INTRODUCTION: COPING WITH FAMILY VIOLENCE STRATEGIES AND TACTICS FOR THE 1980's*

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The 1970's witnessed major challenges to the social and economic structure of the traditional nuclear family unit. More people chose to live without a state-sanctioned marriage ceremony. Many more of those who did marry terminated their relationships by divorce. Most important, perhaps, were challenges to the traditional role structure within the family: the structure of the working father and the home maker, childrearing mother.

Changes in social structure brought about corresponding modifications in the legal regulation of the family. Some courts began to recognize legal rights of unmarried cohabitants.[1] Almost all state legislatures adopted, at least in part, "no fault" divorce statutes.[2] Many other statutes that bestowed superior rights upon husbands or wives fell victim to equal protection attacks.[3]

Given this background, it is no accident that the 1970's also marked a time when the problem of violence within the family began to receive widespread public attention.[4] The issue of child

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1. *See, e.g.*, Marvin v. Marvin, 18 Cal.3d 660, 134 Cal. Reptr. 815, 557 P.2d 106 (1976).

2. *See, e.g.*, VT. STAT. ANN. tit. 15, § 551 (1974 & Supp. 1981).

3. *See* BABCOCK, FREEDMAN, NORTON & ROSS, SEX DISCRIMINATION AND THE LAW: CAUSES AND REMEDIES 121-23 (1975).

4. A detailed examination of the complex interrelationship between changes in the social structure and legal regulation of the family, on the one hand, and the emergence of family violence as a matter of public concern, on the other, would require a study going far beyond the scope of this introduction. It is possible, however, to cite a few examples of this relationship. Many of the earliest battered women's shelters established in the 1970's were not started because of a preconceived idea that battering was a problem. Rather, they arose almost spontaneously when women's consciousness-raising groups became overwhelmed

abuse surfaced first, and was to pave the way for legislative attempts to deal with problems of family violence. Already a matter of public concern in the late 1960's, child abuse received increasing publicity throughout the decade of the 1970's. The issue of spousal abuse—or wife-battering—on the other hand, did not receive much media attention until the second half of the decade. Sexual abuse of family members and abuse of the elderly were brought from the shadows into the limelight even later.[5]

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with victims of domestic violence who had suddenly found a place to go with their problems. *See, e.g.*, D. MARTIN, BATTERED WIVES 198 (1977).

An example of how the changing family structure may in fact increase domestic violence is found in the area of the sexual abuse of children. Step-fathers are more prone to engage in sexual acts with daughters than natural fathers. The increasing rate of divorce and remarriage, therefore, puts more children at a higher risk and may lead to an increase in the incidence of sexual abuse. V. GREEN, FAMILY LAW 9 (1978) (citing M. MEAD, ANOMALIES IN AMERICAN POST-DIVORCE RELATIONSHIPS, IN DIVORCE AND AFTER 104-08 (1979)).

5. This pattern of increasing public concern with different types of violence within the family is illustrated in Figure 1, below, which charts the growth of popular literature on the issues of child abuse, wife-beating, "incest" and mistreatment of the elderly, in journals indexed in the READERS GUIDE TO PERIODICAL LITERATURE.

FIGURE 1

Number of entries in READER'S GUIDE TO PERIODICAL LITERATURE concerning different aspects of family violence 1970-1981*

		Category		
Year	Child Abuse**	Wife Beating	Aged, Mistreatment of	Incest***
1970	1	no listing	no listing	no listing
1971	2	no listing	no listing	no listing
1972	2	no listing	no listing	0
1973	6	no listing	no listing	0
1974	11	2	no listing	no listing
1975	5	1	no listing	no listing
1976	4	8	no listing	0
1977	18	7	no listing	2
1978	19	6	1	1
1979	13	7	1	1
1980	13	3	4	2
1981	11	1	3	1

*The author is indebted to Gregory Gabbard, a Chase Law School student, for his

Intensified public concern was mirrored in legislative attempts to "do something" about family violence. Most legislation was directed at aiding the victim of abuse, and the bulk of these ameliorative efforts were aimed at the victims of child abuse in particular.[6] By the mid-1970's, almost all the states had passed laws that (1) required doctors and certain other professionals to report suspected cases of abuse,[7] (2) established state agencies to investigate claims of abuse and to provide "protective services,"[8] and (3) set out procedures for juvenile court hearings to determine whether abuse had occurred and to provide a range of remedies. These remedies include removal from the home in cases where abuse is established.[9] Existing state legislation was augmented in 1974 by the Federal Child Abuse Prevention and Treatment Act,[10] which created a National Center on Child Abuse and Neglect, mandated a federal role in research, training and information services, and provided for conditional grants to state child abuse programs.[11]

In the latter half of the 1970's, many initiatives were undertaken to pass legislation to aid battered women. On the state level, some of these initiatives were successful. The two most common types of statutory enactments were (1) laws allowing victims to obtain protective orders against abusers and (2) laws providing aid to

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research in preparing this table.

**The 1971-1975 subject heading in the *Reader's Guide* was "Cruelty to Children."

***The entries listed relate to children only. Entries relating to consensual incestuous activity among adults have been omitted.

6. The text of this introduction briefly summarizes the development of ameliorative legislation. For a much more extended description of this legislation with full citations, see Schechter, *The Violent Family and the Ambivalent State: Developing A Coherent Policy for State Aid to Victims of Family Violence*, 20 J. FAM. L. 1 (1981-82) [hereinafter cited as Schechter].

7. For a national survey of state reporting laws, see NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, CHILD ABUSE AND NEGLECT STATE REPORTING LAWS (1978).

8. For a summary of the responsibilities of state protective service agencies, see Besharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 VIL. L. REV. 458 (1978).

9. For a comparative survey of the provisions of these acts, see Katz, Howe & McGrath, *Child Neglect Law in America*, 9 FAM. L. Q. 1 (1975).

10. 42 U.S.C. §§ 5101-5106 (1976 & Supp. III 1980).

11. These grants were made contingent upon recipient states having child abuse programs that met ten specified requirements. These requirements were intended to ensure that state programs provided effective aid to abused children . . . .

> Since 1974, . . . [a]lmost all states have brought their programs into compliance with the federal requirements, even though the amount of aid to be gained has been relatively small.

Schechter, *supra* note 2, at 4.

supportive services, especially emergency shelters, for battered victims.[12] On the federal level, attempts to enact legislation for battered women, similar in nature to the 1974 Child Abuse Act, ended in failure in November 1980, shortly after the election of Ronald Reagan.[13]

Also during the second half of the seventies, a number of state legislatures addressed the issue of abuse of the elderly, passing legislation often modeled on child abuse reporting laws. Again paralleling developments in the areas of child abuse and neglect, legislation was introduced in Congress to establish a National Center on Adult Abuse.[14]

While most legislative initiatives were directed at helping the victims of abuse, there were some legislative efforts to deal more forcefully with its perpetrators. At first, there was considerable conflict about whether perpetrators should be seen as "sick" individuals needing "treatment" or as "bad" individuals deserving "punishment,"[15] but as the 1970's progressed, a trend toward favoring the imposition of criminal sanctions emerged.[16] This trend

12. For a recent state-by-state survey of domestic violence legislation, see Lerman, *State Legislation on Domestic Violence*, RESPONSE TO VIOLENCE IN THE FAMILY (Aug.-Sept. 1980).

13. [1980] 7 FAM. L. REP. (BNA) 2060. For a description of the four-year battle to pass such legislation and the arguments used by opponents, see Schechter, *supra* note 2, at 17-23.

14. For a full discussion of legislative initiatives in the area of elder abuse see Saland, Satz & Pynos, Mandatory Reporting Legislation for Adult Abuse (March 1981) (unpublished report prepared for the National Conference on Elder Abuse).

15. Based on five years of working with individuals involved in aiding both abused children and battered women, my conclusion is that child abuse workers generally tended to favor therapeutic treatment for child abusers. Those working with battered women, however, tended to favor imposing criminal sanctions.

There are several possible explanations for this difference. One is that individuals working with child abuse tend to be professionals who are to some extent "distanced" from the problem, while individuals working with battered women tend to be volunteers who are much more closely tied in age and circumstance to the victims. A second difference may be that there has been some record of success "treating" perpetrators of child abuse, but only very recently have there been programs which successfully treated battering husbands.

16. For example, *compare* Parna's view in 1973, in Parna, *Prosecutorial and Judicial Handling of Family Violence*, 9 CRIM. L. BULL. 733, 757 (1973), (concluding that "the best that can be said about the approach of the criminal courts to family disputes is that domestic disputants are rarely incarcerated," and forcefully calling for massive diversion of family violence cases away from the criminal justice system) *with* his view in 1977, in Parna, *The Relevance of Criminal Law to Inter-Spousal Violence*, in FAMILY VIOLENCE: AN INTERNATIONAL AND INTER-DISCIPLINARY STUDY 188, 190 (Eekelaar & Katz eds. 1978). In the latter, the author fervently calls for a return to the use of criminal sanctions against perpetrators of family violence:

> But even more important than our criminal law's traditional escalation of

was reflected in legislation creating new "family violence" offenses[17] by utilizing existing assault laws to punish violent acts within the family,[18] and by "recriminalizing" previously

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meaningless slaps on the wrist until too late, is recognition of the need for a breakthrough at the outset to the consciousness of the disputants as to the seriousness of their behavior and not later than the second time around at most. In my judgment, only the coercive, authoritative harshness of the criminal process can do this. Efforts at therapy can, and I suppose should, be included in the process but should not be given undue emphasis, for there is simply no evidence that we know how to diagnose, much less treat, disputants' problems in a manner that will prevent repetition. Simply put, we must go with what we know. And we know that we cannot ignore or condone acts or threats of imminent violence. We know that the police are best equipped to protect others and themselves. We know how to punish, whether by fine, incapacitation, other denials of full liberty, embarrassment, inconvenience, etc. And we know punishment is a clear statement of the personal responsibility of the offender and the condemnation and retribution of society. We also know that where punishment is to be imposed, the criminal process provides the best safeguards that such punishment is imposed on the appropriate person under the most adequate circumstances. We know that incapacitation prevents repetition during the period of incarceration. Finally I submit that we are increasingly coming to believe that punishment, quickly, fairly, proportionately and appropriately imposed, may deter or reduce the quality and quantity of some kinds of bad conduct at least as well, if not better, than attempts at speculative therapy, and thus may serve the rehabilitation function even better from the perspective of non-repetition.

See also supra note 15.

17. See, for example, the California statute:

Corporal injury; Infliction by spouse upon his or her spouse or by person cohabiting with person of opposite sex.

(a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person of the opposite sex with whom he or she is cohabiting, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 3 or 4 years, or in the county jail for not more than one year.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

CAL. PENAL CODE § 273.5 (Supp. 1982).

18. An example of such legislation can be seen in the following Washington statute:

Purpose—Intent

The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims

"decriminalized" conduct.[19]

Evaluating the impact of this legislation, one finds a very mixed record. While the 1970's witnessed a spate of new legislation, important legislative initiatives—especially in the area of wife-battering—were rejected in many states and on the federal level. Much of the legislation designed to protect battered children and wives did not provide adequate funding or resources to accomplish the objectives of the draftsmen. Police and state officials also undermined the effectiveness of this legislation by failing to vigorously implement the statutes.

Remedying these problems is a common theme underlying many of the articles in this Symposium. For example, included are articles which question: How can we improve arrest laws to provide greater safety for the battered woman?[20] How can protective order laws be made more effective?[21] How can inadequately funded state protective service agencies deal more efficiently with child abuse cases?[22] These are not easy questions to answer in the decade of

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> led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

WASH. REV. CODE ANN. § 10.99.010 (1980).

19. For example, New York, under a 1962 statutory amendment, tried to divert acts of violence within the family from the criminal justice system by giving the family court exclusive original jurisdiction over all acts of violence short of aggravated assault. *See* 1962 N.Y. Laws ch. 686, *codified at* N.Y. FAM. CT. ACT §§ 811, 812 (McKinney 1975).

In 1977, a campaign was launched to "recriminalize" such acts of violence within the family by giving the victim of an assault the option of proceeding either in family court or in the criminal courts. Letters in support of this legislation by groups not normally known for "hard-line" positions, which demonstrate the marked change of attitude towards dealing with perpetrators of family violence that occurred in the 1970's, are on file at the VERMONT LAW REVIEW.

The campaign to change the law was successful. Section 812, the jurisdictional section, was amended in 1977 to provide for concurrent jurisdiction in both criminal and family courts. 1977 N.Y. Laws ch. 449, § 1(1), *codified at* N.Y. FAM. CT. ACT § 812 (McKinney Supp. 1981). Section 811, which was the statement of "Findings and Purpose" and which had presented the original rationale for vesting exclusive jurisdiction in family court, was repealed. 1981 N.Y. Laws ch. 416, § 13.

20. *See* Lerman, *Expansion of Arrest Power: A Key to Effective Intervention*, 7 VT. L. REV. _ (1982).

21. *See* Wesley, *Breaking the Vicious Cycle, The Lawyer's Role*, 6 VT. L. REV. 363 (1981).

22. *See* Horowitz and Davidson, *Improving the Legal Response of Child Protective Service Agencies*, 6 VT. L. REV. 381 (1981).

the 1980's—a decade which has started with political reaction against state intervention in family matters as well as taxpayers' rebellion against funding remedial social programs.[23]

This Symposium was organized as a forum for the exchange of

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23. In the early 1980's, a confluence of three forces threatens to overwhelm proponents of state intervention on behalf of family violence victims: (1) the drive to reduce government spending on social services; (2) the movement, especially among some professionals dealing with child abuse, to question the efficacy of state intervention; and (3) the resurgence of concern with freedom from governmental control, for "preserving the integrity of the family." For further discussion of these three forces, *see* Schechter, *supra* note 2, at 33-35.

The reaction against state intervention should not be attributed solely to the 1980 elections. In CARE OR CONTROL? DECISION-MAKING IN THE CARE OF CHILDREN THOUGHT TO HAVE BEEN ABUSED OR NEGLECTED, a summary of the final report of an intensive study by the Centre for Socio-Legal Studies, Wolfson College, Oxford, Dingwall, Eekelaar and Murray suggest there is a cyclical pattern of more and then less intervention inherent in the nature of child abuse as a social problem:

> We draw on Waller's (1936) account of social problems, in particular the proposition that the problem arises from a conflict between two sets of mores, viz. the "organisation" mores upon which society is founded (private property and individualism) and humanitarian values (that the world should be made a better place for the less well off). Child abuse and neglect is problematic within this model because it is centred on a conflict between a basic social value of parental autonomy (which we have characterised as a facet of "commonsense individualism") and humanitarian assumptions about what childhood ought to be like. This conflict runs throughout modern discussion of the subject just as it did in the late nineteenth century. What is important to realize is that the place where the line is drawn between these conflicting mores will significantly determine the perception of events as problematic, and accordingly the conception of abuse or neglect. When the tide runs strongly in favour of individualism, much behaviour which might otherwise be seen as abusive or neglectful will be veiled. Indeed, it may be encouraged, for example, by acceptance of the "right" of parents to inflict corporal punishment.

DINGWALL, EEKELAAR AND MURRAY, CARE OR CONTROL? DECISION-MAKING IN THE CARE OF CHILDREN THOUGHT TO HAVE BEEN ABUSED OR NEGLECTED. A SUMMARY OF THE FINAL REPORT, 3-4 (Social Science Research Council 1981).

Viewing the United States from an external vantage point, they find evidence that, at least in the area of child abuse, the inevitable reaction in favor of the threatened social values of individualism and family autonomy is well under way.

> Yet, despite the growth of these social concerns, child abuse and neglect remain problematic because the responses they seem to demand come quickly into conflict with the "organizational" mores of "commonsense individualism" and family autonomy. This has already become apparent in the United States. It first appeared as criticism of the plethora of laws relating to the reporting of child abuse and neglect: these were seen as counter-productive and invasive of liberty. Distrust was expressed at the ability of the state to provide suitable alternatives when it intervened on behalf of children and now three influential authors have powerfully expressed these countervailing mores in urging the adoption of the principle of "minimum state intervention," Goldstein, Freud and Solnit (1980).

Id. at 7.

ideas on ways to cope with the myriad aspects of family violence in light of the peculiar economic and social conditions of the 1980's. It is based on the premise that discussion should not be confined, as in the past, to one form of family violence, be it child abuse, wife battering, elder abuse, or sexual imposition upon weaker family members. The various forms of family violence are far too interrelated to be dealt with successfully in isolation. The Symposium encompasses discussions both of long-term social strategies for reducing the causes of family violence, and of more immediate tactics for ameliorating its effects. Finally, while recognizing that family violence is a problem that cuts across lines demarcating many traditional disciplines such as mental health and social work, this Symposium pays special attention to the challenges family violence poses for lawyers and for legal institutions.

The articles that make up this Symposium extend over two issues of the VERMONT LAW REVIEW: volume 6, number 2, and volume 7, number 1. Each article deals with a different aspect of the problem of family violence and each author presents his or her own ideas for improving responses to the problem.

The Symposium opens with a provocative article by David Gil entitled, *The Social Context of Domestic Violence: Implications for Prevention.*[24] Professor Gil, of Brandeis University's Florence Heller Graduate School for Advanced Studies in Social Welfare, is the author of one of the pioneering studies in the child abuse field, VIOLENCE AGAINST CHILDREN. Gil's contribution to this Symposium is noteworthy in two respects. First, Gil's article advances a theory as to the cause of family violence: Violence in the family is rooted in the violence inherent in the structure of our society.

Gil perceives the United States as an "underdeveloped" country in certain respects. While our products have become increasingly sophisticated, most of our people have not been allowed to develop correspondingly. The inequalities and coercive features inherent in our economic and social structures frustrate the attainment of the basic needs of many people, and consequently deny these people the opportunity to reach their full potential for meaningful and creative participation in our society.[25] Gil believes that

24. 6 VT. L. REV. 339 (1981).

25. Professor Gil argues that the state has an obligation to help meet the following fundamental human needs: (a) basic, material goods and services; (b) meaningful human relations conducive to emergence of a positive sense of identity; (c) meaningful and creative

individual violence is the reaction of individuals "frustrated" by this system, and that this violence most often occurs within the family because the individual sees the family as a "safe" place for the "uninhibited discharge of feelings of hurt, insult, frustration, anger and reactive violence."[26]

The second noteworthy feature of Professor Gil's article is his approach to the issue of *preventing* family violence. Though recently there has been much discussion of how to deal with acts of violence that have already occurred, relatively little has been written about how to eliminate violent acts in the first place. Professor Gil argues that significant changes in our society are necessary if we are to reduce the amount of family violence. He then outlines the broad legislative measures he believes essential to bring about these changes.

The Symposium continues with Jack Wesley's *Breaking the*

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participation in socially valued productive processes; (d) a sense of security; and (e) self-actualization.

Professor Gil recognizes that these needs are not assured by the United States Constitution nor by other domestic American law. Many Americans, undoubtedly, would oppose imposing an obligation to meet such needs upon the state.

It should be noted, however, that since the end of World War II, there has been a growing consensus in the international community as a whole that political guarantees of political rights are inadequate without the provision of certain economic and social rights. Attention has focused, in particular, on meeting certain "basic needs" such as food, shelter, medical care and education.

In the 1970's even the United States government, at least acting on the international plane, acknowledged the importance of including these basic economic and social needs within a human rights framework. As Secretary of State Cyrus Vance remarked, in making one of the Carter administration's first major policy statements on human rights:

> Let me define what we mean by "human rights." First there is the right to be free from governmental violation of the integrity of the person. . . . Second there is the right to the fulfillment of such vital needs as food, shelter, health care, and education. We recognize that the fulfillment of this right will depend, in part, upon the stage of the nation's economic development. But we also know that this right can be violated by a government's action or inaction—for example, through corrupt official processes which divert resources to an elite at the expense of the needy or through indifference to the plight of the poor. Third, there is the right to enjoy civil and political liberties . . . . Our policy is to promote all these rights.

Address by Secretary Vance, Law Day ceremonies at the University of Georgia (April 30, 1977), *reprinted in* 76 Dep't State Bull. 505 (1977); *see also,* Derian, *Human Rights and United States Foreign Relations: An Overview,* 10 Case W. Res. J. Int'l L. 243 (1978).

For further discussion of the development of the concept of basic human needs in the international community see Schechter, *The Views of 'Charterists' and 'Skeptic's' on Human Rights: Two Wrongs Don't Make a Right,* 9 Hofstra L. Rev. 357, 370-83 (1981).

26. 6 Vt. L. Rev. 339, 342 (1981).

Vicious Circle: The Lawyer's Role.[27] Mr. Wesley, the Assistant Director of Vermont Legal Aid, has had considerable experience both in representing battered women and in drafting and advocating new domestic violence legislation. Wesley, like Gil, begins his article with a discussion of the causes of domestic violence. His discussion, however, differs from Gil's in several respects. Wesley concentrates on the causes of wife-battering rather than on family violence in general. He is particularly interested in the role the legal system has played in allowing such violence to continue. Most importantly, his purpose in examining the causes of violence is not to suggest how society as a whole may prevent further violence, but to demonstrate how the practicing attorney may better aid victims of spousal abuse.[28]

In addition to describing the procedure that an attorney should follow in counseling a victim, Wesley discusses the limits of the lawyer's role and provides information, such as to whom the lawyer should turn for help in aiding the victim. He shows how close cooperation between attorneys and battered women's groups may create the most effective system of aid for abused women. Finally, reviewing the laws which have been passed to aid battered women, he suggests ways that these statutes, especially those which provide for protective orders, may be improved.

Promoting better laws and better delivery of services to victims of abuse are themes also found in the next contribution to the Symposium, Robert Horowitz and Howard Davidson's article, *Improving the Legal Response of Child Protective Service Agencies.*[29] Davidson and Horowitz have had extensive experience in dealing with the legal issues arising out of child abuse as Director and Associate Director, respectively, of the American Bar Association's National Legal Resource Center for Child Advocacy and Protection.

The authors begin by discussing the possible legal liability of child protective service agencies for failure to remove a child from a dangerous home, properly to place or to supervise a child once removed, or to provide adequate services. Next, they address improving the performance of child protective service agencies by reforming governing legislation and refining agency policy. Their

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27. *Id.* at 363.
28. *Id.*
29. *Id.* at 381.

most important, and controversial, suggestion is that in light of the increasing number of reported cases of suspected abuse and the decreasing amount of funds available for social service programs, the definition of abuse should be narrowed to allow agencies to deal effectively with the most serious cases.[30]

The authors conclude with a discussion of methods to improve collaboration between child welfare and legal professionals. They recommend: (1) that lawyers representing protective service agencies be involved from the very outset of cases; (2) that lawyers receive better training in related disciplines to be able to advise more effectively in child abuse situations; and (3) that child protective workers be given a better understanding of the role of the lawyer, not only in representing the state, but also in representing the interests of the parent and the child.

The question of the proper relationship between the "prosecuting" lawyer in a child protective proceeding and the state mandated child protective services agency is the focal point of Douglas Besharov's article, *The "Civil" Prosecution of Child Abuse and Neglect*,[31] which rounds out volume 6, number 2. Besharov, formerly the Director of the National Center on Child Abuse and Neglect and currently a Guest Scholar at the Brookings Institute, argues that the lawyer must retain an independent role. While the relationship between the "civil prosecutor" and the child protective services agency should be close, it should not be an attorney-client relationship. In Besharov's view, the civil prosecutor must retain the discretion to dismiss or to pursue cases over the objections of the child protective service agency, in order to ensure that the child's interests are not sacrificed to bureaucratic inertia but are fully protected.

Volume 7, number 1 opens by shifting attention from the role of the lawyer in "prosecuting" civil child protection cases to the role of the psychologist in defending battered women charged with murdering their abusers. The role of the psychologist is explored by Lenore Walker, Roberta Thyfault, and Angela Browne in *Be-*

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30. One objection to narrowing the definition of abuse to include only the more severe cases is that child abuse often is a degenerative process; that is relatively mild abuse left unchecked may eventually grow into more severe abuse. Given this premise it might seem a more desirable social policy to have a broader definition and more emphasis on early reporting in order to prevent more severe cases from occurring.

31. 6 VT. L. REV. at 403.

yond the Juror's Ken: Battered Women.[32] Lenore Walker is well known for her book, THE BATTERED WOMAN, which develops two theories to help explain why battered women often remain in the battering situation. Walker found that there is a three stage cycle of violence: a battering phase, followed by a loving phase, and then a tension-building stage leading to another battering.[33] Battered women who decide to leave after being battered are often lured back by their batterer during the loving phase, when the batterer is contrite and promises to mend his ways. Walker found that many battered women are also victims of "learned helplessness," which is the conviction that they cannot get out of the battering situation. This belief is reinforced by the attitudes of parents and family members, who feel that the women should stay, and by the attitudes of police and law enforcement officials, who refuse to provide effective aid when the women do try to leave. In *Beyond the Juror's Ken,* Walker and her coauthors show how the psychologist may use these concepts to further a battered woman's claim of self-defense. They argue that the psychologist should be allowed to testify as an expert witness, since the psychologist can help to explain to a lay jury why the woman had a *reasonable* fear of severe injury and why her use of a deadly weapon, even though the batterer was unarmed, was not *unreasonable* given the situation and the woman's socialization and background.

Walker, Thyfault and Browne concentrate on one of the most severe or "worst-case" situations of domestic abuse, in which the abuse is so extreme that the woman responds by killing her abuser. In contrast, Charles Bethel and Linda Singer focus their attention on relatively mild cases of abuse, in which the very absence of significant physical harm may militate against formal state intervention through the criminal justice system. Bethel and Singer, who are the Deputy Director and Executive Director, respectively, of the Center for Community Justice in Washington, D.C., argue that at least in relatively mild cases, mediation may prove an effective remedy. In their article, *Mediation: A New Remedy for Cases of Domestic Violence,*[34] they not only explain why mediation may be successful, but also describe how an effective mediation program may be implemented.

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32. 7 VT. L. REV. _ (1982).
33. L. WALKER, THE BATTERED WOMAN (1979).
34. 7 VT. L. REV. _ (1982).

Another type of domestic violence is the subject of Martin Schwartz's article, *The Spousal Exemption For Criminal Rape Prosecution.*[35] Professor Schwartz, who holds a joint appointment in the Criminal Justice and Women's Studies Programs at the University of Cincinnati, takes aim at the spousal exemption rule, which states that a husband cannot be convicted of raping his wife. Initially, Schwartz investigates the origins of the rule and surveys its current status in the United States. The main body of his article is devoted to considering the arguments that have been advanced against removing the exemption. Schwartz concludes that marital rape is a serious problem in terms of both the number of cases and the severity of impact on the victim; that the criminal justice system is an appropriate forum to deal with the problem, even though there often may be difficulties in proving rape; and that the exemption should be removed both as a practical measure to prevent such rapes and as a symbolic act to reaffirm the equal rights of married women.

The final contribution to the Symposium comes from Lisa Lerman, formerly of the Center for Women's Policy Studies, and is entitled *Expansion of Arrest Power: A Key to Effective Intervention.*[36] Lerman first explains why the expansion of arrest power may be a key to effective intervention: It protects the victim, communicates the message that a "crime" has been committed, and places the burden on the state, rather than the victim, to initiate further action. Lerman then surveys the current status of warrantless arrest laws and suggests useful reforms. Perhaps the most important of these is that the traditional felony-misdemeanor distinction—allowing a police officer to arrest without a warrant only if the misdemeanor occurs within the officer's presence—be abolished. Lerman favors replacing the traditional rule with one allowing, or even mandating, an arrest when the officer has probable cause to believe that a crime has been committed and that the alleged perpetrator may cause further harm if not arrested.

This Symposium is by no means the "last word" on family violence. It is hoped it will be a first step in encouraging further multidisciplinary exchanges of ideas on how to cope with the problem of family violence in the 1980's and beyond.

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35. *Id.* at __.
36. *Id.* at __.