicious persons or circumstances, or traffic stops and pursuits. *Id.* at 17. F.B.I. statistics show that 33.8% of officers assaulted in 1982 were assaulted while responding to all types of disturbance calls. *Id.* at 45. Since the F.B.I. does not distinguish here between family quarrels and barroom brawls, we do not know how many officers were assaulted while responding to battered women.

177. Some officers report that arresting immediately after establishing probable cause, rather than waiting to arrest, reduces the danger to officers. Written testimony of Ellen Pence submitted to the Minnesota Senate Judiciary Committee for *Hearings on S.F. 240*, 73d Sess. (1983). During the experimental Domestic Abuse Intervention Project in Duluth, police injuries did not change when they made mandatory probable cause arrests. Pence, *supra* note 84, at 257 n.25.

"disputants" as potentially violent further covers up the fact that one of them, the *woman*, is likely injured by the other, the *man*. Officers should be taught that a woman's actions which may appear violent are most likely self-defensive, and not an initiation of aggression.¹⁷⁸ Officers must be taught to discern assaults from self-defense. Trainers must drop the false neutrality that characterizes the situation as a violent free-for-all, in which no one is a victim and no one is an assailant. Otherwise, students will continue to ignore battered women's injuries.

Crisis intervention techniques are unsuited for responding to battered women. The mediative techniques encourage officers to examine a battered woman's actions for provoking behavior. By allowing the abusive man to discuss the problems he has with the woman, the officers allow him to blame the woman, while never confronting him with the criminality of his actions. Officers are taught to mediate arguments which they are unlikely to encounter. Injuries to battered women are ignored entirely, making it unlikely that police will perceive criminal actions against battered women. Finally, the emphasis on crisis intervention techniques makes it unlikely officers will use investigative methods more suited to these criminal assaults.

C. Arrest

1. Why Police Should Arrest Men who Batter Women

Arresting men who batter women empowers battered women in many ways. When police arrest a batterer, society confirms the battered woman's experience that her beatings are an act of hostility. Assault becomes cause for legal action. Injuries that were once invisible to society become real. When police arrest a man for beating the woman they tell the man and the woman that it is not her function to be beaten.¹⁷⁹

Police should also arrest men who batter women because removing the abusive man from the house protects the victim from continuing violence. Police argue that arrest endangers the battered women by provoking immediate retaliatory violence against her.¹⁸⁰ It makes little sense, however, to speak of the woman-batterer's violence as "retaliatory," since anything can trigger it. Men hit women for any reason and for no reason

178. See Schechter, *supra* note 1, at 170-74.

179. See *supra* notes 38-43 and accompanying text.

180. Jailers may release a man within two hours of arrest. This makes immediate retaliatory violence against a woman possible.

at all. One batterer spoke about his reasons for battering: "Whenever you feel like getting angry, when you feel like arguing, when you feel like fighting, God Himself could be sitting in that chair and you'll keep looking until you find that reason."¹⁸¹ The police retaliation justification has also been proven unfounded.¹⁸² Probable cause arrest does best what police are supposed to do: provide immediate protection from violence. Police avoiding arrest ignore evidence that arrest reduces subsequent beatings.¹⁸³ Ironically, the study which developed this evidence was conducted in Minneapolis. It compared three different police responses to calls from battered women: (1) order the man to leave the residence; (2) mediate the dispute; and (3) arrest the man.¹⁸⁴ Arrest produced a lower recidivism rate than either of the other options.¹⁸⁵

Police should arrest men whom they have cause to believe batter women because such arrests empower women. Arrest can kindle the battered woman's perception that society values her and penalizes violence against her. This perception counteracts her experience of abuse. A woman learns through experience that nothing she does stops the beatings:¹⁸⁶ she is beaten when dinner is late; she is beaten when it is on time. When she calls the police they do not come; when they do come they act as neutral¹⁸⁷ observers. When a battered woman calls the police and they arrest the man who beats her, her actions, along with the officers' actions, do something to stop her beating. Previously, her actions may have done little or nothing to stop the violence against her. Now her actions empower her. The woman may begin to believe in herself enough to endeavor to protect herself. Police arrest of a woman's batterer reinforces the shred of belief in herself that prompted her to

181. Mark Lipman & Emerge: A Men's Counseling Service, *To Have and to Hold*, (New Day Films) (1982).

182. Sociological evidence reveals that arrests do not cause immediate retaliation against battered women. Sherman & Berk, *supra* note 30, at 16, 19. None of the 76 men arrested in one study, for example, committed "new violence" against the woman within a day after arrest, even though 38% of the couples had been together within that time. *Id.* at 30.

183. Sherman & Berk, *supra* note 30, *passim*.

184. *Id.* at 4-5.

185. *Id.* at 13, 15.

186. One study showed that many women do not report assaults against them because they believe that the police can be of no real help. Loving, *supra* note 16, at 15 (citing Lou Harris and Associates, Inc., A Survey of Spousal Violence Against Women in Kentucky (1979)).

187. This "neutrality" harms women and preserves male power. See further *supra* note 17.

call them.¹⁸⁸ Police indifference can only obstruct empowerment.

Police should arrest men whom they have cause to believe batter women because such arrest re-educates men. It tells the man that society does not accept his woman-battering. It represents the first of many opportunities for the criminal system to tell the man that his behavior is a crime for which he can be punished. Such strong messages must be sent to counteract the deeply ingrained attitude that women's *function* is to be beaten and men's function is to beat.¹⁸⁹ When police fail to arrest woman-batterers, police give men implicit permission to continue beating "their" woman.¹⁹⁰ Police arrest avoidance fails to assist battered women to empower themselves.

Extension of probable cause arrest power has been criticized as racist and classist by some battered women's advocates.¹⁹¹ Police already arrest disproportionate numbers of

188. When a neighbor or other person in the woman's household calls the police, a battered woman may not be as empowered as she might be if she called the police herself. Under these circumstances, arrest does not directly show her that her actions can make a difference. However, arrest may instigate her belief that if *she* calls the police they will stop the violence. A battered woman's actions can make a positive difference even if someone else calls the police. If she asks the officers to arrest the man and they then do so, her actions matter.

189. See *supra* note 43 and accompanying text.

A probation officer explained one possible effect of telling a woman-batterer "no, you do not have the right to hit or be violent": "I have seen men who have been violent within their relationships for years end their violent behavior. The beginning of this process was the mandatory arrest policy in the Duluth area." Testimony of David Nyquist, Probation Officer (1983) (available from Minnesota Coalition for Battered Women, St. Paul, Minn.).

190. Loving, *supra* note 16, at 61 ("[n]ot to arrest in these cases may suggest to the assailant that violent behavior is not serious and will not be punished."). Some police favor policies *presuming* arrest, *not* mandating arrest. *E.g.*, Sherman, *supra* note 30, at 20. The difference between these policies and those mandating arrest is that under mandatory arrest an officer *must* arrest a man whom he has probable cause to believe has beaten a woman. Under a presumption of arrest the officer retains discretion not to arrest if he feels that it would be inappropriate. (Still, he is to presume that arrest is the appropriate response when probable cause exists).

Since training discourages officers from arresting men who batter women, police response would not change under a presumptive arrest policy. Presumptive arrest only gives police power. It does not necessarily empower battered women. Mandatory arrest policies empower battered women by requiring police officers to act on their behalf. Mandatory arrest does not further empower police because they lose some power of discretion.

Police must receive very strong messages against woman-battering before their behavior toward women will change. Strong training accompanied by strict laws and policies is necessary to end police avoidance of arrest.

191. Interview with Janet Harpole Anderson, Associate Executive Director and Co-founder of the Phyllis Wheatley Community Center, Administrator of

people of color.¹⁹² Mandatory arrests would increase the numbers of arrested persons. After arrest, the courts impose harsher penalties on men of color than on white men and women.¹⁹³ The entire criminal legal system treats men of color more harshly at every stage. Increased powers to arrest provide additional opportunities for the criminal system to exercise its oppressive racist and classist power, to the detriment of men and women of color, as well as all poor people.

Effectively implemented, mandatory arrest policies could remove racist police discretion. Under these policies men who batter women are arrested only and always upon probable cause of criminal activity, regardless of their color or class.¹⁹⁴ Advocates and others could discover, prove, and correct abuses of discretion more easily under nondiscretionary arrest policies. Still, police exercise discretion no matter what laws or policies dictate. Mandatory arrest policies might result in arrest quotas which would be filled by poor men and men of color.¹⁹⁵ However, the percentage of Black men arrested for abusing women has dropped approximately twenty percent under Duluth, Minnesota's mandatory probable cause arrest policy.¹⁹⁶

Mandatory arrest probably could not reduce other racist

Education for Cooperative Living, a program of the Phyllis Wheatley Community Center, in Minneapolis, Minnesota (March 20, 1984) (Anderson is a Black woman who developed these programs to serve the needs of men and women of color, particularly Blacks); Schechter, *supra* note 1, at 178 ("As one shelter noted, 'while we wanted to activate police protection for abused women wherever possible, we were hesitant to support the extension of discretionary powers of arrest, so open to abuse, particularly against Third World and low income people.'").

192. In 1980 Blacks comprised 1.30% of Minnesota's population, Native Americans comprised .86% of the population, Brown people .79%, and whites 96.57%. See U.S. Bureau of Census, 1982-83 Statistical Abstract of the United States 32 (103d ed. 1982). Yet 8.23% of those arrested in Minnesota in 1981 were Black, 4.32% were Native Americans, 1.11% were Brown people, and only 86.98% were white. See Bureau of Criminal Apprehension, Minnesota Department of Public Safety, 1981 Minnesota Crime Information 59 (1982) (reports numbers arrested).

193. Minnesota Sentencing Guidelines Commission, Report to the Legislature 21-23 (1983) (In Minnesota, sentences for people of color are more severe, in terms of both type of sentence and duration of sentences, than those imposed upon white offenders.).

194. Although women of color call police for assistance more than white women, there is no evidence that men of color beat women more than do white men. See Minnesota Department of Correction, *supra* note 5, at 35-36.

195. Anderson interview, *supra* note 191.

196. Telephone interview with Ellen Pence, Director of the Domestic Abuse Intervention Project in Duluth, Minnesota (March 26, 1984).

treatment of people of color by police.¹⁹⁷ Actions such as unnecessary use of force and disrespectful ways of talking to offenders (and victims) can ensure that a man of color arrested for beating a woman will believe he was arrested because of police prejudice, and not because beating the woman is wrong. However, this problem is not an excuse to ignore the need of battered women of color for immediate protection. Abuse of women is a crime, and men of color commit this crime, as do white men. Like the Domestic Abuse Intervention Project in Duluth, Minnesota, other programs addressing Brown woman-batterers have found that despite these problems, arrest can effectively deter Brown men from beating women.¹⁹⁸ Arrest can initiate the long process of ending the violence. Most battered women's advocates urge appropriate follow-up treatment for the abusive man.¹⁹⁹ Such treatment would, among other things, make clear to the man the real reason for his arrest—the crime of woman-battering. A visit at the jail by a male advocate to confront the man with his unacceptable behavior would send a serious message to the offender. Intervention projects do just this.²⁰⁰ As one advocate points out, the needs of battered *women* of color must come before those of men of color who batter.²⁰¹ In conclusion, police response that both many women of color and many white women deem necessary to validate their experience should be demanded by the battered women's movement. The message that all society, including women of color, does not accept woman-battering from any man must be conveyed to all men. We should convey that message via probable cause arrest.

In sum, arrest empowers battered women, protects them from further immediate violence, and can prompt abusive men to change their ways. Probable cause arrest shows a battered woman that she is human and credible, and that violence against her matters. Police should be trained to arrest abusive men as a way to assist battered women.

197. See Minnesota Advisory Committee, U.S. Commission on Civil Rights, *Police Practices in the Twin Cities: A Report* (1981) for description of rough treatment and brutality suffered by people of color while being taken into custody.

198. Interview with Frances Zamora, Director of the Center for Domestic Abuse Intervention, in St. Paul, Minnesota (Jan. 27, 1984).

199. See, e.g., Schechter, *supra* note 1, at 178; Zamora interview, *supra* note 198; Interview with Bonita Clairmont, Administrative Manager, Casa de Esperanza, in St. Paul, Minnesota (Feb. 21, 1984)

200. See *supra* notes 83-90 and accompanying text.

201. Clairmont interview, *supra* note 199.

2. Police Training and Arrest

Police training minimizes and discredits arrest as an appropriate response to battered women. Assuming that mandatory probable cause arrest is the best policy, I will discuss first what the law requires in order to arrest abusive men. Second, I will describe how training emphasizes techniques other than arresting abusive men in responding to battered women. Training materials' characterization of arrest as a last resort is discussed third. Fourth, I will note how training materials suggest to a police student that he is not really skilled if he has to arrest to control "domestic disturbances." Training fails to guide police response even when the police officer determines that a crime has been committed against a battered woman. I will discuss this last.

Minnesota law requires police to arrest upon probable cause that an order for protection restraining a man or excluding him from the woman's residence has been violated.²⁰² Police *may* arrest upon probable cause that a woman has been assaulted.²⁰³ Accordingly, the POST Board requires that students understand when probable cause arrests may be made in cases involving domestic abuse.²⁰⁴ This objective seems adequate to insure minimal police knowledge. Unfortunately, many police officers either do not understand the Domestic Abuse Act and probable cause arrest, or do not act on that knowledge.²⁰⁵ Two instructors, when updating police students on the 1983 amendments to the act, did not mention that arrests were required for violation of a protection order.²⁰⁶ Since the law mandating arrest requires an entirely new response from police, instructors should spend considerable time outlining what the law requires of law enforcement officers. Additionally, since veteran officers working with recent recruits probably have inaccurate views of when probable cause arrests are appropriate,²⁰⁷ trainers should give careful and detailed train-

202. Minn. Stat. § 518B.01 subd. 14(b) (Supp. 1983). See *supra* note 62 and accompanying text.

203. Minn. Stat. § 629.341 subd. 1 (Supp. 1983). See *supra* note 64 and accompanying text.

204. Academic Courses Objectives, *supra* note 116, at 10.

205. See notes 4, 23-26 and accompanying text.

206. Clark lecture, *supra* note 121, Moeller lecture, *supra* note 124.

207. After the enactment of the 1983 amendment to the 1979 Domestic Abuse Act, the Hennepin County Attorney's Office provided totally inadequate information about probable cause arrest to police officers. Although the statute requiring probable cause arrest for certain violations is quoted, the explanation immediately following states that "the law enforcement officer, with a finding of

ing to police students. All training must explain, whether to new recruits or to veteran officers, the importance of exercising probable cause arrest powers to assist battered women.

Despite the statutory requirement, police training emphasizes the use of techniques other than arrest for responding to battered women:

3. The student will identify the following steps to be taken once safe entry has been made at the scene of a disturbance (crisis).
 -
 - f. If no crime has been committed, try reasoning.
 - g. Cool-off [sic] the parties. Let them talk out their problem in a reasonable manner.
 -
5. The student will be able to correctly identify the steps to be taken in making the initial contact with family disputants.
 -
 - f. Establish the relationship of the disputants.
 - g. Determine if a crime . . . has been committed.
 - h. Down play [sic] your own authority.
 - i. Don't jump to conclusions or choose sides.
6. The student will demonstrate that he/she understands how to properly "defuse" a potentially explosive situation when dealing with domestic disturbances.
7. The student will understand the basic techniques of fact finding [sic] and mediation in dealing with non-criminal domestic disturbances.
8. The student will demonstrate that he/she understands the proper time and/or conditions under which the police officer should leave the scene of a dispute.
9. The student will identify the proper methods involved in making referrals.²⁰⁸

These procedures emphasize mediation, and assume non-criminal situations. From this type of police training students learn that: (1) most disturbances are not criminal; (2) mediation, with possible referral, is preferred to other options; and (3) officers should not arrest frequently. Having learned these assumptions, the trainee may not perceive criminal activity when it occurs before his eyes. He may be less likely to believe bat-

probable cause, *can* make an arrest without a warrant for a misdemeanor not committed in his presence." The county attorney further explains that "[t]he obvious intent of this legislation is to *allow* law enforcement officers to intervene to protect persons from abuse by spouses and others." Hennepin County Attorney's Office, Police Prosecutor Hotline, Sept. 6, 1983, at 3, (emphasis added). This explanation is inaccurate, since it says that arrest is *allowed*, and *can* be made. In fact, arrest is required. Minn. Stat. § 518B.01 subd. 14(b) (Supp. 1983).

208. Skills Courses Objectives, *supra* note 139, at 30-31.

tered women's accounts of criminal activity.²⁰⁹ A battered woman who calls police for help receives less than assistance when police listen patiently to her abuser, inquire into his grievances about her, do not believe that anything violent was done to her, and try to work out the "dispute."²¹⁰ To assist battered women, training materials must emphasize the woman's need for immediate protection, investigation and apprehension of men who have committed assaults, and the use of arrest as an appropriate response to criminal acts.

Instructors at the University of Minnesota promote arrest avoidance. They suggest using arrest only when mediation fails completely.²¹¹ They promote the idea that arrest leads to retaliation against the battered woman.²¹² One skills instructor did comment that an officer can be reasonably sure that arrest will have a positive effect on the parties. However, he emphasized the use of other alternatives throughout his lecture.²¹³

Training materials also promote arrest avoidance. They suggest that an officer who arrests woman-batterers is not skilled:

Many experienced officers have found that they are themselves in trouble in the long run when they can't avoid making an arrest. An arrest is a stopgap procedure at best. It ends the fight for the time being, but it does nothing to solve the problem.²¹⁴

Such remarks discourage officers from fulfilling their legislatively mandated duty and must be eliminated from the training curriculum, for the benefit of battered women, as well as that of officers. Police must be given incentives, not disincentives, to arrest.

Arrest avoidance may continue because the POST Board provides *no* guidance about how to proceed once the officer determines that a crime has been committed against a battered

209. Officers must believe battered women's accounts of the crimes against them so that officers believe that the probable cause necessary to arrest exists. One instructor did remind his students that the battered woman's story of what happened is reliable and can support a probable cause finding. Clark lecture, *supra* note 121.

210. *E.g.*, *supra* note 4 and accompanying text.

211. Enger & Herberg, *supra* note 14, at 10 ("Arrest when you cannot avoid it."). This training guide did not comment on how one determines that mediation has failed.

212. *Id.* at 1, (Arrest "does nothing to solve the problem. On the contrary, it adds new cause for resentment. It will probably lead to more and more bitter quarrels in the future.").

213. Clark lecture, *supra* note 121.

214. Enger & Herberg, *supra* note 14, at 1.

woman.²¹⁵ Trainers must not only teach students appropriate skills for determining when a crime has been committed against a battered woman, trainers must inform students about situations in which they arrest. Trainers must explain that officers are more likely to find the woman-batterer at the scene of the crime than they would be to find stranger assailants. The woman-batterer probably does not realize he has done anything wrong. Arrests may be expedited by easy access to the offender, yet made more difficult by the woman-batterer's ignorance of his criminal wrong-doing. Since the woman-batterer may be aware that the woman called the police, he may have fled the scene before the police arrive. Trainers must explain this possibility, and instruct students to follow usual procedures for apprehending offenders. Trainers should also remind the students that the battered woman may be the best source of information about the assailant's destination, since she knows of his friends and habits. Most importantly, the responding officers should not ignore the victim's needs while arresting the victim. Students must receive guidance about responding to crimes against battered women.

Police trainers must stop promoting arrest avoidance. Minnesota law requires probable cause arrest for some offenses against battered women, and allows probable cause arrest for any other crime committed against battered women. Nevertheless, police trainers emphasize using techniques other than arrest for these offenses. They regard arrest as a last resort, and suggest that an officer who arrests woman-batterers is not skilled. Even when trainers recognize that crimes can be committed against battered women, they fail to inform officers as to how to respond to such crimes. Police trainers must emphasize the use of arrest of woman-batterers as the appropriate response to criminal activity. Students should also be taught about the ways arrest benefits battered women.

D. Misogyny

Instructors express misogyny when training law enforcement students. One skills instructor "joked" that role-playing is the only way to learn about domestic disturbances unless the student does it nightly at home.²¹⁶ The same instructor recommended during a landlord-tenant dispute role-play that the police encourage the male landlord to return to his office "to blow

215. Skills Courses Objective, *supra* note 139, at 30-31.

216. Clark lecture, *supra* note 121.

off steam with his secretary."²¹⁷ The first joke trivializes the terror to which battered women are subjected. The second joke reinforces the subordinate status of secretaries as buffers for male anger and as caretakers of their bosses. It also suggests that the boss should psychologically beat his secretary.

Law enforcers exhibit this misogyny outside the classroom as well. When confronted with a slightly uncooperative and argumentative woman arrested for driving while intoxicated, a Ramsey County sheriff commented that he should have given her an open hand slap, because that works well with hysterical women.²¹⁸ This on-duty law enforcement officer stated, without challenge from several listening officers, that argumentative women should be slapped. All these jokes show the true subordinate status of women and battered women specifically in the ranks of the police department and generally in this society. Such "humor" really gives permission to beat women, while pretending to say nothing of import, because the words constitute jokes. These jokes are dangerous and intolerable. Until instructors and senior officers end such misogyny, no woman will be seen, heard, believed, and respected by all police.

IV. Recommended Changes

Police training in Minnesota, as in any other jurisdiction using mediation as a crisis intervention technique, does not seriously address the situation of battered women. This may be caused by the fact that police and police trainers seldom recognize the amount and connections between all violence against women. Trainers generally fail to understand how their actions perpetuate men's acts of violence against women *because we are women*, subordinate to men, here for men to rape, torture, harass, and batter.²¹⁹ Police training communicates specific perceptions of women and the injuries men do to us. Police are instructed to perceive woman-battering as a private crime against the family. They avoid arresting the woman-batterer and mediate between criminals and their victims. Training reinforces law enforcers' inability to understand battered women or to do anything for them.

At a minimum, the objectionable content of police training

217. *Id.*

218. On patrol with a St. Paul, Minnesota police officer (Nov. 5, 1983).

219. See *supra* notes 38-43 and accompanying text.

must be eliminated.²²⁰ The POST Board might accomplish this goal by defining specific standards to qualify instructors. For example, two years experience working with battered women, along with knowledge of police procedures,²²¹ would serve as a minimum standard for instructors teaching about woman-battering. This high valuation of battered women's advocates' experience could increase students' respect for battered women themselves.²²² The more support and respect given these advocates by other police instructors, the more likely the advocates will successfully train students to take battered women seriously. It is especially important for trainers and officers to learn to respect battered women of color. The more respect and understanding police accord women of color, the less they will trivialize women of color because of their race and perhaps the less they will arrest men of color for racist reasons unrelated to the men's criminal activity.²²³

Expanding training time about battered women would provide trainers with the appropriate opportunity to educate students. The number of training hours on response to woman-battering should increase. If approximately twenty percent of police calls are from battered women, twenty percent of training hours should be devoted to that topic.²²⁴ If large numbers of police are injured on such calls,²²⁵ large numbers of training hours should be devoted to understanding the situations which

220. Battered women could obtain these changes in a variety of ways. Training changes could be legislated in detail. (Contrast the current statutory training requirements discussed at *supra* note 67 and accompanying text). Alternatively, a battered woman could sue police and sheriff departments, along with the municipalities or counties responsible for them, under several different theories. See *supra* notes 75-83 and accompanying text. The court could mandate changes in training under the terms of an injunction, or the parties could agree to changes as part of a settlement. Battered women might consider suing solely for money damages as a way to pressure police departments and municipalities in terms they do not ignore.

221. At present, an instructor may be deemed qualified to teach about battered women solely by virtue of being an experienced police officer. Wilson interview, *supra* note 144; Clark lecture, *supra* note 121. See also Minn. Rules, 6700.0300, subp. 7 (1983) (Instructors shall "possess an associate degree or greater from an accredited institution of higher learning, or have *professionally recognized training* and experience to teach the *assigned subject matter*.") (emphasis added).

222. Increased respect for battered women could also lead to increased credibility for all women.

223. For discussion of racism and arrest, see *supra* notes 191-201 and accompanying text.

224. One author notes that "adequate training for handling spousal violence calls would involve a *minimum of 20 hours* of instruction." Loving, *supra* note 16, at 122.

225. See *supra* note 176 and accompanying text.

lead to these injuries. Expanded training of new officers will fail without re-education of experienced police. All officers should be totally retrained within a reasonably short period of time so that the officers' understanding can operate effectively with that of new recruits.

Expanded training should teach officers to discover criminal acts against women. Officers must determine *what* happened, not *why* it happened. In short, training must teach students how to conduct a criminal investigation of woman-battering. Specifically, students should be trained to ask the victim if she is hurt, and administer necessary first aid. They should determine the nature and extent of any injuries and record in their report any pain felt by the victim, whether or not it is accompanied by visible injuries. Instructors must teach police students how to determine the cause of the injuries. Police should inquire who beat the woman, and whether she was beaten with a fist, an open hand, a blunt instrument, a knife, a gun, furniture, or other weapons. The woman should be asked whether the assailant forced her to have sex.²²⁶ Officers should respectfully determine the history, if any, of abuse. Finally, officers should determine whether the assailant made any threats against the woman or her children, and they should obtain a statement from the woman as to how fearful any threats made her.²²⁷ This sort of investigation establishes whether criminal activity has occurred, what degree of criminal activity occurred, and validates the woman's experience of injury and terror.

To conduct an effective investigation, students must learn that when a man has just assaulted "his" woman, she may be very fearful of him. A battered woman may, therefore, minimize her injuries, or even totally deny them. A battered woman may be intimidated into silence. Training materials should detail how officers can create an environment which minimizes the assailant's control and the woman's fear. For example, officers should try to interview her out of sight and hearing of the assailant. They should reassure her of her safety. This will increase the effectiveness of their investigation.

If police investigation discloses probable cause that a crime has been committed, they should arrest the assailant.

226. Asking the woman whether she was raped may not be helpful. Studies report that most women do not think of forced sex in marriage as rape. Russell, *supra* note 6, at 52-53.

227. Such a statement helps prove that threats constitute an assault. Minn. Stat. § 609.224 (Supp. 1983).

Trainers must repeat, in a variety of ways, the circumstances under which the law requires arrest. If the woman-batterer is no longer present, police should take the usual steps to locate a criminal who has fled from the scene of the crime. Where the investigation reveals no probable cause, officers should be taught to refer each of the parties to appropriate resources. Police students should learn to advise the woman of her legal right to make a citizen's arrest.²²⁸ If officers are certain no crime has been committed, it is better to provide parties with referrals and information about their legal rights than to attempt to mediate. When police deal with dynamics between a man and a woman in a sexual relationship, there is nearly always a power difference between the parties. Such gender-based power differences make mediation inappropriate.²²⁹ Providing information about how a battered woman can protect herself neither encourages nor discourages her to remain within the family. It may simply give her an option she did not know she had. Instruction about referrals in non-criminal situations should be clear, but brief. Brevity should discourage officers from relying on referrals as an alternative to arrests. Trainers must teach that woman-battering is criminal in order to overcome law enforcers' long history of ignoring these crimes against women.

Trainers should teach these investigatory techniques as part of the regular curriculum about assaults. They should also inform students that abuse of women can amount to other crimes, such as property damage, harassing telephone calls, and trespass. This should begin to dispel the myth of the "crime against the family." In short, criminal investigation of woman-battering should be taught as a crime against a *person*, not as a crime against the family. This strategy to stop violence against women would also combat racism. The more officers themselves respond to woman-battering as a crime *against women*, the more they will arrest men of color for that crime and not harass men because of their race.²³⁰ Officers should consider a battered woman the primary source of information about what happened to her. This will affirm her as a person

228. Once the police arrive, a woman could make a citizen's arrest, *see* Minn. Stat. § 629.30(4) (1982), by simply advising the woman-batterer he is under arrest and demanding that the police take him into custody. A battered woman's other legal rights include petitioning for an order for protection, *see supra* notes 54-64 and accompanying text, and requesting the local prosecuting attorney to file charges against the batterer.

229. Stallone, *supra* note 33, at 510.

230. *See supra* notes 191-201 and accompanying text.

and perhaps begin to replace her experience as a possession. Repeated emphasis on *criminal* investigatory techniques will help new law enforcers overcome the legacy of crisis intervention techniques and the misogynist attitudes embedded in them.

Finally, more women should be hired as law enforcement officers. A recent study found that "where a policewoman is present, even if only in the capacity of a secretary, cases disappear or receive nonoffense labels less often, and are marked as founded more often."²³¹ One expert on wife rape and wife beating recommends mandatory involvement of women officers in these cases.²³² When police training improves, women officers will be even less likely to take on the male attitudes that have proven detrimental to battered women.

V. Conclusion

Police training about battered women exhibits misogyny, harmful concepts of the family, arrest avoidance, and inappropriate reliance upon mediation. Until training teaches them to do so, police may fail to arrest woman-batterers. Ignorant police fail to take battered women seriously and otherwise fail to treat woman-battering incidents as crimes. Instructors should teach police students how to conduct criminal investigations of woman-battering. Then, backed up with strong laws and administrative policies, law enforcers will become equipped to enforce the laws against woman-battering.

231. Thomas McCahill, Linda Meyer, and Arthur Fischman, *The Aftermath of Rape* 121 (1979), *quoted in* Russell, *supra* note 6, at 312.

232. Russell, *supra* note 6, at 312. Of 20 officers hired by the Minneapolis police department in January, 1984, seven are white women and one is an Asian woman. Also hired were three Black men, three Hispanic men, two Native American men and four white men. *Hires result in 2% more women and minorities on city's police force*, Minneapolis Star & Tribune, Jan. 18, 1984, at 1B, col. 2.

