MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 21, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, March 21, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown.

CONSIDERATION OF SENATE BILL NO. 332: Senator Tom Towe, District #46, chief sponsor of SB 332, testified. Senator Towe said this bill deals with the access to library records. He said the problem arises when somebody wants to see how many people have checked a particular book out of the library. He said the library people would just as soon not be required to disclose that information. With this bill, they would not have to disclose that particular information. He explained the sections of the bill in fuller detail. He feels that librarians need this type of protection to make sure that when they refuse to disclose this kind of information, they will be supported.

Sara Parker, state librarian, testified as a proponent to this bill. She told the committee that the inquiries range from the very casual inquiries to the more serious inquiries. She feels this bill is needed to protect librarians who refuse to disclose this requested information.

Deborah Schlesinger, legislative chair of the Montana Library Association; Lois Fitzpatrick, director of the Carroll College library and Brenda Schye, representing the Montana Arts Advocacy all testified as proponents to the bill. A copy of Ms.Schlesinger's written testimony was marked Exhibit A and attached.

There being no further proponents or opponents, Senator Towe closed.

The floor was opened to questions from the committee.

Rep. Gould referred to the penalty provision of the bill with regard to attorneys fees and asked if the person who brings the action loses the case, can the defendant collect the attorneys fees? Senator Towe said "no, not in this bill."

Rep. Mercer said that while he is in total agreement of the intent of the bill, will it require the library to completely redo its system? Ms. Parker said the bill is not intended

in anyway to require that libraries change their circulation system even though a number of libraries are interested in doing so. She said that her assumption is that if libraries do not change their systems, anyone will be able to go to the library shelves and still obtain the names of the people who checked out a particular book.

There being no further questions, hearing closed on SB 332.

CONSIDERATION OF SENATE JOINT RESOLUTION No. 19: Senator Richard Manning, District #18, chief sponsor of this resolution, testified on its behalf. A copy of his written testimony was submitted and marked Exhibit B which is hereto attached.

Ray Blehm from Billings, testified on behalf of SJR 19. A copy of his written testimony was marked Exhibit C and attached hereto.

There being no further proponents or opponents, Senator Manning closed. Senator Manning said this resolution was introduced at the request of the Great Falls postal workers who were interested in sending a message to Congress urging the repeal of the Hatch Act.

The floor was opened to questions from the committee.

Rep. Addy said the other side of the coin is that if public employees are allowed to participate in politics, their jobs are going to be more dependent on political participation. Senator Manning said that although there may be a little of this, we have provision in the law that protects individuals' rights a lot more to some degree.

There being no further questions, hearing closed on SJR 19.

CONSIDERATION OF SENATE BILL NO. 352: Senator Ray Lybeck, District #4, chief sponsor of SB 352, testified. This bill deals with an existing law. The bill was submitted at the request of the County Association of Probation Officers. The only thing the bill does is raise the victim age cutoff from 16 to 18 years of age for purposes of the offense of endangering the welfare of children.

There being no further proponents or opponents, Senator Lybeck closed.

There were no questions, and the hearing closed on SB 352.

CONSIDERATION OF SENATE BILL NO. 453: Senator Fred Van Valkenburg, District #30, chief sponsor of SB 453, testified. He said that SB 453 is somewhat similar to HB 794, but it is also substantially different. It would provide for the authorization to utilize electronic surveillance when there was a situation involving hostages or barricaded subjects.

In order to simply authorize electronic surveillance in the situation that was previously described, you have to adopt the federal law that provides protections that go with the requirements to issue those warrants. The thrust of SB 453 is found on page 9, section 6. Other than this portion, the rest of the bill is just federal law other than some changes on page 6 which would delete that which has not been previously legal in the state of Montana by virtue of supreme court decision. This bill was introduced at the request of personnel in Missoula County Sheriff's Office. Missoula County has particularly experienced a number of incidents in the last several years that involved the taking hostages or people who have barricaded themselves with weapons. He feels that we have really got to plan very seriously for those kinds of incidents and be ready to deal with them as quickly as possible. He continued by saying in today's world, there are electronic surveillance methods which can be of tremendous assistance in dealing with those kinds of situations. He feels that SB 453 will provide law enforcement with a tool that will not only protect law officers themselves but avoid the unnecessary death of innocent victims who are taken hostage. He feels this is a reasonable utilization of power for the police force. He further said that he is not endorsing anything else beyond what is in this particular bill. A letter written by Michael R. McMeekin, deputy of the Missoula County Sheriff's Office was submitted and marked as Exhibit D.

PROPONENTS:

Greg Hintz, Undersheriff from Missoula County, told the committee that Missoula County has witnessed an ever increasing number of incidents involving hostage/barricaded incidents. He feels this legislation is necessary to help law enforcement officials. He feels the bill would enable law enforcement officials to gather intelligence at a less risk to the officers.

Bob Reid, a police officer from Missoula, said that he feels SB 453 is a conservative measure insofar as to how wire tapping is usually done.

Lee Meltzur, police officer from Missoula City Police Department, testified as a proponent to the bill but also said he would be opposed to any amendments. By being able to monitor what is taking place in the residence, we hope to more effectively preserve life in some of these situations.

Marc Racicot, from the Attorney General's Office, appeared and offered testimony on behalf of of the Montana County Attorneys Association. He said the association supports this bill. He said that he sees no reasons for striking the provisions on page 6, lines 17 through 25 of the bill. He feels that this material would provide the law enforcement officer with a valuable tool. He briefly addressed other amendments he feels will make the bill better. He submitted

a copy of the bill with handwritten notes illustrating those amendments which was marked Exhibit E.

Harold Hansen, Yellowstone County Attorney, spoke as a proponent. He urged the committee to support this bill in addition to the amendments proposed by Mr. Racicot. He said the Attorney General of the State of Montana has identified drug problems as the most critical problem here in Montana today. That is supported by all of the peace officers in the state. He said that HB 794 deals with this same subject that ran into problems because of the procedural aspects of the federal privacy requirements. He said that this bill is a mirror image of HB 794. This bill, however, is extremely limited to deal with the most serious criminal problems in Montana -- and that being the sale of possession of drugs. He said the most frustrating thing that he has experienced is to know that the hard-level people -- those who are getting rich off kids -- escape arrest because law enforcement simply doesn't have the tools to deal with the problem.

United States Attorney, Pete Dunbar, testified in favor of the bill with Mr. Racicot's amendment. He said the number one problem in Montana is criminal activity involving drugs. He said that large drug dealers are recognizing Montana as a haven i.e. a place to operate. Mr. Dunbar said part of the reason for increased drug activity is because we don't have the resources to attack the problem. Because drug activity is such a large business in Montana, this type of legislation is definitely needed. Before law enforcement would be able to get a wire intercept under this legislation, they would have to establish absolute probable cause that they are dealing with conspiratoral problems. Then they must convince the Court. The police officer has to use minimization meaning that he cannot monitor conversations. He can only monitor that portion of the conversation that pertains to the actual illegal conspiracy. The Court is instructed, as would be the prosecutor, to daily monitor each and every activity to insure that there is total and complete minimization, and that only reception of that oral conversation would be limited to that particular criminal activity. He said that the federal government has utilized wire tapping in extremely infrequent cases because of these absolute, stringent type of regulations. He again pointed out that wire tapping may not be used except on true major crimes.

Mike A. Schafer, Yellowstone County Sheriff, appeared and testified in favor of the bill. He said that the law enforcement officers in Carbon County, Big Horn County, Stillwater County, Rosebud County and Musselshell County all support this bill with the amendment because the bill will give law enforcement the tools they need.

Bob Butorovich, county sheriff from Butte-Silver Bow, said

the legislation will give law enforcement the ability to deal with illegal drug activity that is happening in the state.

OPPONENTS:

Susan Cottingham, representing the Montana Chapter of the American Civil Liberties Union, spoke in opposition to the bill and especially the amendments which were proposed.

There being no further opponents, Senator Van Valkenburg closed. He stated that he is concerned with the amendments proposed by Mr. Racicot. He feels that the amendment would jeopardize the bill's chances for passage. While Senator Van Valkenburg is concerned with the drug problem in the state, he doesn't feel that it is quite as serious as some of the proponents may feel it is.

The floor was opened to questions from the committee.

Rep. Addy wanted to know why the material on page 6, lines 17 through 25 was stricken. Senator Van Valkenburg said that when he presented the bill before the Senate Judiciary Committee, it was brought to his attention that this language would change current caselaw in the state of Montana.

Senator Van Valkenburg said it was not his intention to do that, but those are areas that the federal government would authorize electronic surveillance without a warrant. And because he didn't have any problem taking that language out of the bill, it was stricken.

Rep. Addy said he didn't see terrorist or terrorist's incident defined and he is wondering how broad that definition might be. Senator Van Valkenburg said he agreed that this was of concern to him.

In response to a question asked by Rep. Rapp-Svrcek, Senator Van Valkenburg feels that the legislation he is proposing is a reasonable one and he is not afraid to put the law on the books just because it might present a possibility for an amendment in the future.

In response to another question asked by Rep. Rapp-Svrcek, Mr. Dunbar said they do have a lesser scale of Montana drug dealers who deal strictly in the state of Montana. Rep. Rapp-Svrcek wanted to know if these drugs are being manufactured in the state. Mr. Dunbar said that to his knowledge, cocaine is not being manufactured in the state. Basically, the drugs come from out of state -- almost entirely from South America which ultimately ends up with the dealers here who in turn distribute through the local Montanans who in turn distribute to street dealers who in turn distribute to the users. Rep. Rapp-Svrcek wanted to know why the federal wire tapping law isn't sufficient to investigate these cases. Mr. Dunbar said that although they are getting

some of the large scale dealers, they are not getting all of them. Rep. Rapp-Svrcek said that he felt that wire-tapping is very intrusive, and he wanted to Mr. Dunbar to comment accordingly. Mr. Dunbar agrees that wire tapping is intrusive, but he feels there are plenty of safeguards in the bill that would prevent abuse.

Rep. Miles wanted to know the number of incidents that occured last year that could have been affected by this particular bill. Senator Van Valkenburg said he was aware of three such incidents in the Missoula area. Mr. Hintz said that the number of incidents is increasing monthly in the Missoula area.

Rep. Hannah wanted to know what the number one offense is in Montana if it isn't drug activity. Senator Van Valkenburg said that alcohol is an extremely obvious problem followed by the crime of theft.

Rep. Rapp-Svrcek wanted to know if the proposed amendments will be allowed under the title of the bill. Senator Van Valkenburg answered "yes".

There being no further questions, hearing closed on SB 453.

CONSIDERATION OF SENATE BILL NO. 449: Senator Pat Regan, District #47, chief sponsor of this bill, testified. This is an act defining "domestic abuse" and proving that Commission on Domestic Abuse is a criminal offense. The bill allows that an arrest may be made. Senator Regan pointed out that the bill was originally drafted requiring that an arrest be made. That provision was stricken in the Senate, and she asked the committee to reinsert that stricken language. She said this is not a new concept -- it is used in Washington and Oregon. The last provision of the bill deals with prohibiting a peace officer from accepting bail on behalf of a justice of the peace when a person is arrested for domestic abuse. Senator Regan said the reason for this type of legislation is obvious. A copy of her proposed amendment was marked Exhibit F.

PROPONENTS:

Amy Pfeifer, representing the Women's Law Caucus, testified as a proponent and submitted her written testimony which was marked as Exhibit G and attached hereto.

Marti Adrian, counselor on domestic violence issues, limited her testimony to the portion of the bill that was deleted by the Senate Judiciary Committee which is the mandatory arrest provision. In all the years that she has worked in the domestic violence field, she has never heard of an incident which police arrested in domestic violence on probable cause. She gave some of the specific examples that she has

observed. She said that men tend to treat women as property. She feels that society needs to take a close look at the sanctity of marriage and the right to privacy and further look at who those rights are working for and who they are working against. We need to deal with a women's right to privacy in her own home as well as the man's right to privacy in his home. We need to look at the right of the government to protect women when they are unable to do so. We need to further look at why women must leave their homes when they are victims of domestic abuse. She feels the state has a compelling need to bring suit in these instances. We need a directive law to compel law enforcement to take action in this regard. In closing, she asked the committee to reinstate the mandatory arrest provision of the bill.

Robert Holmes, pastor of the St. Paul United Methodist Church of Helena, testified as a proponent. He said that without the mandatory arrest provision, it would increase the chances of further abuse inflicted upon the women. He urged the committee to restore the mandatory arrest provision of the bill.

Caryl Wickes Borchers, executive director of the Mercy Home Chair, testified in support of the bill. She submitted her written testimony and several other articles pertaining to domestic abuse which was marked Exhibit H and attached hereto.

Nancy Mills from Great Falls read a letter to the committee from a victim of domestic abuse which was marked as Exhibit I and attached hereto.

Julie Ferguson, who testified as a proponent, said this legislation would clearly announce that battering is unacceptable in our society. She feels that in the long run it will keep families together.

Barbara Greene, a person from Bozeman working with battered spouses, urged the committee to reinstate the mandatory provision of the bill. She asked the committee to consider the "spillover" effect as well as the safety of the victim of domestic abuse.

Susan Cottingham, representing the Montana Chapter of the American Civil Liberties Union, said that the union's domestic policy is very clear with regards to women's rights in this particular area. She pointed out that the ACLU opposed the mandatory arrest provision in the Senate, and she further stated that they support the bill in its present form.

Kelly Rosenleaf, director of Safe Space in Butte, testified in favor of the bill. A copy of her written testimony was marked Exhibit J and attached hereto.

Rep. Montayne wished to go on record as supporting this bill.

Karen Abbott, an abused wife, submitted written testimony which was marked Exhibit K and attached.

Gail Kline, representing the Women's Lobbyist Fund, testified as a proponent to SB 449 with the mandatory arrest provision. A copy of her written testimony was submitted and marked Exhibit L. She also submitted a letter from the Montana Catholic Conference urging the support of this bill which was marked Exhibit M and attached.

There being no further proponents or opponents, Senator Regan closed. She pointed out that this bill refers to all kinds of spousal abuse. She said this would cover 5% of husbands who are also abused by their spouse.

The floor was opened to questions from the committee.

Rep. Keyser pointed out to Senator Regan that the bill makes only reference to "he". Senator Regan said the gender was meant to be neutral.

There being no additional questions, hearing closed on SB 449.

CONSIDERATION OF SENATE BILL NO. 294: Senator Bruce Crippen, District #45, chief sponsor of SB 294, testified on its behalf. The bill deals with the issue of eliminating the spousal exemption in the criminal offense of sexual intercourse without consent. He pointed out that the Senate added an amendment on page 1, lines 21 through 23 which says "a person may not be convicted under this section based on the age of his spouse as provided in 45-5-501 (2) (C). Senator Crippen said that the marital rape exclusion as it now stands in Montana law in unconstitutional. It is a violation of not only the equal protection clause of the Montana Constitution but also the federal constitution. He said there is no rational basis for distinquishing between marital rape and non-marital rape. The classification of the statute simply does not support the legislation purpose of protecting all persons from this violent act. He went over some of the background of the theories that led to the establishment of the spousal exclusion. He said that 20 other states have adopted this type of legislation, and research shows that very rarely do women try to take the vindicative approach.

PROPONENTS:

Karen McRae, representing the Women's Place, testified as a proponent to the bill. A copy of her written testimony was marked Exhibit N and attached hereto.

Robert Holmes, pastor of the St. Paul's United Methodist Church in Helena, spoke in favor of the bill. A copy of his testimony was submitted and marked Exhibit O.

Bailey Molineux, representing the Montana Psychological Association, urged the committee to support this bill. He pointed out that rape is a violent act and not a sexual act.

Caryl Wickes Borchers, executive director for the Mercy Home, testified in support of this bill and left a copy of her written testimony which was marked Exhibit P.

Connie Rockman from the Great Falls Mercy Home read to the committee a letter written by Melinda who was a victim of a battering relationship. A copy of that letter was marked Exhibit Q and attached.

Cathy St. John, representing the Great Falls Mercy Home, read a letter written by Noreen Seuer, a counselor working with battered women. That letter was marked as Exhibit R and attached.

Gail Kline, representing the Women's Lobbyist Fund, submitted a copy of her written testimony which was marked Exhibit S and attached. She further submitted a written statement dealing with the subject by the Montana Catholic Conference which was marked Exhibit T and attached hereto.

Also going on record as supporting this bill were Marti Adrian, Kelly Rosenleaf and Tammy Plubell.

There being no further proponents or opponents, Senator Crippen closed. He handed out an article dealing with the marital rape issue and quoted some portions from it. (See Exhibit U.)

There being no questions from the committee, hearing closed on SB 294.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 352: Rep. Keyser moved that SB 352 BE CONCURRED IN. The motion was seconded by Rep. Brown and carried with Rep. Cobb dissenting.

ACTION ON SJR 19: Rep. Rapp-Svrcek moved that SJR 19 BE CONCURRED IN. The motion was seconded by Rep. Darko and discussion followed.

Rep. Addy wondered whether title 7 of the federal law discriminates on the basis of political belief. Brenda Desmond said she didn't know.

Rep. Mercer feels that state employees shouldn't be any different than federal employees. He supports this bill. The questions was called, and the motion carried on a voice vote.

ACTION ON SENATE BILL NO. 332: Rep. Hammond moved that SB 332 BE CONCURRED IN. The motion was seconded by Rep. Keyser.

Rep. Addy moved to amend on page 1, line 23, following "names" by inserting "or other personal identifiers". The motion was seconded by Rep. Hammond and carried unanimously.

Rep. Addy further moved to amend on page 2, line 1 following "general" inserting "or records that are not retained or retrieved by personal identifier". The motion was seconded by Rep. Rapp-Svrcek and carried unanimously. Furthermore, Rep. Addy moved to amend on page 4, line 7 following "greater" strike ", reasonable" and insert ". Reasonable". On page 4, line 8 following "action" insert "must be awarded to the prevailing party". The motion was seconded by Rep. Brown. Rep. Krueger made a substitute motion to Rep. Addy's motion to change the word "must" to "may" because it will give the Court more discretion. Without objection, the committee adopted Rep. Krueger's motion, and the question was called on Rep. Addy's motion. It carried on a voice vote. Rep. Keyser further moved that SB 332 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Gould. There being no further discussion, the question was called, and the motion carried with Rep. Cobb dissenting.

ACTION ON SENATE BILL NO. 294: Rep. Brown moved that SB 294 BE CONCURRED IN. The motion was seconded by Rep. Bergene. There being no discussion, the question was called, and the motion carried unanimously.

ACTION ON SENATE BILL NO. 119: Rep. Brown moved that SB 119 BE CONCURRED IN. The motion was seconded by Rep. Hammond. Rep. Brown submitted a copy of his proposed amendment and moved that it be adopted. The motion was seconded by Rep. Miles. The amendment is as follows:

1. Page 2, line 8.
   Following: "to"
   Strike: "and" through "from" on line 9.

2. Page 2, line 15.
   Following: "PAYMENT."
   Insert: "If the person from whom the support is being collected makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct the collection fee from the payment made."

Rep. Brown said that Brenda worked this language out with the department. Rep. Mercer asked Brenda if this amendment was acceptable with the department. Brenda felt that the department should address that particular question. Rep. Brown

said this amendment takes us half way as to where the department wants us. He feels it would cover the department's cost and protect the rights of individuals. Rep. Brown further commented that he feels this language is much more acceptable than the existing statute. Rep. Hannah agreed that this is the right approach to take. Rep. Miles said it is unfortunate, however, that all the money doesn't get to the children.

The question was called, and the motion to amend carried unanimously. Rep. Brown moved that SB 119 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Hammond and carried unanimously. Rep. Brown agreed to carry the bill on second reading.

ACTION ON SENATE BILL NO. 414: Rep. Brown moved that SB 414 BE CONCURRED IN. The motion was seconded by Rep. Keyser. There being no discussion, the question was called, and the motion carried unanimously. Rep. Krueger will carry the bill on the floor.

ADJOURN: Upon the motion of Rep. Keyser, the meeting adjourned at 11:25 a.m.

Tom Hannah

TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/21/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)		✓	
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

March 21 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Joint Resolution Bill No. 19

Third Blue
reading copy (color)

URGING REPEAL OF FEDERAL LAW THAT LIMITS POLITICAL ACTIVITY
FED. WORKERS

Respectfully report as follows: That Senate Joint Resolution Bill No. 19

BE CONCURRED IN
~~DO PASS~~

REP TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 21 19 35

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 119

Third reading copy (Blue color)

FEE FOR CHILD SUPPORT ENFORCEMENT SERVICES TO BE PAID BY NON-SUPPORTER

Respectfully report as follows: That Senate Bill No. 119

be amended as follows:

1. Page 2, line 8.
Following: "to"
Strike: "and" through "from" on line 9.

2. Page 2, line 15.
Following: "PAYMENT."
Insert: "If the person from whom the support is being collected makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct the collection fee from the payment made."

AND AS AMENDED,
BE CONCURRED IN

~~DO PASS~~

REP. TOM HANNAH, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 21 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 294

Third reading copy (Blue color)

INCLUDE SPOUSE IN THE OFFENSE OF SEXUAL INTERCOURSE WITHOUT CONSENT

Respectfully report as follows: That Senate Bill No. 294

BE CONCURRED IN
DO PASS

REP. TOM HANNAH, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 21 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 332

Third reading copy (Blue color)

LIBRARY CONFIDENTIALITY ACT

Respectfully report as follows: That Senate Bill No. 332 be amended as follows:

1. Page 1, line 23.
Following: "names"
Insert: "or other personal identifiers"

2. Page 2, line 1.
Following: "general"
Insert: "or records that are not retained or retrieved by personal identifier"

3. Page 4, line 7.
Following: "greater"
Strike: ", reasonable"
Insert: ". Reasonable"
Strike: ","

4. Page 4, line 8.
Following: "action"
Insert: "may be awarded to the prevailing party"

DO PASS
AND AS AMENDED,
BE CONCURRED IN

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 21 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 352

Third reading copy (Blue color)

RAISE TO 18 AGE FOR ENDANGERING WELFARE OF CHILDREN

Respectfully report as follows: That Senate Bill No. 352

BE CONCURRED IN

~~XXXXXX~~
DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 21 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 414

Third reading copy (Blue color)

PUBLIC ADMINISTRATOR TO BE APPOINTED CONSERVATOR OF CERTAIN SSI RECIPIENTS

Respectfully report as follows: That Senate Bill No. 414

BE CONCURRED IN
~~DO PASS~~

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

EXHIBIT A
3/21/85
SB 332

Mr. Chairman, members of the Committee, my name is Deborah Schlesinger, Legislative Chair of the Montana Library Association. The Montana Library Association supports Senate Bill 332. As Legislative Chair I have traveled far and wide in Montana and I am delighted to report that the Library community, public, special and academic librarians, enthusiastically supports the Confidentiality of Library Records bill.

The Montana library community is aware of the need for protection and due process for both libraries and library patrons. Librarians are very aware that people are not what they read and that a patron's reading habits are and should be private. This bill will not change the way libraries do business, it will afford the protection of the law to librarians and patrons. Now, patrons and librarians do not have the protection of the law even though many libraries in the state do have individual Confidentiality of Library Records policies. Requests for patron reading information come up every day in Montana libraries. Some libraries have been placed in extremely awkward and uncomfortable positions by their refusal to provide such information without due process. Senate Bill 332 addresses these concerns and real needs for Confidentiality of Library Records. Montana Library Association supports Senate Bill 332.

EXHIBIT B
3/21/85
SJR 19

SENATE JOINT RESOLUTION 19

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, THE PURPOSE OF THIS RESOLUTION IS VERY SIMPLE AND STRAIGHT FORWARD.

ITS PURPOSE IS TO ATTEMPT TO MAKE THE CONGRESS AND SENATE OF THE UNITED STATES AWARE OF THE INJUSTICE THAT HAS BEEN CREATED BY THE ENACTMENT AND ENFORCEMENT OF CERTAIN PROVISIONS OF THE HATCH ACT.

MANY FEDERAL EMPLOYEES DO NOT ENJOY THE PRIVILEGES OF BEING TREATED LIKE 1st CLASS CITIZENS IN MANY INSTANCES.

YOU AND I CAN PUT POLITICAL DECALS ON OUR CARS AND IN OUR YARDS. WE CAN CONTRIBUTE TO POLITICAL PARTIES OR CANDIDATES WITHOUT FEAR OF RETALIATION. THESE PEOPLE ARE VERY LIMITED IN THIS AREA AS TO WHAT THEY CAN DO OR CANNOT DO.

THIS IS NOT A CHANGE OF LAW BUT AN EXPRESSION OF OUR FEELINGS IN REGARD TO THE FREEDOM OF RIGHTS OF OUR FELLOW CITIZENS.

EXHIBIT C
3/21/85
SJR 19

WITNESS STATEMENT

Name Ray Blehm Committee On

Address Billings MT Date

Representing MT Fire Fighters Support X

Bill No. SJR 19 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. In the intrest of fuller participation
2. of all citizens in the electorial
process of this Nation we urge
3. passage of SJR 19. The day is long
past when the disenfranchisement
of a portion of the population is
4. good public policy. Lets urge Congress
to repeal this ~~ch~~ antiquated provisions
of Federal Law called the "Hatch act"
and end this indignity to our
Federal employees and allow them
to participate fully in this process,

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

EXHIBIT D
3/21/85
SB 453

MISSOULA COUNTY

OFFICE OF THE SHERIFF
COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
(406) 721-5700

DANIEL L. MAGONE
SHERIFF

T. GREGORY HINTZ
UNDERSHERIFF

Tuesday, 19 March, 1985

Chairman Tom Hannah
House Judiciary Committee

Dear Sir:

Please accept my apology for not being able to personally attend today's hearing. If there was any possible way to rearrange my schedule it would be done.

Senate Bill 453 is a tool vital to law enforcement's success in dealing with hostage, barricaded subject and terrorist incidents. It was requested specifically for that purpose and no other. The Senate Judiciary Committee accepted our assurances in that regard and we urge your support as well.

It is my understanding an attempt is being made to ammend section 6 of the bill to include authorization for investigations involving the sale, or conspiracy to sell, dangerous drugs. Please register my adamant opposition to any ammendment broadening the scope of authorization! We have promised legislative supporters of this measure we would not seek to expand the scope at a later time. If somebody wishes authorization to utilize wiretapping in criminal investigation, let them submit their own bill.

The two-page written testimony (attached) is identical to that presented to the Senate committee. A quick review of that material should give you a good understanding of why we feel this legislation is so necessary.

Thank you for your consideration of this matter.

Respectfully submitted,
DANIEL L. MAGONE, SHERIFF

Michael R. McMeekin

Michael R. McMeekin, deputy

MISSOULA COUNTY

OFFICE OF THE SHERIFF
COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
(406) 721-5700

DANIEL L. MAGONE
SHERIFF

T. GREGORY HINTZ
UNDERSHERIFF

TESTIMONY IN SUPPORT OF SENATE BILL NUMBER 453

(In Supplement To Oral Testimony)

PRESENTED TO: THE HOUSE JUDICIARY COMMITTEE
TOM HANNAH, CHAIRMAN

PRESENTED BY: T. GREGORY HINTZ, UNDERSHERIFF
(S.W.A.T. COMMANDER)

MICHAEL R. MCMEEKIN, DEPUTY
(COORDINATOR, MISSOULA NEGOTIATIONS TEAM)

DATE : THURSDAY, 21 MARCH, 1985

WHEN LAW ENFORCEMENT OFFICERS ARE CALLED TO RESPOND TO A BARRICADED SUBJECT OR HOSTAGE INCIDENT, IT IS ALWAYS PRESUMED THERE EXISTS AN IMMEDIATE AND DIRECT THREAT TO HUMAN LIFE. THAT THREAT IS PRESUMED TO CONTINUE UNTIL THE SITUATION IS RESOLVED. FOR THIS REASON, SPECIAL TEAMS ARE TRAINED AND EQUIPPED SOLELY TO HANDLE SUCH SITUATIONS. THE THREATS MAY INVOLVE HOSTAGES, GENERAL PUBLIC IN THE VICINITY, RESPONDING LAW ENFORCEMENT OFFICERS AND THE OFFENDERS THEMSELVES.

THE STATED OBJECTIVE OF LAW ENFORCEMENT IN SUCH AN INCIDENT IS TO RESOLVE IT WITHOUT INJURY OR LOSS OF LIFE IF AT ALL POSSIBLE. IN ORDER TO BETTER ENABLE US TO ACHIEVE THIS OBJECTIVE, IT IS IMPORTANT TO KNOW WHAT IS BEING SAID AND DONE BY THE SUBJECTS INVOLVED. CRITICAL NEGOTIATION AND TACTICAL DECISIONS PIVOT ON AVAILABLE DATA REGARDING PHYSICAL CONDITION OF HOSTAGES, NUMBER AND IDENTITY OF OFFENDERS, LOCATION OF HOSTAGES AND OFFENDERS WITHIN A BUILDING, ACTIONS TAKEN BY OFFENDERS AS OPPOSED TO WHAT IS BEING TOLD THE NEGOTIATORS AND MINUTE-BY-MINUTE CHANGES IN THE EMOTIONAL STATUS OF BOTH OFFENDERS AND HOSTAGES. TECHNOLOGY HAS ADVANCED TO THE POINT IT IS POSSIBLE TO SAFELY MONITOR AND RECORD THE NECESSARY INFORMATION DURING SUCH AN INCIDENT. ALL THAT REMAINS IN MONTANA IS STATUTORY AUTHORITY TO DO SO.

FEW SITUATIONS COULD BE CONSIDERED MORE INTRUSIVE UPON MEMBERS OF THE PUBLIC THAN BEING TAKEN HOSTAGE OR SUBJECTED TO SNIPER FIRE BY A BARRICADED SUBJECT. VICTIMS OF SUCH SITUATIONS OFTEN SUFFER PROLONGED EMOTIONAL TRAUMA EVEN IF THEY HAVE ESCAPED ACTUAL PHYSICAL INJURY. WHATEVER WE AS LAW ENFORCEMENT CAN DO TO PREVENT SUCH TRAUMA, OR BRING AN INCIDENT TO A TIMELY CONCLUSION, WOULD CERTAINLY BE LESS INTRUSIVE THAN ANY PRIVACY THE OFFENDER MAY EXPECT IN HIS COMMUNICATIONS.

18 USC 2510-2520, AFTER WHICH THIS BILL IS PATTERNED, IS THE PREVAILING LAW. TWO PRIMARY CONCERNS VOICED BY CONGRESS WHEN THE LAW WAS ENACTED WERE BALANCING THE PUBLIC NEED AGAINST INTRUSION INTO PRIVATE COMMUNICATIONS AND UTILIZATION OF SUCH INTRUSIVE METHODS IF MORE ROUTINE INVESTIGATIVE PROCEDURES APPEAR TOO DANGEROUS. THE MONTANA LEGISLATURE HAS HISTORICALLY BEEN RELUCTANT TO AUTHORIZE GOVERNMENT INTERCEPTION OF PRIVATE ORAL AND WIRE COMMUNICATIONS. WE CERTAINLY DO NOT DISAGREE WITH THAT STANCE. OUR REQUEST IS CONSIDERABLY MORE RESTRICTIVE THAN THAT ENACTED BY THE CONGRESS.

WIRETAP LAWS GENERALLY (18 USC 2510, ET SEQ.) FOCUS UPON THE GATHERING OF EVIDENCE IN A CRIMINAL INVESTIGATION. AS SPECIFIED IN SECTION 6 OF THIS BILL, OUR REQUEST IS DIRECTED TOWARD THE GATHERING OF INFORMATION NECESSARY TO PRESERVE HUMAN LIFE. HOWEVER, BOTH THE MONTANA CONSTITUTION AND SUPREME COURT RECOGNIZE FURTHER USE OF INFORMATION LAWFULLY OBTAINED UNDER JUDICIAL AUTHORITY.

SB 0453/03

SENATE BILL NO. 453

INTRODUCED BY VAN VALKENBURG, MAZUREK

Title

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AND REGULATE THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS DURING TERRORIST INCIDENTS AND WHEN ONE OR MORE PERSONS HAVE TAKEN ONE OR MORE HOSTAGES OR HAVE BARRICADED THEMSELVES IN ANY PLACE FOR any PURPOSE."

WHEREAS, there is an increasing number of incidents in which a person or persons engage in terrorist acts, take hostages, or barricade themselves in a home, business, government building, or other place; and

WHEREAS, these situations are extremely threatening to persons and property; and

WHEREAS, these situations pose unique and extremely difficult problems to law enforcement personnel, compounded by the need to act swiftly and with all available information; and

WHEREAS, the ability to monitor communications between the person or persons creating the situation and other persons is often crucial to a satisfactory termination of the incident; and

WHEREAS, the interception and monitoring of wire or oral communications is the subject of federal statutes, codified at 18 U.S.C.A. 2510-2520, that extensively regulate the matter and have preempted this field of law so that states must follow the federal statutes and may enact more restrictive law but not less restrictive law.

THEREFORE, The Legislature of the State of Montana finds it appropriate to pass a law modeled on the federal statutes and addressing these situations and the problems arising from them.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. In [this act], the following definitions apply:

(1) "Aggrieved person" means a person who was a party to any illegally intercepted wire or oral communication or a person against whom the interception was illegally directed.

(2) "Communications common carrier" means a person engaged as a common carrier for hire in intrastate, interstate, or international communication by wire or radio or by satellite, fiber optics, or any other energy-based communications transmission system.

(3) "Contents", when used with respect to a wire or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of the communication.

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THIRD READING

WHEREAS, There is a rising level of activity involving the illegal sale and possession of dangerous drugs within the STATE OF Montana by highly secretive and well-financed organizations; and

(4) "Electronic, mechanical, or other device" means a device or apparatus that can be used to intercept a wire or oral communication other than:

(a) a telephone or telegraph instrument, equipment, or facility or a component thereof furnished to a subscriber or user by a communications common carrier in the ordinary course of its business or being used by a communications common carrier in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his duties; or

(b) a hearing aid or similar device used to correct subnormal hearing to not better than normal.

(5) "Intercept" or "interception" means the aural acquisition of the contents of a wire or oral communication through the use of any electronic, mechanical, or other device.

(6) "Investigative or law enforcement officer" means an officer of the state of Montana empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in [this act] and a attorney authorized by law to prosecute or participate in the prosecution of such offenses.

(7) "Judge" means a judge of a district court.

(8) "Oral communication" means an oral communication uttered by a person under circumstances justifying an

expectation that the communication is not subject to interception.

(9) "Person" means an employee or agent of the state or a political subdivision of the state and an individual, partnership, association, joint stock company, trust, cooperative, or corporation.

(10) "Wire communication" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, furnished or operated by a person engaged as a common carrier in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications.

Section 2. Interception and disclosure of wire or oral communications prohibited -- penalty. (1) Except as otherwise specifically provided in [this act], it is unlawful for any person to:

(a) willfully PURPOSELY intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept a wire or oral communication;

(b) willfully PURPOSELY use, endeavor to use, or procure any other person to use or endeavor to use any electronic, mechanical, or other device to intercept an oral communication when:

(i) the device is affixed to or otherwise transmits a signal through a wire, cable, or other like connection used in a wire communication; or

(ii) the device transmits communications by radio or interferes with the transmission of the communication;

(c) ~~willfully~~ PURPOSELY disclose or endeavor to disclose to any other person the contents of a wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection (1);

(d) ~~willfully~~ PURPOSELY use or endeavor to use the contents of a wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection (1); or

(e) intercept a communication for the purpose of committing a criminal act.

(2) A person violating the provisions of subsection (1) is punishable by imprisonment in the state prison for a term not to exceed 5 years or a fine not to exceed $5,000, or both.

(3) It is lawful:

(a) for an operator of a switchboard or an officer, employee, or agent of a communications common carrier whose facilities are used in the transmission of a wire

communication to intercept, disclose, or use a communication in the normal course of his employment while engaged in an activity necessarily incident to the rendition of his service or to the protection of the rights or property of the carrier of the communication; however, the communications common carrier may not utilize service observing or random monitoring except for mechanical or service quality control checks;

(b) for an officer, employee, or agent of the federal communications commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of chapter 5 of Title 47, U.S.C., to intercept a wire communication or oral communication transmitted by radio or to disclose or use the information thereby obtained;

~~(c) for a law enforcement officer or a person acting under the direction of a law enforcement officer to intercept a wire or oral communication if he is a party to the communication or one of the parties to the communication has given prior consent to the interception;~~

~~(d) for an investigative or law enforcement officer to intercept a wire or oral communication if one of the parties to the communication has given prior consent to the interception;~~

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~~(e)~~(C) for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of the communication if the interception is requested by an appropriate law enforcement agency or the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature; and

~~(f)~~(D) for an employee of a law enforcement agency, fire department, or ambulance service, while acting in the scope of his employment and while a party to the communication, to intercept and record incoming wire communications.

Section 3. Manufacture, distribution, possession, and sale of wire or oral communications intercepting devices prohibited -- penalty. (1) Except as otherwise specifically provided in [this act], it is unlawful for a person to purposely:

(a) send through the mail or send or carry an electronic, mechanical, or other device, knowing or having reason to know that its design renders it primarily useful for the illegal interception of wire or oral communications; or

(b) manufacture, assemble, possess, or sell an electronic, mechanical, or other device, knowing or having reason to know that its design renders it primarily useful

for the illegal interception of wire or oral communications.

(2) A person violating subsection (1) is punishable by imprisonment in the state prison for a term not to exceed 5 years or a fine not to exceed $5,000, or both.

(3) It is lawful for a communications common carrier or an officer, agent, or employee of, or a person under contract with, a communications common carrier, in the normal course of the communications common carrier's business, or an officer, agent, or employee of, or a person under contract with, bidding upon contracts with, or in the course of doing business with the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision of a state, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that its design renders it primarily useful for the surreptitious interception of wire or oral communication.

Section 4. Confiscation of wire or oral communications intercepting devices. An electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, or sold in violation of [this act] may be seized and forfeited to the state.

Section 5. Prohibition of use as evidence of

intercepted wire or oral communications. If a wire or oral communication has been intercepted, no part of its contents and no evidence derived from it may be received in evidence in a trial, hearing, or other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or a political subdivision of the state if the disclosure would violate [this act].

Section 6. Authorization for interception of wire or oral communications. The state attorney general or a county attorney may authorize an application to a judge for an order authorizing or approving the interception of wire or oral communications and may apply to the judge for, and the judge may grant in conformity with 18 U.S.C. 2518 and [this act], an order authorizing or approving the interception of wire or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made if such interception may provide or has provided evidence of the commission of an offense punishable by imprisonment in the state prison for more than 1 year by:

(1) one or more terrorists engaged in a terrorist incident;

(2) one or more persons who have taken a hostage or hostages; or

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(3) one or more persons who have barricaded themselves in any place for any purpose.

Section 7. Authorization for disclosure and use of intercepted wire or oral communications. (1) An investigative or law enforcement officer who, by any means authorized by [this act], has obtained knowledge of the contents of a wire or oral communication or evidence derived from it may disclose the contents to another investigative or law enforcement officer to the extent that disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) An investigative or law enforcement officer who, by any means authorized by [this act], has obtained knowledge of the contents of a wire or oral communication or evidence derived from it may use the contents to the extent that the use is appropriate to the proper performance of his official duties.

(3) A person who has received, by any means authorized by [this act], information concerning a wire or oral communication or evidence derived from it intercepted in accordance with [this act] may disclose the contents of the communication or evidence while giving testimony under oath or affirmation in a criminal proceeding in a court of this state, the United States, any other state, or any political subdivision of a state.

VIOLATION OF 45-4-102,
ISPIENCY IN ~~45-9-XXX~~ CRIMINAL SALE OF DANGEROUS DRUGS IN VIOLATION OF 45-9-101 OR CRIMINAL POSSESSION OF DANGEROUS DRUGS WITH INTENT TO SELL IN VIOLATION OF 45-9-103 OR

(4) An otherwise privileged wire or oral communication intercepted in accordance with or in violation of [this act] does not lose its privileged character.

(5) If an investigative or law enforcement officer intercepting wire or oral communications in the manner authorized in [this act] intercepts wire or oral communications relating to offenses other than those specified in the order of authorization, the contents of the communications and evidence derived from them may be disclosed or used as provided in subsections (1) through (3).

Section 8. Application for order authorizing interception of wire or oral communications. (1) An application for an order authorizing the interception of a wire or oral communication must be in writing, upon oath or affirmation, to a judge and state the applicant's authority to make the application. It must include the following:

(a) the identity of the investigative or law enforcement officer making the application and the officer authorizing the application;

(b) a complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(i) details as to the particular offense that has been, is being, or is about to be committed;

(ii) a particular description of the nature and location of the facilities where the communication is to be intercepted;

(iii) a particular description of the type of communications sought to be intercepted;

(iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed, why they reasonably appear to be unlikely to succeed if tried, or if they reasonably appear to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be included in the application.

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the present application, made to a judge for authorization to intercept wire or oral communications involving any of the persons, facilities, or places specified in the present application, and the action

taken by the judge on each prior application; and

(f) if the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

Section 9. When order authorizing interception may be issued -- required contents. (1) Upon application under [section 8], the judge may enter an ex parte order, as requested or as modified, authorizing the interception of wire or oral communications within the state of Montana if the judge determines on the basis of the facts submitted by the applicant that:

(a) there is probable cause to believe that an individual is committing, has committed, or is about to commit an offense referred to in [section 6];

(b) there is probable cause to believe that communications concerning that offense will be obtained through the interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) there is probable cause to believe that the

facilities where the wire or oral communications are to be intercepted are being used or are about to be used in connection with the commission of an offense described in subsection (1)(a) or are leased to, listed in the name of, or commonly used by an individual described in subsection (1)(a).

(2) Each order authorizing the interception of a wire or oral communication must specify:

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities where authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications and of the person making the application; and

(e) the period of time during which the interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication has been obtained.

Section 10. Required assistance from communications common carrier and others. An order authorizing the interception of a wire or oral communication must, upon

request of the applicant, direct that a communications common carrier, landlord, custodian, or other person immediately furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the communications common carrier, landlord, custodian, or person is providing to the person whose communications are to be intercepted. A communications common carrier, landlord, custodian, or other person furnishing the facilities or technical assistance may be compensated therefor by the applicant at the prevailing rate.

Section 11. Time limitation on order. (1) An order entered under [section 9] may not authorize the interception of a wire or oral communication for a period longer than necessary to achieve the objective of the authorization, and in no event longer than 30 days. Extensions of an order may be granted upon application for an extension made in accordance with [section 8(1)] and upon the judge's making the findings required by [section 9(1)]. An extension may apply only for a period the authorizing judge considers necessary to achieve the purposes for which the extension is granted, and in no event longer than 30 days.

(2) An order or extension must state that the authorization to intercept must be executed as soon as

practicable, that the interception must be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under [this act], and that the order or extension terminates upon attainment of the authorized objective, or in any event after 30 days.

Section 12. Required reports. An order authorizing interception under [this act] may require that reports be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports must be made at such intervals as the judge may require.

Section 13. When recording of intercepted communication required. (1) The contents of a wire or oral communication intercepted by any means authorized by [this act] must, if possible, be recorded on tape, wire, or other comparable device and in a manner that protects the recording from editing or other alterations. Upon the expiration of the period of the order or extensions, the recordings must immediately be made available to the judge who issued the order and be sealed under his direction. Custody of the recordings must be wherever the judge orders. The recordings may not be destroyed except upon an order of the issuing or denying judge and must be kept for 10 years. Duplicate recordings may be made for investigative use or

disclosure under [section 7(1) and (2)]. The presence of the seal required by subsection (2) of this section or a satisfactory explanation of its absence is a prerequisite to the use or disclosure of the contents of a wire or oral communication or evidence derived from it under [section 7(3)].

(2) An application or order under [this act] must be sealed by the judge. Custody of applications and orders shall be wherever the judge directs. An application or order may be disclosed only upon a showing of good cause before a judge, may not be destroyed except on the order of the issuing or denying judge, and must be kept for 10 years.

Section 14. Disclosure of interception. (1) Within a reasonable time, but not later than 90 days, after the filing of an application for an order of authorization which is denied or the termination of the period of an order or its extensions, the issuing or denying judge shall cause to be served on the persons named in the order or application and such other parties to intercepted communications as the judge may determine in the interest of justice an inventory which must include notice of:

(a) the entry of the order or the application;

(b) the date of the entry and the period of authorized interception, or the denial of the application; and

(c) whether, during the period, wire or oral

communications were or were not intercepted.

(2) Upon the filing of a motion, the judge may make available to a notified person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice.

(3) On an ex parte showing of good cause to a judge, service of the inventory required by subsection (1) may be postponed.

Section 15. When intercepted communication admissible in evidence. (1) The contents of an intercepted wire or oral communication or evidence derived from it may not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, ~~and~~ accompanying application under which the interception was authorized. This 10-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(2) An aggrieved person in a trial, hearing, or proceeding in or before a judge, department, officer, agency, regulatory body, or other authority of the United

AND A Duplicate Recording OR TRANSCRIPT OF THE CONTENTS OF THE COMMUNICATION

States, a state, or a political subdivision of a state, may move to suppress the contents of an intercepted wire or oral communication or evidence derived from it on the grounds that:

(a) the communication was unlawfully intercepted;

(b) the order of authorization under which it was intercepted is insufficient on its face; or

(c) the interception was not in conformity with the order of authorization.

(3) The motion to suppress must be made before the trial, hearing, or proceeding, pursuant to 46-13-302 or the hearing rules of the respective body, as applicable.

(4) In addition to any other right to appeal, the state of Montana may appeal an order granting a motion to suppress made under subsection (2). The appeal must be made within 30 days after the date the order was entered.

Section 16. Violations punishable as contempt. Any violation of [sections 8 through 15] may be punished as a contempt by the issuing or denying judge.

Section 17. Recovery of civil damages authorized. (1) A person whose wire or oral communication is intercepted, disclosed, or used in violation of [this act] has a civil cause of action against a person who intercepts, discloses, uses, or procures another person to intercept, disclose, or use the communication and is entitled to recover:

(a) actual damages, but not less than liquidated damages computed at the rate of $100 a day for each day or violation or $1,000, whichever is higher;

(b) punitive damages; and

(c) a reasonable attorney fee and other litigation costs reasonably incurred.

(2) A good faith reliance on a court order or legislative authorization constitutes a complete defense to any civil or criminal action under [this act].

Section 18. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

EXHIBIT F

AMENDMENT TO SENATE BILL 449

1. Page 5, line 6.
Following: "~~shall~~"
Strike: "MAY"
Insert: "shall"

2. Page 5, lines 7 and 8.
Following: "if" on line 7
Insert: "evidence available to"
Following: "officer" line 8
Insert: "is clear that"

Following: "cause"
Insert: "does exist"

The amendment will read as follows On line 5.

(2) A peace officer shall arrest a person anywhere, including his place of residence, if evidence available to the peace officer is clear that probable cause does exist to believe the person is committing or has committed domestic abuse or aggravated assault against a family member or household member, even though the offense did not take place in the presence of the peace officer.

EXHIBIT G
3/21/85
SB 449

SBA MONTANA STUDENT BAR ASSOCIATION
UNIVERSITY OF MONTANA LAW SCHOOL
MISSOULA, MONTANA 59801
WOMEN'S LAW CAUCUS

TESTIMONY OF AMY PFEIFER BEFORE THE HOUSE JUDICIARY COMMITTEE, March 21, 1985
ON BEHALF OF SENATE BILL 449

Family violence occurs in this country in staggering proportions. Each year thousands of men, women and children must deal with the tragedy of family violence. Estimates from the U.S. Attorney General's Task Force on Family Violence indicate that family violence is a crime of shocking magnitude. Battery is a major cause of injury to women in America. Nearly a third of female homicide victims are killed by their husbands or boyfriends. Almost 20 percent of all murders involve family relationships.

These intentional, purposeful acts of physical and sexual abuse by one family member against another must be defined and recognized by the criminal justice system as serious criminal offenses. A strong commitment by law enforcement officials, prosecutors, and courts in responding to family violence as a crime can aid in deterring, preventing and reducing violence against family members.

The criminal justice system has responded inconsistently to acts of violence. Violence committed by a stranger is classified as an assault. If a person is apprehended after beating up a stranger, the usual result is an arrest and prosecution for assault and battery. Yet when one family member assaults another, it is commonly viewed as a family squabble, something less than a crime. This disparity in the legal response to assaults must be eliminated. The problem for too long has been viewed as a private matter best resolved by the parties themselves without resort to the legal system. Today, with increasing public awareness of the seriousness and pervasiveness of family violence, there is a growing demand for an effective response from all community agencies, particularly the criminal justice system. An assault is a crime, regardless of the relationship of the parties. A person beaten in the home is no less a victim than the person beaten on the sidewalk in front of the home. The law should not stop at the front door of the

family home. An individual's right to privacy in his home is no bar to the arrest of an assaulter. The right of individual privacy is a fundamental constitutional right expressly recognized in the Montana Constitution as essential to the well-being of a free society, but the constitutional guarantee is not absolute and it must be interpreted or construed and applied in light of other constitutional guarantees. It must yield to a compelling state interest which exists where the state enforces its criminal laws for the benefit and protection of other fundamental rights of its citizens. State ex rel. Zander v. District Court, 180 MT 548, 591 P.2d 656 (1979). The state's compelling interest in enforcing it's assault laws justifies arresting an abuser in the home.

Traditional criminal justice practice in family violence cases has been to view an assault as a family disturbance, not requiring arrest. When an arrest does occur, law enforcement officers and prosecutors may fail to acknowledge the seriousness of the offense, believing that the victim will be hesitant to cooperate. Penalties imposed by the court generally do not reflect the severity of the injury or the number of prior convictions for the same offense. This under-enforcement of the law tells victims and assailants alike that family violence is not really a serious crime, if a crime at all. It is this wide-spread perception that has contributed to the perpetuation of violence within the family.

Assaults against family members are not only crimes against the individual but also crimes against the state and the community. Intervention by the criminal justice system can effectively restrain assailants and make them responsible for their violence like any other perpetrator of crime. Arrest by law enforcement officers sends a clear signal to the assailant: abusive behavior is a serious criminal act and will not be condoned or tolerated. Prosecution policies that are not dependent upon a signed complaint from the victim reinforce that message. Courts can confirm it by imposing sanctions commensurate with the crime. Such measures not only have a deterrent effect on the abuser but also provide protection for the victim.

Intervention by the criminal justice system must also recognize and be sensitive to the trauma suffered by the victim. Family violence is a crime occurring in a special context with very different causes, manifestations and effects. Reporting and successful prosecution requires

victim cooperation. To achieve that cooperation after the initial call by the victim, law enforcement officials, prosecutors and judges, not the victim, must proceed with and monitor the criminal justice process. This not only reinforces the notion that abuse is a serious criminal act but also provides the victim the support necessary to participate in the criminal justice process.

The response of the criminal justice system, punishing the offender and protecting the victim, is a critical element of a community effort to reduce family violence. The response must be decisive and expeditious and, most importantly, guided by the nature of the abusive act and not the relationship of the victim and abuser.

During the sixties, police trainers relied on the literature of psychologists and social scientists who believed that arrest was inappropriate because it exacerbated the violence, broke up families, and caused the abuser to lose his job. Consequently, mediation was the preferable solution to most family violence incidents. Rather than emphasize the victim's right to safety and protection against future assaults, the mediation model moved away from law enforcement into social services. As a result, law enforcement officers have generally attempted to resolve incidents of family violence through the expeditious techniques of sending one party away from the home or superficially mediating the dispute. A recent study by the Police Foundation indicated that reincidence of violence is less likely if the police arrest an abuser than if they separate the parties or mediate the "dispute". The Police Foundation study focused on whether police should use law enforcement procedures or social work techniques in responding to disturbance calls. It was designed to determine, through an experiment using real cases, whether arrest, informal mediation, or temporary separation of the parties was most effective in deterring subsequent assault.

The participating officers were divided into three groups. Each officer responded to a sample of actual wife abuse cases according to the instructions the officer's group had been given. One-third of the officers made arrests, one-third separated the parties, and one-third mediated the disputes.

A six-month follow-up study found that there had been a recurrence of violence in 24% of the cases in which the police had separated the parties for eight hours, a 17% recurrence in cases which were mediated, and only a 10% reincidence of violence in cases in which an arrest was made.

The study revealed the dramatic deterrent effect of arrest on domestic abuse compared to the effect of other, more common, police responses to abuse cases. It is hoped that the Police Foundation study will lead to a major shift in police policy away from mediation and toward more traditional law enforcement.

Subdivision (4) of M.C.A. §§ 46-6-401, Circumstances in which a peace officer may make an arrest, was enacted in 1967 to provide for felony and misdemeanor arrest without an arrest warrant. The scope of the arrest power was broadened to allow for an arrest without a warrant when the peace officer believes on reasonable grounds that a person is committing an offense or that a person has committed an offense. In 1968 an amendment was made pursuant to a Supreme Court order which added to subsection (4) the requirement that "existing circumstances require his immediate arrest." As the Montana Criminal Law Commission's comments note, "before the addition of subsection (4), the officer (was) often handicapped by being unable to arrest for a past misdemeanor not committed in his presence, e.g., a family squabble or traffic infraction."

Montana Code Annotated § 46-6-401, subsection (4) was enacted to allow peace officers to arrest for domestic abuse which did not occur in their presence. This was almost 18 years ago. The addition of subsection (4) and the Supreme Court's amendment to it have obviously not gone far enough in addressing the serious problem of domestic abuse.

In 1977 the state of Oregon chose mandatory arrest as the best means to reduce recurring domestic violence. According to Oregon Revised Statutes § 133.055, subsection 2 & 3, a police officer, upon probable cause that a domestic assault has occurred or that serious physical injury is threatened must arrest the assailant. After the enactment of the Oregon Abuse Prevention Act, including the mandatory arrest provision, nondomestic homicides in Oregon showed a 10% increase while domestic homicides during the same period showed a 10% decrease.

The state of Washington, too, has chosen mandatory arrest as its response to the serious problem of domestic violence. Revised Code of Washington § 10.99.030, subsection (3)a) provides: "When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise (his) arrest powers . . . ." The officer also has a duty,

under this section, to notify the victim of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available.

The Women's Law Caucus believes it is time for Montana to follow Oregon and Washington's lead in adopting mandatory arrest as the preferred response to domestic violence. This bill is essential to break the cycle of domestic violence. It is necessary to give the victim support so that she will participate in the system. The burden should not be on her shoulders. We support Senate Bill 449 as necessary to send a broad, clear signal that domestic abuse is a crime and will not be tolerated by the people of Montana.

EXHIBIT H
3/21/85
SB 449

February 20, 1985

Capitol Station
Helena, Montana 59601

Dear Legislators,

I am the Legislative Representative from the MONTANA COALITION AGAINST DOMESTIC VIOLENCE and we are urging you to support Senate Bill 449 (REQUIRING ARREST LAW).

Before Richard Gelles, Maury Strauss, Susan Steinmetz, and Dr. Lenore Walker started to do in-depth research on FAMILY VIOLENCE and the DYNAMICS OF ABUSIVE RELATIONSHIPS, the Sociologists and Psychologists were saying to Law Enforcement who were dealing with Family Violence, "Let's just mediate and send the Abuser around the block for a walk;" or the Law Enforcement would say,"we will not get involved in Domestic Problems." Later, we found through RESEARCH that in PHASE 2 of the BATTERING CYCLE--the Abuser is in pure RAGE. A WALK AROUND THE BLOCK will not be a long enough "COOLING OFF" period. Instead, an enforced separation of the victim and assailant is often necessary to permit the passions on all sides to subside and to take the reasonable steps necessary to end the violence and prevent future abuse.

To ensure the safety of the victim and provide just and fair treatment of the assailant, the rights of both parties must be equally considered and balanced. When considering release or setting bail, judges must carefully assess the dangerousness of the abuser's behaviour and the likelihood that the violence will continue. When that probability is great, overnight incarceration of the abuser may prove to be an effective means to prevent the continuation of violence. Not only will this reasonable cooling-off period provide immediate protection for the victim, but the assailant will more likely recognize the serious criminal nature of violence within the family. Also, important service and treatment contacts and referrals can be made for both the victim (see enclosed card the Law Enforcement uses in Gt. Falls, and we are currently making up another information card.) The referral for the Abuser can be to counseling such as 'The Alternativesto Violent Behaviour Group'at the Mental Health in Gt. Falls.

I have worked with over 4,000 Abused Women and Children, and many of them have related to me such stories as the following:

-Last Saturday morning (Feb.16/85) in a small town outside of Gt. Falls, a client of mine was threatened he would kill her and he left to go get his gun out of his car. His son told him, "If you kill mom, I'll have to kill you." This is the second time that the son has had to say this to his father. The client told me that he threatened to "Drop the Sheriff" if she called him.

-the client who he took out on a lonely road and shot at her,missing her and hitting the car engine. Another time she ran out of the house and he fired a shot and hit the house next door. When the Police were called, they suggested she move and get out of town. She asked, "Don't I have any rights?" Why, do I have to always be the one to leave?" They also did nothing to the Abuser.

- My client who had moved to Great Falls with her three children and after she paid the rent and got settled, her husband showed up and threatened to"beat her to death." When the Police came they told her they couldn't do anything--It was a family matter."

A lack of understanding of the nature of FAMILY VIOLENCE encourages others not directly involved to keep the cloak of SILENCE in place. The LEGISLATIVE, JUDICIAL, LAW ENFORCEMENT, and MONTANA COALTITION AGAINST DOMESTIC VIOLENCE and SERVICE PROVIDERS will have to use their creative minds to'BREAK THE CYCLE OF VIOLENCE'in MONTANA as we have before in the last 4 Legislatures. This includes EDUCATING the PUBLIC about: 1) The CRIMINAL nature of family violence; 2).The Human and Economic Costs of Family Violence; Information on local resources for victims;4and Methods of preventing Family Violence.

Sincerely yours,

Carol Vickes Borchers

Carol Vickes Borchers, Executive Director Mercy Home
Board, State Task Force on Domestic Violence

RE: MANDATORY ARREST

Dear Legislators:

I am writing on behalf of many women in Montana who have been, are, or will be victims in a battering relationship. I speak from personal experience as I married a man who was extremely violent. This letter is graphic simply because generalities don't give one a clear picture of what really goes on in a relationship where the husband is a batterer.

I came from a good christian home where as a minister, my father, along with my mother, taught my sisters and I to be kind, loving, and empathetic toward the needs of others. In contrast to my husband's childhood of physical abuse, violence on the streets, and scraping for himself, my childhood was based on love, comfort, security, and a firm hand of correction where needed. So what I went through for the next two years was totally foreign to me.

After obtaining a college degree, I returned to the city where my parents resided. While there, I met and married a man who was kind, helpful, loving, and cared for me. His flip side was that of extreme jealousy, possessiveness, uncontrollable outbursts of violence, an obsession with knives, an alcohol problem, and severe beatings, even when I was pregnant. On one occasion when I was going to leave him, he took me for a ride in our car and got a gun and said he was going to kill himself if I left him. I wonder if he planned to shoot me, too. I don't know. During another incident, as if it was premeditated, he made me pack our baby's belongings, then tied me up, gagged me, beat me, and told me he was going to kill me and leave with our $2\frac{1}{2}$ month old baby. The list of violent incidents goes on.

After living through a year of marriage in this hell, I left him and was separated for a month. I lived in Great Falls but went to Kalispell while my parents were on vacation. Upon our arrival back to Great Falls, my husband wanted to see the baby. Since I had had several conversations with him during our separation during which he said he had changed as the result of a religious revival in his life, I trusted him. So my father dropped me off at the house while he went to visit one of his elders for a short time. My husband tried to get me to leave the house with him to go for a ride, and upon my refusing, he went into a rage. He pulled a long knife from the kitchen drawer and informed me that I was going with him. I talked him into throwing the knife down and after pulling the phone cord out of the wall, he started dragging me out the door. I started to scream because I knew it was my only chance (he had on several occasions told me he was going to take me to a remote area someday and kill me). He threatened to knock me out if I didn't be quiet, and next tried to force me into the car. Then something snapped in him, and he quit, just like that. I ran to a neighbor that I noticed was watching the incident and told him what had happened and that my husband was going to take the baby. Upon being informed by my neighbor that my husband was a "nice" guy and wouldn't do such a thing, my husband then grabbed the baby from me and ran to the car and left. As it turned out, he went around the block, brought the baby back to me and said he couldn't separate us. He just wanted money to get out of town. A police officer arrived, and I went to a neighbor's house to call my father who came right over. Dad, who thought I should press charges, talked to the officer. The officer was very reluctant to get involved because it was a domestic situation, and said the authorities can't really do much unless I am divorced. He also indicated my husband could go to jail that night and get out on bail the next day. Then he stated it was all over for that night and to "let a sleeping dog lie." I also didn't want to be responsible for sending him to jail because I figured if he was going to go to jail, he was going to put himself there as I didn't want him coming after me when he got out. After a few more minutes (by this time my husband has disappeared) the officer said,

"Well, I'd better get back to work." What did he think he had been doing for the past 45 minutes? So when he left, we had no idea where my husband was. We were just about to leave when he came out of the park from across the street. He started coming at my dad with a look of rage in his eyes but stopped only after my father yelled for someone to call the police.

The next day, my husband was on a plane to the city where we used to live. I divorced him, and before it was even finalized, he almost killed a guy with a hammer and was sent to prison in that state for a couple of years. He got out on parole last May and is now in California. It's only a matter of time before he victimizes someone else.

Had there been a mandatory arrest law during these incidents, the course of his violence could have been altered. The pressure of having one's husband arrested should not lie on the shoulders of the wife but on that of the officer who answers the call for help. He is the one with the authority and training to handle situations such as this, especially since my husband no longer had a weapon when the officer arrived. These batterers need to take responsibility for their own actions and be headed in the direction of extensive psychiatric counseling.

What needs to be prevented are the beatings and homicides that are so prevalent in our society. Let's put these actions on the criminal's side where they belong. It is crucial that they be ordered out of the house and placed in jail for a "24 hour cooling off period" where they can evaluate their actions and criminal behavior.

Thank you for your consideration.

Melinda

February 1985

Dear Legislators,

A mandatory arrest law would help battered women, particularly those in cases similar to mine. Under this law, if there is evidence of abuse, law enforcement agencies would be able to arrest the offender and incarcerate for 24 hours.

I am a battered wife! Knowing that as long as the officers (if they show up) are on the premises, the batterer will settle down, but as soon as the officers leave, the batterer continues his rage on the victim. At this point, the law's hands are tied.

I have gone to the shelter several times. I was not able to return to my own home, as my (now) ex-husband continued to remain in it, running up staggering bills which I was responsible for, since I own the home. Being a woman and a mother, the stress factor has been very bad for my health, and so seeking employment to help with the bills has been impossible.

It will take several years to overcome the financial and emotional abuse I was under. The laws for protecting women and children in abusive situations should be seriously looked into. This is a crime that has been hidden for centuries, and is now coming into light. Often, the battering disappears temporarily, only to return, even worse; all battered women are aware of this. More legislation is required to provide protection from these abusers.

Thank you

Carolyn

February 15, 1985

Dear Legislators:

I'm writing this letter to you to request your support in regards to the "Mandatory Arrest Law" which would provide immediate action in arresting abusers.

I recently went through a divorce which ultimately brought to light the abusive situation I had been living under for many years. To understand "my story", you must realize my ex-husband is a very egotistical, unresponsible person who is also very manipulative and domineering. This was "learned behavior".

Immediately after the divorce, my life was threatened several times and ways and through my minister, I sought help from the Mercy Home and Caryl Borchers. His next tactics included suicide threats, numerous statements involving friends and relatives and my employers and additional threats on my life.

Several weeks after the divorce at approximately 2:15 A.M., I alarmingly awoke to a noise downstairs, turned on my light and was faced with him charging up the stairs carrying a loaded shotgun. During the next two hours, my phone was riped off the wall so I could not call for help and I was sexually abused. As soon as I was free to get to my neighbors house, the police were there within minutes; by that time, of course, he was gone. Even though I told the police I would press charges, it took seven days for the arrest orders to be processed through the city courts, and by that time, he had "confessed" to what he had done, sought professional mental help for 2-3 days, and appeared in court where they "slapped his hands" and told him to leave me alone. Therefore, any charges I had pressed were dropped.

In addition to the above, it took better than three weeks to get a permanent restraining order processed and served on this person. In the meantime, I felt my life was very much in danger, and the constant fear I lived with was devastating. I try to live a good Christian life, but there's only so much a person can tolerate and I firmly believe that no person has the right to abuse another person by such actions.

I feel the worst part is behind me and each day is better than the last. My concern now is for the many abused people in our society today who do not have the strong support of family and friends, and Caryl Borcher and the rest of the Mercy Home Personnel as I did. Abused people, whether they be men, women or children, need better protection, immediate action by our law enforcement, and concerned citizens to come to their aid.

I strongly urge you to support the "Mandatory Arrest Law" and House Bill 310, "self help restraining order".

Sincerely,

Janet

February 20, 1984

Dear Legislators,

Please support the Mandatory Arrest SB #449!

I was a victim of domestic violence! I never called the police when my spouse was taking out his frustrations on me by slamming me up against a wall, choking me, punching me in the face or stomach, or kicking me, as I knew when they (the police) came he would NOT be arrested and he would then have killed me and my children.

Had they arrested him and kept him in jail for 24 hours he would have had a long enough cooling off time that when he returned he would not have continued the violent behavior. Plus he would have begun to realize that he no longer could continue this type of behavior without serious consequences. As it was he knew no one would do anything about his behavior, therefore, it was acceptable for him to be abusive to me and my children. He never believed he had a problem and the only one who told him that he did was me, which brought about more beatings.

I firmly believe that we as a society need to make a positive statement that violence in the home is NOT acceptable. I can't think of a better way to make that statement then to arrest the person who is assaulting his spouse and place the responsibility for this crime on him rather then on the victim.

Thank you for your anticipated support!

Sincerely,

Margy

re: Mandatory Arrest

Dear Legislator,

I am currently working in a shelter for battered women and their children. I strongly request your adoption of the Mandatory Arrest Bill.

Through my work with battered women I have seen how detrimental the lack of arrest has been. An abused woman will often call the police for help during phase 2 of the cycle, or the 'Acute Battering Incident' phase. The victims are often too afraid to press charges against their batterers for fear of intensified beatings or threats of death from their attackers.

One of the women that I have worked with, Sandra, called the police out of desperation after being beaten by her husband. When the police arrived Sandra ran out to the driveway to meet them, and explained the beating to the officers. The officers asked the man to leave the house for a few hours, a 'cooling off period'. The man told the officers that he merely wanted the house key because he was afraid that Sandra would lock him out of the house. The officers had her give him the key, gave the man a 'slap on the wrist' and told him to leave her alone.

When the police left the man was even angrier at Sandra for calling the police then he was in the beginning. At this point the man and Sandra's 14 year old son (learned behavior) took Sandra inside the house, handcuffed her hands behind her back, and together they beat her.

Had this man been immediately arrested not only would his temper have cooled, but Sandra would have had time to escape to safety, and the police would have reinforced in the man the fact that what he did was an assault and against the law.

The Minneapolis Domestic Violence Experiment by Lawrence W. Sherman and Richard A. Berk, as written in the Police Foundation Reports was conducted to determine how police should respond to domestic violence calls. The study found that;

> arrest was the most effective of three standard methods police use to reduce domestic violence.

re: Mandatory Arrest

> The other police methods - attempting to counsel both parties or sending assailants away from home for several hours - were found to be considerably less effective in detering future violence in the cases examined.

I urge you to accept the Mandatory Arrest Bill and to place the punishment of an assault on the batterer, not the victim.

Sincerely,

Janet

February 1985

Dear Legislators,

This piece of testimony has been prepared to urge your support of Senate Bill 449. As a volunteer counselor at a shelter for battered women and their children, I have dealt with the victims of such violence, women and children who have had to leave their homes as the only means of escape from their batterers.

However, our shelters mainly address the situation of the victim, educating her and her children about the cycle of abuse, and telling them that this is not normal behavior--it is learned behavior that must and can be "un-learned."

What is just as important, but more difficult to do, is to contact the abuser and tell him the same--that this behavior is not normal and is criminal. Under the legislation proposed in this session, such contact could be made through overnight incarceration of the offender, as well as any longer-term incarceration that could occur as a result. Currently, the length of time for which a domestic violence offender is incarcerated, is usually very short, if at all. In this proposed method of dealing with domestic violence, the seriousness of the offense would be realized, and referral could then be made to various agencies, therapists or centers that could assist the person in restructuring their behavior. Through treatment, the family situation has a better chance, and calls for police intervention may no longer be needed. What we are doing under our current, lenient laws, is enabling this behavior to continue, and subjecting our police officers to repeated visits to particular families.

In the recently published Attorney General's Task Force Report On Domestic Violence, it is recommended that legislation, such as mandatory arrest and warrantless arrest, be enacted to deal with domestic violence. One opposing opinion has been presented to our proposals--that these and similar legislation would violate family privacy. In instances of domestic violence, where the matter cannot be settled among the parties because of its high emotional content, any individual should be able to turn to the law for protection, and receive that protection.

It is not the intent of our proposed legislation, nor that of battered women shelters, to split the family. Rather, these are effective means for treating the problem of domestic violence, from the standpoint of both victim and, with revised legislation, offender as well. In these ways, we can draw society's attention to the seriousness of domestic violence, and continue to improve methods of prevention and treatment.

Your support, please.

Sincerely,

Cathy St. John

February 21, 1985

Dear Legislators:

When you love someone and are so afraid of the same person your emotions are torn. I was a victim of a violent marriage. My children were victims and in many ways still are victims even though we have since fled the violent man we knew as a husband and father.

I came from a very loving and gentle background. My parents never displayed anger or so much as spoke harshly to one another. I was always loved and loving deeply was easy for me.

When I married I felt I married the most wonderful man alive. I soon learned the sweet, kind, loving man I married had another side. He became violent and angry. He pushed and shoved. He made threats often. The first real fear he instilled in me was while I was pregnant with our first child. He hit me so hard he busted my lip and bruised my mouth. I ran for the phone to call for help from his parents and he tore the phone out of the wall. He was afraid I was calling the police. Instead I was only going to call his father. Over the years many times I did call his father because I was too afraid to call the police. I knew he would only have been released right away and then what would he have done to me?

After 8½ year of fear, because I never knew what would trigger his anger, I took my children and ran for safety. He had torn up our home in a fit of rage and threatened suicide in front of the children. This was a man I didn't even know any longer. He lost control completely. Yet the fear he caused always made me even further afraid to call for help from the police. If there could have been the promise of his not coming immedidately home to "really get even" I'm sure I could have made the call - but there wasn't.

After I left, my husband threatened my life and to take the children and run with them. I went to the police and all they could do was suggest I seek shelter in a home, because in civil matters it is very difficult to get involved. Everything seems to be "after the fact". I am thankful there was such a home for my children and myself to go to, but what of women who have no readily available shelter? If they call the police and their spouse is taken into custody what happens when he is released two hours later? There is a potentially violent person who is even more angry after the humilation of being removed. If there were a 24 hour period where the abused or threatened woman could know she was safe she could make arrangements for herself and children. They need time - without it there is possibly a time bomb being released and ready to explod; and he won't blame himself for the situation but rather the wife for having put him into his embarassing situation. Most men who abuse don't ever let others see this violent side of himself. Only his wife knows the extent of his cruelties. She needs a chance to make a choice. He needs time to cool down. If he knows he can't get away with abusing he'll stop and think first. If my husband would have realized that by abusing me he could have been held for 24 hours maybe he wouldn't have been so

quick to hurt me. And if I would have known I had 24 hours to decide where to go for help maybe my children and I wouldn't have had to flee our home with only the clothes on our backs.

Please take into consideration what a help the manditory 24 hours holding time would be to women who are in a desparate and frightening situation.

Thank you for your consideration.

Sincerely,

Mary

POLICE FOUNDATION 1 REPORTS

The Minneapolis Domestic Violence Experiment

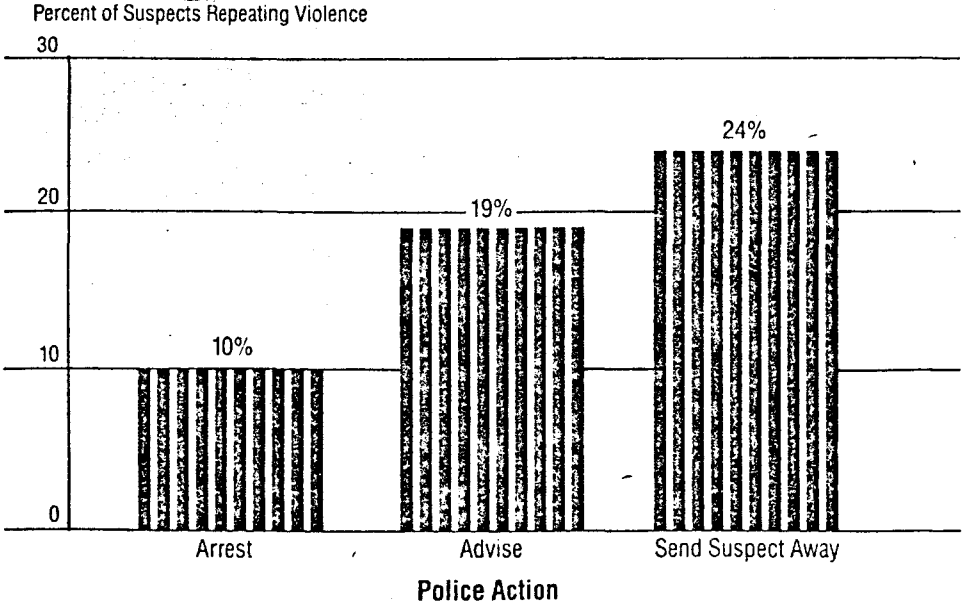
By LAWRENCE W. SHERMAN and RICHARD A. BERK

Under a grant from the National Institute of Justice, the Minneapolis Police Department and the Police Foundation conducted an experiment from early 1981 to mid-1982 testing police responses to domestic violence. A technical report of the experiment can be found in the April 1984 issue of the *American Sociological Review*. This report summarizes the results and implications of the experiment. It also shows how the experiment was designed and conducted so the reader may understand and judge the findings.

Findings in Brief

The Minneapolis domestic violence experiment was the first scientifically controlled test of the effects of arrest for any crime. It found that arrest was the most effective of three standard methods police use to reduce domestic violence. The other police methods—attempting to counsel both parties or sending assailants away from home for several hours—were found to be considerably less effective in deterring future violence in the cases examined. These were not life-threatening cases, but

Figure 1 Percentage of Repeat Violence Over Six Months For Each Police Action:



When I was a young police officer in Oakland, California, nothing perplexed or concerned me more than dealing with domestic assault cases, the staple and bane of every patrol officer's work life. I sensed that my colleagues and I were not doing enough to deter future violence. We had little guarantee that when we left the scene of a violent domestic assault, it would not recur. But, frankly, like other police officers, we did not know what we could do to prevent new eruptions of violence in domestic settings.

I believe the nation's almost half million police officers are tired of responding with the same old non-effective prescriptions to the plight of the battered victims who get caught up in domestic fights. So when I was appointed director of the National Institute of Justice, I was determined to help find the answer to what the police could do to deter domestic violence. The job of NIJ is to get practical answers to important, policy relevant problems such as this one.

The answer, as this report documents, appears to be that the police should use arrests quite frequently in typical domestic violence cases if they want to reduce assaults. More research, of course, is needed before we can say that only arrest should be used in cases of domestic assault. But the Minneapolis research is very useful in guiding our way.

How the research was obtained is a landmark in policing about which readers should know. For the first time in the history of police research, a police department permitted experimentation with officers' responses to a situation involving a specific offense. As this report notes, to permit the experiment to happen, the responses were determined through a lottery method. In that way, the three typical police responses to domestic violence calls received a fair test. The Minneapolis Police Department deserves immense credit for being the laboratory in which we could gain, in the most effective way possible, important new information about a common, serious police problem.

James K. Stewart
Director, National Institute of Justice

rather the minor assaults which make up the bulk of police calls to domestic violence.

The findings, standing alone as the result of one experiment, do not necessarily imply that all suspected assailants in domestic violence incidents should be arrested. Other experiments in other settings are needed to learn more. But the preponderence of evidence in the Minneapolis study strongly suggests that the police should use arrest in most domestic violence cases.

Why the Experiment Was Conducted

The purpose of the experiment was to address an intense debate about how police should respond to misdemeanors, cases of domestic violence. At least three viewpoints can be identified in this debate:

1 The traditional police approach of doing as little as possible, on the premise that offenders will not be punished by the courts even if they are arrested, and that the problems are basically not solvable.

2 The clinical psychologists' recommendations that police actively mediate or arbitrate disputes underlying the violence, restoring peace but not making any arrests.

3 The approach recommended by many women's groups and the Police Executive Research Forum (Loving, 1980) of treating the violence as a criminal offense subject to arrest.

If the purpose of police responses to domestic violence calls is to reduce the likelihood of that violence recurring, the question is which of these approaches is more effective than the others?

AUTHORS

Lawrence W. Sherman is vice president for research for the Police Foundation and associate professor of criminology at the University of Maryland.

Richard A. Berk is professor of sociology at the University of California at Santa Barbara and director of the Social Process Research Institute.

Policing Domestic Assaults

Police have been typically reluctant to make arrests for domestic violence (Berk and Loseke, 1981), as well as for a wide range of other kinds of offenses, unless a victim demands an arrest, a suspect insults an officer, or other factors are present (Sherman, 1980). Parnas' (1972) observations of the Chicago police found four categories of police action in these situations: negotiating or otherwise "talking out" the dispute; threatening the disputants and then leaving; asking one of the parties to leave the premises, or, very rarely, making an arrest.

Similar patterns are found in many other cities. Surveys of battered women who tried to have their domestic assailants arrested report that arrest occurred in only ten percent (Roy, 1977:35) or three percent (see Langley and Levy, 1977:219) of the cases. Surveys of police agencies in Illinois (Illinois Law Enforcement Commission, 1978) and New York (Office of the Minority Leader, 1978) found explicit policies against arrest in the majority of the agencies surveyed. Despite the fact that violence is reported to be present in one-third (Bard and Zacker, 1974) to two-thirds (Black, 1980) of all domestic disturbances police respond to, police department data show arrests in only five percent of those disturbances in Oakland (Hart, n.d., cited in Meyer and Lorimer, 1977:21), six percent of those disturbances in a Colorado city (Patrick, Ellis, and Hoffmeister, n.d., cited in Meyer and Lorimer, 1977:21), and six percent in Los Angeles County (Emerson, 1979).

The best available evidence on the frequency of arrest is the observations from the Black and Reiss study of Boston, Washington, and Chicago police in 1966 (Black, 1980:182). Police responding to disputes in those cities made arrests in 27 percent of violent felonies and 17 percent of the violent misdemeanors. Among married couples (Black, 1980:158), they made arrests in 26 percent of the cases, but tried to remove one of the parties in 38 percent of the cases.

The apparent preference of many police for separating the parties rather than arresting the offender has been attacked from two directions over the past 15 years. The original critique came from clinical psychologists who agreed that police should rarely make arrests (Pot[illegible], 46; Fagin, 1978: 123-124) in domesti[illegible] sault cases and argued that poli[illegible]sh mediate the disputes responsibl[illegible]fo violence. A highly publicized [illegible]on tion project teaching police spec[illegible]l c seling skills for family crisis int[illegible]ver (Bard, 1970) failed to show a redu[illegible] in violence, but was interpreted as a [illegible] cess nonetheless. By 1977, a nati[illegible]al vey of police agencies with 100[illegible]r [illegible] officers found that over 70 percen[illegible] ported a family crisis interventio[illegible]ra[illegible] program in operation. Although [illegible]i[illegible] clear whether these programs red[illegible] separation and increased mediation, [illegible] cline in arrests was noted for som[illegible]W[illegible] *et al.*, 1976). Indeed, many sough[illegible]ex itly to *reduce* the number of arrests (versity of Rochester, 1974; Ketter[illegible]an Kravitz, 1978).

By the mid-1970s, police practices criticized from the opposite dire[illegible]tio feminist groups. Just as psycholo[illegible]ts ceeded in having many police agencie[illegible] spond to domestic violence as "half s[illegible] work and half police work," fem[illegible]st gan to argue that police put "t[illegible]n emphasis on the social work aspect not enough on the criminal" (La[illegible]ey Levy, 1977:218). Widely publ[illegible]d suits in New York and Oakland soug[illegible] compel police to make arrests in [illegible] case of domestic assault, and st[illegible]l latures were lobbied successfully to re[illegible] the evidentiary requirements needed police to make arrests for misd[illegible]e[illegible] domestic assaults. Some legislat[illegible]es now considering statutes requiring p[illegible] to make arrests in these cases.

The feminist critique was bols[illegible]re[illegible] a study (Police Foundation, 1976) sh[illegible] ing that for 85 percent of a sampl[illegible] spouse killings, police had inter[illegible]ne least once in the preceding two ye[illegible]rs. 54 percent of those homicides, police intervened five or more times. B[illegible]it impossible to determine from t[illegible] whether making more or fewer ar[illegible] would have reduced the homicide[illegible]t[illegible]

How the Experiment Was Desig[illegible]

In order to find which police a[illegible]re[illegible] was most effective in deterring f[illegible]ure[illegible] mestic violence, the Police F[illegible]da[illegible] and the Minneapolis Police Dep[illegible]t[illegible] agreed to conduct a classic exp[illegible]n[illegible]

A classic experiment is a research design that allows scientists to discover the effects of one thing on another by holding constant all other possible causes of those effects. The design of the experiment called for a lottery selection, which ensured that there would be no difference among the three groups of suspects receiving the different police responses (Cook and Campbell, 1979). The lottery determined which of the three responses police officers would use on each suspect in a domestic assault case. According to the lottery, a suspect would be arrested, or sent from the scene of the assault for eight hours, or given some form of advice, which could include mediation at an officer's discretion. In the language of the experiment, these responses were called the arrest, send, and advise treatments. The design called for a six-month follow-up period to measure the frequency and seriousness of any future domestic violence in all cases in which the police intervened.

The design applied only to simple (misdemeanor) domestic assaults, where both the suspect and the victim were present when the police arrived. Thus, the experiment included only those cases in which police were empowered, but not required, to make arrests under a recently liberalized Minnesota state law. The police officer must have probable cause to believe that a cohabitant or spouse had assaulted the victim within the past four hours. Police need not have witnessed the assault. Cases of life-threatening or severe injury, usually labeled as a felony (aggravated assault), were excluded from the design.

The design called for each officer to carry a pad of report forms, color coded for the three different police responses. Each time the officers encountered a situation that fit the experiment's criteria, they were to take whatever action was indicated by the report form on the top of the pad. The forms were numbered and arranged for each officer in an order determined by the lottery. The consistency of the lottery assignment was to be monitored by research staff observers riding on patrol for a sample of evenings.

After a police action was taken at the scene of a domestic violence incident, the officer was to fill out a brief report and give it to the research staff for follow-up. As a further check on the lottery process, the staff logged in the reports in the order in which they were received and made sure that the sequence corresponded to the original assignment of responses.

Anticipating something of the background of victims in the experiment, a predominantly minority, female research staff was employed to contact the victims for a detailed, face-to-face interview, to be followed by telephone follow-up interviews every two weeks for 24 weeks. The interviews were designed primarily to measure the frequency and seriousness of victimizations caused by a suspect after police intervention. The research staff also collected criminal justice reports that mentioned suspect's names during the six-month follow-up period.

Conduct of the Experiment

As is common in field experiments, the actual research process in Minneapolis suffered some slippage from the original plan. This section recounts the difficulties encountered in conducting the experiment. None of these difficulties, however, proved finally detrimental to the experiment's validity.

In order to gather data as quickly as possible, the experiment was originally located in two of Minneapolis's four precincts, those with the highest density of domestic violence crime reports and arrests. The 34 officers assigned to those areas were invited to a three-day planning meeting and asked to participate in the study for one year. All but one agreed. The conference also produced a draft order for Chief Anthony Bouza's signature specifying the rules of the experiment. These rules created several new situations to be excluded from the experiment, including whether a suspect attempted to assault police officers, a victim persistently demanded an arrest, or both parties were injured. These additional exceptions allowed for the possibility that the lottery process would be violated more for the separation and mediation treatments than for the arrest treatment. However, a statistical analysis showed that these changes posed no threat to the validity of the experiment's findings.

The experiment began on March 17, 1981. The expectation was that it would take about one year to produce about

No call for service is more familiar, challenging, and personally disheartening to a police officer than the summons to a domestic assault. Once again, two people living together are engaged in physical violence; once again, there are bruises, blood, and, perhaps, broken bones; once again, there has been an assault, and the officer fears that worse might occur. Often, terrified children witness the battle and pick up an early lesson that violence is somehow an appropriate way of dealing with problems and frustrations.

What does the officer do?

The common police tradition has been to do little. Physical violence within the home was thought to be exempt from the same laws which keep acquaintences or strangers from assaulting each other on the streets. The battered partner in the typical domestic fight was unlikely to sign a complaint, the officer learned from experience. The problems which caused the violence were probably chronic and unsolvable. So the officer restores a semblance of order, warns the assailant to behave, perhaps sends him out of the home, and goes on to the next call.

However, an increasing public awareness of the toll of domestic violence—of its injury to women, as a harbinger of possible homicide, and for its damaging psychological effects on children—has called into question the traditional police response of doing little or nothing when they intervene. But on what could the police rely if they sought to change their response to domestic violence? Hunch, supposition, tradition had been their guides and they seemed insufficient.

So the Police Foundation, through scientific inquiry, sought to supplant tradition with fact in resolving the question: How can the police deter future domestic violence?

The answer to the question and how it was obtained are in this report which I urge the police, policy makers, government officers, and concerned citizens to read and consider. Domestic violence, along with child abuse, is the quiet criminal plague of American life and must be curbed. I believe the Minneapolis experiment makes substantial progress in suggesting how the police can deter such violence.

Patrick V. Murphy
President, Police Foundation

300 cases. In fact, the experiment ran until August 1, 1982, and produced 314 case reports. The officers agreed to meet monthly with Lawrence W. Sherman, the project director, and Nancy Wester, the project manager. By the third or fourth month, two facts became clear: Only about 15 to 20 officers either were coming to meetings or turning in cases and the rate at which the cases were turned in would make it difficult to complete the project in one year. By November, it was decided to recruit more officers in order to obtain cases more rapidly. Eighteen additional officers joined the project. But like the original group, most of these officers turned in only one or two cases. Indeed, three of the original officers produced almost 28 percent of the cases, in part because they worked a particularly violent beat and in part because they had a greater commitment to the study. A statistical analysis showed that the effects of police actions did not vary according to which officer was involved. Since the lottery was by officer, this condition created no validity problem for the cases in the study.

There is little doubt that many of the officers occasionally failed to follow fully the experimental design. Some of the failures were due to forgetfulness, such as leaving report pads at home or at the police station. Other failures derived from misunderstanding about whether the experiment applied in certain situations; application of experimental rules under complex circumstances was sometimes confusing. Finally, there were occasional situations that were simply not covered by experimental rules.

Whether any officer intentionally subverted the design is unclear. The plan to monitor the lottery process with ride-along observers broke down because of the unexpectedly low frequency of cases meeting the experimental criteria. Observers had to ride for many weeks before they observed an officer apply one of the treatments. An attempt was made to solve this problem with "chase alongs," in which observers rode in their own car with a portable police radio and drove to the scene of any domestic call dispatched to any officer in the precinct. Even this method failed.

Thus, the possibility existed that police officers, anticipating from the dispatch call a particular kind of incident and finding the upcoming experimental treatment inappropriate, may have occasionally decided to ignore the experiment. In effect, they may have chosen to exclude certain cases in violation of the experimental design. Such action would have biased the selection of the experiment's sample of cases, but there is little reason to believe it actually happened. On the other hand, had they, for example, not felt like filling out extra forms on a given day, this would not affect the validity of the experiment's results.

Table 1
Designed and Delivered Police Treatments in Domestic Assault Cases

	Delivered Treatment			
Designed Treatment	Arrest	Advise	Separate	
ARREST	98.9% N=91	0.0% N=0	1.1% N=1	29.3% N=92
ADVISE	17.6% N=19	77.8% N=84	4.6% N=5	34.4% N=108
SEPARATE	22.8% N=26	4.4% N=5	72.8% N=83	36.3% N=114
TOTAL	43.3% N=136	28.3% N=89	28.3% N=89	100% N=314

Table One shows the degree to which the three treatments were delivered as designed. Ninety-nine percent of the suspects targeted for arrest actually were arrested; 78 percent of those scheduled to receive advice did; and 73 percent of those to be sent out of the residence for eight hours actually were sent. One explanation for this pattern, consistent with experimental guidelines, is that mediating and sending were more difficult ways for police to control a situation. There was a greater likelihood that officers might have to resort to arrest as a fallback position. When the assigned treatment is arrest, there is no need for a fallback position. For example, some offenders may have refused to comply with an order to leave the premises.

This pattern could have biased estimates of the relative effectiveness of arrest by removing uncooperative and difficult offenders from mediation and separation treatments. Any deterrent effect of arrest could be underestimated and, in the extreme, arrest could be shown to increase the chance of repeat violence. In effect, the arrest group would have too many "bad buys" *relative* to the other treatments.

Fortunately, a statistical analysis of this process shows that the delivered treatments conformed very closely to the experimental design, with no problems of bias.

Things went less well with interviews of victims; only 205 (of 330, counting the few repeat victims twice) could be located and initial interviews obtained, a 62 percent completion rate. Many of the victims simply could not be found, either for the initial interview or for follow-ups. They had left town, moved somewhere else, or refused to answer the phone or doorbell. The research staff made up to 20 attempts to contact these victims and often employed investigative techniques (asking friends and neighbors) to find them. Sometimes these methods worked, only to have the victim give an outright refusal, or break one or more appointments to meet the interviewer at a "safe" location for the interview.

The response rate to the biweekly follow-up interviews was even lower than for the initial interview, as response rates have been in much research on women crime victims. After the first interview, for which the victims were paid $20, there was a gradual falloff in completed interviews with each successive wave; only 161 victims provided all 12 follow-up interviews

over the six months, a completion rate of 49 percent. Whether paying for the follow-up interviews would have improved the response rate is unclear; it would have added over $40,000 to the cost of the research. When the telephone interviews yielded few reports of violence, every fourth interview was conducted in person.

Fortunately, there is absolutely no evidence that the experimental treatment assigned to the offender affected the victim's decision to grant initial interviews. Statistical tests showed there was *no* difference in victims' willingness to give interviews according to what police did, race of victim, or race of offender.

In sum, despite the practical difficulties of controlling an experiment and interviewing crime victims in an emotionally charged and violent social context, the experiment succeeded in producing a promising sample of 314 cases with complete official outcome measures and an apparently unbiased sample of responses from the victims in those cases.

Table 2
Victim and Suspect Characteristics: Initial Interview Data and Police Sheets

A. Unemployment		
Victims	61%	
Suspects	60%	
B. Relationship of Suspect to Victim		
Divorced or separated husband	3%	
Unmarried male lover	45%	
Current husband	35%	
Wife or girlfriend	2%	
Son, brother, roommate, other	15%	
C. Prior Assaults and Police Involvement		
Victims assaulted by suspect, last six months	80%	
Police intervention in domestic dispute, last six months	60%	
Couple in counseling program	27%	
D. Prior Arrests of Male Suspects		
Ever arrested for any offense	59%	
Ever arrested for crime against person	31%	
Ever arrested on domestic violence statute	5%	
Ever arrested on an alcohol offense	29%	
E. Mean Age		
Victims	30 years	
Suspects	32 years	
F. Education	Victim	Suspect
< high school	43%	42%
high school only	33%	36%
> high school	24%	22%
G. Race	Victim	Suspect
White	57%	45%
Black	23%	36%
Native-American	18%	16%
Other	2%	3%

N=205 (Those cases for which initial interviews were obtained)

Results

The 205 completed initial interviews provide some sense of who the subjects involved in domestic violence are, although the data may not properly represent the characteristics of the full sample of 314. They show the now familiar pattern that domestic violence cases coming to police attention disproportionately involve unmarried couples with lower than average educational levels, who are disproportionately minority and mixed race (black male, white female) and who are very likely to have had prior violent incidents with police intervention. The 60 percent unemployment rate for the experiment's suspects is strikingly high in a community with only about five percent of the workforce unemployed. The 59 percent prior arrest rate is also strikingly high, suggesting (with the 80 percent prior domestic assault rate) that the suspects generally are experienced law-breakers who are accustomed to police interventions. But with the exception of the heavy representation of Native-Americans due to Minneapolis' proximity to many Indian reservations, the characteristics in Table Two are probably close to those of domestic violence cases coming to police attention in other large U.S. cities.

Two kinds of measures of repeat violence were used in the experiment. One was a police record of an offender repeating domestic violence during the six-month follow-up period, either through an offense or an arrest report written by any officer in the department or through a subsequent report to the project research staff of an intervention by officers participating in the experiment. A second

Police handling of chronic, thorny problems such as domestic violence cases usually has been characterized by seat-of-the-pants adoption of remedies thought to work. But little lay behind such cures except an untested belief in their efficacy. Domestic violence provided a fine example of the way police approached difficult problems. Clearly productive answers based on hard evidence were needed.

The Minneapolis domestic violence experiment not only provides new insights into the spouse assault problem and its solutions, but it highlights the general need for analysis, experimentation, and evaluation in law enforcement.

A number of factors traditionally have worked against a belief that arrest works best in both gaining leverage over assailants and deterring future violence. These factors included the absence of legislation that would enable officers to make arrests in misdemeanor assault cases that did not occur in their presence; the male dominated psychology of a police world that did not relish interference in a "man's castle" and affairs; and the notable reluctance of cowed women to come forward or, having found the courage, to see the process of arrest and prosecution through.

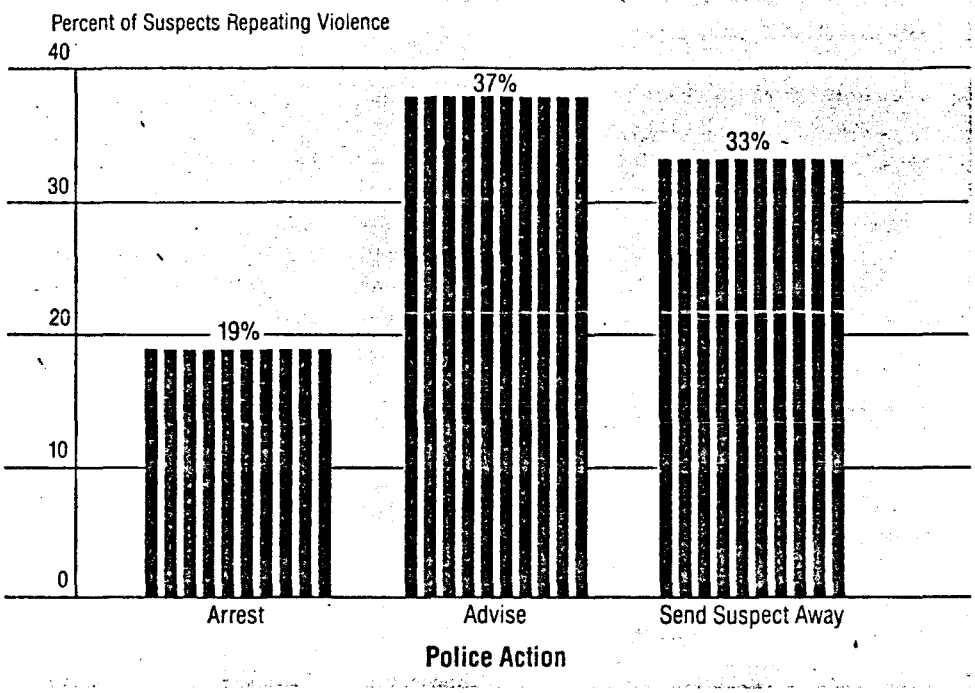
The domestic violence experiment, by demonstrating the efficacy of an arrest policy, influenced the Minneapolis legislature to make necessary changes; reshaped the policies of the Minneapolis Police Department to force more arrests; and reinforced the feminist thrust calling for stricter adherence to an arrest policy in domestic violence cases.

All of this combined to change dramatically the way the Minneapolis Police Department looks at, and responds to, domestic violence cases. The policy will be to arrest. The law enables us to do so and women, the usual victims, are being persuaded to come forward.

We believe an important step has been taken and that this step will influence police handling of domestic violence cases nationally. This experiment, in which the National Institute of Justice, the Police Foundation, and the Minneapolis Police Department participated, has, we think, blazed a new trail for law enforcement's progress.

Anthony V. Bouza
Chief of Police,
Minneapolis Police Department

Figure 2 Percentage of Repeat Violence Over Six Months For Each Police Action:
VICTIM INTERVIEWS N = 161



kind of measure came from the interviews in which victims were asked if there had been a repeat incident with the same suspect, broadly defined to include an actual assault, threatened assault, or property damage.

The technical details of the analysis are reported in the April 1984 *American Sociological Review*. The bar graphs in Figures 1, 2, and 3 approximate equations presented in that article, which made statistical adjustments for such problems as the falloff in victim cooperation with the interviews. Figure 1 shows the results taken from the police records on subsequent violence. The arrest treatment is clearly an improvement over sending the suspect away, which produced two and a half times as many repeat incidents as arrest. The advise treatment was statistically not distinguishable from the other two police actions.

Figure 2 shows a somewhat different picture. According to the victims' reports of repeat violence, arrest is still the most effective police action. But the advise category, not sending the suspect away, produced the worst results, with almost twice as much violence as arrest. Sending the suspect away produced results that were not statistically distinguishable from the results of the other two actions. It is not clear why the order of the three levels of repeat violence is different for these two ways of measuring the violence. But it is clear that arrest works best by either measure.

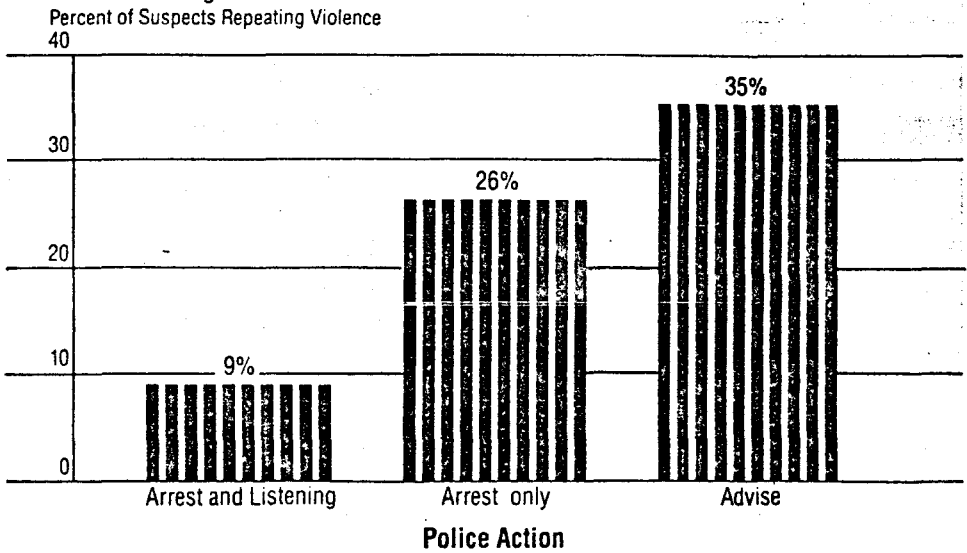
Additional statistical analysis showed that these findings were basically the same for all categories of suspects. Regardless of the race, employment status, educational level, criminal history of the suspect, or how long the suspect was in jail when arrested, arrest still had the strongest violence reduction effect. There was one factor, however, that seemed to govern the effectiveness of arrest: whether the police showed interest in the victim's side of the story.

Figure 3 shows what happens to the effect of arrest on repeat violence incidents when the police do or do not take the time to listen to the victim, at least as the victim perceives it. If police do listen, that reduces the occurrence of repeat violence even more. But if the victims think the police did not take the time to listen, then the level of victim-reported violence is much higher. One interpretation of this finding is that by listening to the victim, the police "empower" her with their strength, letting the suspect know that she can influence their behavior. If police ignore the victim, the suspect may think he was arrested for arbitrary reasons unrelated to the victim and be less deterred from future violence.

Conclusions and Policy Implications

It may be premature to conclude that arrest is always the best way for police to handle domestic violence, or that all suspects in such situations should be arrested. A number of factors suggest a

Figure 3 Percentage of Repeat Violence Over Six Months For Each Police Action and Listening to Victim: Victim Interviews* N = 194



*All bars are approximate, and drawn from a multivariate model that includes the effects of the prior number of arrests for crimes against persons.

cautious interpretation of the findings:

Sample Size. Because of the relatively small numbers of suspects in each subcategory (age, race, employment status, criminal history, etc.), it is possible that this experiment failed to discover that for some kinds of people, arrest may only make matters worse. Until subsequent research addresses that issue more thoroughly, it would be premature for state legislatures to pass laws requiring arrests in *all* misdemeanor domestic assaults.

Jail Time. Minneapolis may be unusual in keeping most suspects arrested for domestic assault in jail overnight. It is possible that arrest would not have as great a deterrent effect in other cities where suspects may be able to return home within an hour or so of arrest. On the other hand, Minneapolis seems to have the typical court response to domestic violence: only three out of 136 of the arrested suspects ever received a formal sanction from a judge.

Location. Minneapolis is unusual in other respects: a large Native-American population, a very low rate of violence, severe winters, and low unemployment rate. The cultural context of other cities may produce different effects of police actions in domestic violence cases.

Interviewer Effect. Strictly speaking, this experiment showed the effects of three police responses *plus* an intensive effort by middle class women to talk to victim's over a six-month follow-up. It is possible that the interviewers created a "surveillance" effect that deterred suspects. Whether the same effects would be found without the interviews is still an open question.

A replication of the experiment in a different city is necessary to address these questions. But police officers cannot wait for further research to decide how to handle the domestic violence they face each day. They must use the best information available. This experiment provides the only scientifically controlled comparison of different methods of reducing repeat violence. And on the basis of this study alone, police should probably employ arrest in most cases of minor domestic violence.

Legislative Implications. The findings clearly support the 1978 statutory reform in Minnesota that made the experiment possible. In many states the police are not able to make an arrest in domestic violence cases without the signed complaint of a victim. In at least one state (Maryland), police cannot make an arrest without a warrant issued by a magistrate. This experiment shows the vital importance of state legislatures empowering police to make probable cause arrests in cases of domestic simple assault.

Impact of the Experiment. As a result of the experiment's findings, the Minneapolis Police Department changed its policy on domestic assault in early March of 1984. The policy did not make arrest 100 percent mandatory. But it did require officers to file a written report explaining why they failed to make an arrest when it was legally possible to do so. The policy was explained to all patrol officers in a roll call videotape. The initial impact of the policy was to double the number of domestic assault arrests, from 13 the weekend before the policy took effect to 28 the first weekend after. On one day in mid-March there were 42 people in the Minneapolis jail on spouse assault charges, a record as far as local officials could remember.

The experiment apparently has done more than contributed to knowledge. It also has helped to change police behavior in Minneapolis, and possibly in other cities as well. If the findings are truly generalizable, the experiment will help ultimately to reduce one of the most common forms of violent crime.

The Minneapolis domestic violence experiment was conducted under Grant Number 80-IJ-CX-0042 from the Office of Research and Evaluation Methods, Crime Control Theory in Policing Program, National Institute of Justice, U.S. Department of Justice. Points of view or opinions stated in this report do not necessarily represent the official position of the U.S. Department of Justice, the Minneapolis Police Department, or the Police Foundation.

The success of the Minneapolis domestic violence experiment depended on the dedication and hard work of both the project staff and many police officers.

The project staff:

Nancy Wester, Project Manager, and
Amy Curtis
Kay Gamble
Gayle Gubman
Donileen Loseke
Debra Morrow
Phyllis Newton
David Rauma
Roy Roberts

Minneapolis police officers taking part in the experiment:

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Perry Dunfee	Dennis Nordstrom
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take the law into their own hands or despair of finding relief at all — or why the male feels protected by the system in his use of violence.

As an example of the novel ways police departments seek to avoid becoming involved I would like to relate two strategies utilized by the Detroit Department. The first is euphemistically called a "peace bond." Note that the spelling is with an "a" not an "i." This non-document was issued to the perpetrator by an assistant prosecutor. It admonished him to cease and desist beating his wife on pain of being prosecuted if he should repeat the offense during the time limits stated. Suprisingly this was a fairly effective device. It was effective because the prosecutor would follow through on his commitment when the assault was later repeated.

So well accepted was this strategy that wives would come in seeking a peace bond. It had the advantage of restraining the violent husband while not adversely effecting the family's economy by placing him in jail. Of course I believe that it merely gave him an opportunity to save face for not living up to his socially required duties of the male dominance role. "I can't beat her even though she deserves it because I'm on a peace bond."

Later the prosecutor withdrew from his role and the police took over issuing the peace bond. At this time it lost whatever effectiveness it once had because the prosecutor no longer had a commitment to follow through if the offender repeated.

The second example of a not atypical strategy is what has become known as "call screening." Some years back calls for police service exceeded the department's ability to respond. The decision was made not to respond to certain types of calls. Wouldn't you know that the first calls screened out were family troubles. Although the women found a convenient overide which would assure a police response it has diminished in effectiveness by overuse. They merely alleged that their tormentor had a gun, even if he did not. This had limited value because the policemen arriving at the home and discovering the ruse left after an angry outburst and didn't even make a report. His display of non-interest could be expected to instill in the aggressor a feeling that violence against a wife was actually permissible, as long as it didn't involve a firearm.

Call screening has had the effect of masking the true dimensions of the problem. While it's possible to count the number of calls for police service in domestic situations even when police do not respond it is impossible to even estimate the number of women who do not call the police. They, either directly or indirectly have become aware that the police will seldom intervene in their problems.

Explicitly or implicitly the criminal justice system says to the citizen, "look we can't solve your personal problems." It seems that police agencies are inept in their efforts to successfully intervene in social conflict situations — they are adept however at homicide investigations. If our present attitudes continue we will become increasingly good at homicide resolution.

Such extreme pessimism may, however, be unwarranted. Dr. Witt, in our study, has made several recommendations which may contribute to a decrease in the incidence of "battered wives."

First of all there needs to be a turnabout in the thinking of police administrators. We must cease viewing domestic violence as beyond the role of the criminal justice system. Such a reorientation would require immediate steps to train police officers in conflict intervention techniques. Such training should not be designed to make therapists of police officers, but rather to assist them in de-escalating domestic violence as a short range goal. Minimally they should be rendered competent enough that they do not worsen an already tense situation. Secondly we need to commit ourselves to full response rather than screening out those calls for service which we are not very adept at resolving. Once we respond we should make full reports of the incident, creating from these reports a history of conflict that can be utilized by action agencies.

We should create a diagnostic facility staffed with the full range of expertise from medical and legal, to budget planning. These experts would analyze the conflict situation of the battling couples and affirmatively refer them to the appropriate existing social service agencies. Such a facility staffed by public and private sector experts would assure that the appropriate service was rendered rather merely dumping persons in trouble into broad social service programs. In order to initiate this diagnostic-intervention strategy the police would play the limited role of identifying the parties and situations in which intervention was needed.

Fourth we need to examine a full range of non-criminal remedies for social conflict. One such strategy could be the disarmament of conflict prone households by intervention through the civil process. Another might well be the judically decreed separation of violence prone couples. I realize the latter suggestion is unpalatable to many, however, there comes a point when society must intervene on the behalf of those persons not willing to initiate the action necessary to preserve their own lives.

Finally, as I have said before we must begin to view domestic violence as a "public issue" rather than a "private problem." We must recognize the tremendous costs in blood and money of our failure to protect those people who are daily brutalized by their conjugal partners. As distastefu! as it may seem to most, society must recognize the role it has played in creating an ideal of the sanctity of the home beyond whose doors anything goes.

The potential for progress in this vital area is dim and remains so as long as we continue to view women as property rather than as fully vested, independent members of society. The criminal justice system affirmatively responded to the brutalization of children who shared the females' property classification. It must now do more to assure the same safeguards for women, at least for the length of time it would require to resocialize our society in its male-female role concepts.

It is no accident that women are not the subject of express concern in the constitution of the United States. That document, like the law (and law enforcement) which follows from it reflects the standard socialization of its framers. Women were not second class citizens but in fact were non-citizens. As they were not entitled to the protections extended to fully vested male citizens. At this point in time, almost two hundred years later abused wives are still not receiving even minimally sufficient protection or cooperation from either police or the criminal justice system as a whole.

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LAW ENFORCEMENT PROBLEMS WITH INTRA-FAMILY VIOLENCE

by James Bannon Ph.D. Commander Detroit Police Department

This paper views the issue of the criminal justice system's contribution to family violence. The legal and law enforcement professions have long been enamored of psychological explanations of violent behavior. These individual pathologies, though of some limited validity, are not terribly helpful in designing strategies for dealing with violent behavior at the street level.

To me the more promising, and I believe more legitimate approach to an understanding of family violence is offered by viewing it as a social phenomenon. It has been said often that violence is as "American as apple pie" and surely we can no longer view as debatable the remarkably American emphasis on individuality. Taken together with the view of woman as property we virtually guarantee the widespread existence of a phenomenon now being dubbed the "battered wife syndrome."

Those of us in law enforcement, who are the first official representatives of government to respond to violence in the home, are socialized in precisely the same manner as the citizens we are expected to restrain or protect.

Policemen, like most males, are taught a self-reliance, "fight your own battles" philosophy from the cradle. Similarly we are socialized into the conscious perceptions of masculine-feminine roles. In our society this process translates into dominance-submission terms. The man is the boss, the owner, the female the subordinate, the property.

Most frequently it is when these role expectations are not observed that violence occurs between married couples, or those who are involved in relationships which approach our definition of marriage. That includes economic dependence or inter-dependence and sexual access.

Taken together with our culture's views on the sanctity of the home, the above social factors guarantee that police will be less than enthusiastic about becoming involved in family disputes.

As it turns out, in the case of domestic violence, we reject the rule of law which makes it a crime to assault another person regardless of the degree of injury or the relationship existing between the victim and the perpetrator of the violence. We substitute in its stead an arbitrary determination usually based on irrelevant factors. Most frequently the factor which will cause police intervention is a family fight which disrupts the peace and tranquility of the neighborhood, next most frequently the use of a deadly weapon and thirdly the degree of injury involved. All of course are irrelevant to the substantive charge of assault.

In my view the police attitude, which seems to say that what happens between husband and wife in their own home is beyond the authority or ability of the police to control is a "cop out." The real reason why police avoid domestic violence situations to the greatest extent possible is that we do not know how to cope with them and because we share society's view that domestic violence is an individual problem and not a public issue. Only when society in general is made aware of the extreme social and economic costs of domestic violence will sufficient interest be generated to force law enforcement and the criminal justice system to find solutions to these problems.

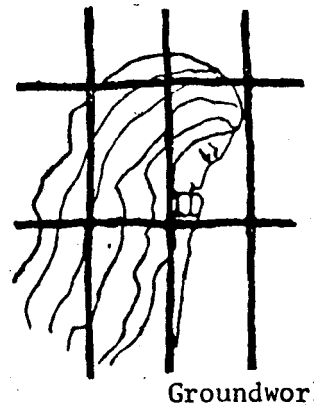
The abuse of victims of crime by our criminal justice system is a national disgrace. Leading that procession of shame are the abused wives, women married to violent men who have been taught from the cradle that they have a right, indeed an obligation, to manage their personal affairs, to redress presumed insults and to force compliance to their orders by the use of their fists.

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 role image.

This paradox suggests to me that traditionally trained and socialized policemen are the worst possible people to attempt to intervene in domestic violence. Their known physical propensities may in fact reinforce the degree to which they perceive as legitimate the use of violence by a husband against a wife. While police, because of their position, must play a role in intervention strategies they perhaps need only be utilized as identifiers of problematic family situations.

It is my view that police, and later prosecutors and courts, contribute to domestic violence by their laissez-faire attitudes toward what they view as essentially a "personal problem." This is made even more problematic because police are socialized to regard females in general as subordinate. The superordinacy of the male coupled with his socially mandated reliance on violence to resolve personal problems without outside assistance assures us that wives will continue to be battered in record numbers.

It's clear from our research that in virtually every case of homicide of the social conflict variety there has been a long history of conjugal violence. It is even possible to predict a homicide if only we recorded this violence. However, it's not possible to predict who will be the perpetrator and who the deceased. Because in the final resolution of the conflict situation it is frequently the former victim of all those assaults who



Groundwork/cpf

finally resolves the problem society and the justice system has ignored and kills her tormentor. Thus, she again validates the use of violence to resolve her problem, one that society is unable or unwilling to even recognize as a public issue let alone redress.

In Detroit, as in many other cities the treatment of female victims of assault of the domestic variety could charitably be termed cavalier. Perhaps more accurate would be to call it malfeasance.

The attrition rate in domestic violence cases is unbelievable. In 1972 for instance, there were 4900 assaults of this kind which had survived the official process long enough to at least have a request for warrant prepared and the complainant referred to the assault and battery squad. Through the process of conciliation, as a result of complainant harrassment and prosecutor discretion, fewer than 300 of these cases were ultimately tried by a court of law. And in most of these the court used the judicial process to attempt to conciliate rather than adjudicate.

If you bear in mind that these cases had been culled over several times by court officials so that only where the injury was extreme or the offense repeated would a warrant have been issued you can readily understand why women ultimately

Mandatory arrest

Sioux Falls, SD
Argus Leader
3/4/85

Seattle's get-tough policy curtails domestic violence

SEATTLE — Repeatedly attacked by her husband, a terrified oanne Tulonen called the police. "They came — six of them — and tood around laughing and joking. I asked them to arrest him. They aid, 'No, today's Saturday, and we're busy for the weekend, and Monday's Labor Day. You could come in Tuesday and swear a omplaint if you want.' "

That was 14 years ago, in an eastern state. "I ended up leaving ny nurse's job, my family, my home and going into hiding with my hild in Denver for eight years," Tulonen relates. "And there was lways the nightmare of being found. Fleeing hurts like hell, but I'd ather be alone, on the streets, than being beaten up."

Today, Tulonen heads the battered women's project within the Seattle prosecutor's office — the first of its kind in the nation. She's helped thousands of women bring the weight of legal protection against the domestic violence that Police Foundation president Patrick Murphy calls the quiet criminal plague of American life.

Neil Peirce

And now a simple concept — automatic arrest when the police find evidence of a domestic assault within four hours of being called to the scene — has arrived in Washington state. Patterned after pioneering statutes in Oregon and Minnesota, it's having what high Seattle police official calls a dramatic effect.

In all of 1983, the Seattle police arrested only 383 domestic erers. But in the first five months after the new statute took ect last September, they arrested 1,281.

Most police, prosecutors, judges, and sociologists start out skeptical — if not downright opposed — to the idea of mandatory arrest. The old idea "home is a man's castle" and he can beat up on his wife if he pleases dies hard. Therapists often want to fix relationships instead of first stopping criminal behavior. Officials fear a deluge of cases and high costs of incarceration — in fact, the Washington law stirred up a hornet's nest of police opposition when arrests suddenly spiraled in September.

But the evidence is rolling in: Mandatory arrest, as opposed to walk-around-the-block-and-cool-off counsel police have been handing out for years, is a powerful tool in breaking the brutal cycle of family violence. Last year's report of the U.S. Attorney General's Task Force on Family Violence concluded from research "arrest and overnight incarceration are the most effective interventions to reduce the likelihood of subsequent acts of family violence. A victim's chance of future assault was nearly two and half times greater when officers did not make an arrest."

"The new law is a tremendous hammer to get people's attention," Leo Poort, Seattle police legal counsel, says. "There's no other part of the criminal justice system where you get two days in jail — up front."

> 'The new law is a tremendous hammer to get people's attention. There's no other part of the criminal justice system where you get two days in jail — up front.'
>
> **— Leo Poort**
> **police legal counsel**

Even the victimized women often have been shocked to see their mates hauled off to the slammer. But few are displeased to see the mandatory counseling which follows convictions.

Critics in Seattle have pointed to the $100-a-day cost for jailing prisoners. But psychologist Anne Ganley, a national expert on domestic abuse who provides direct counseling to male batterers, asserts: "People are blaming the law because the jails or courts are full. The fact is they're full because of the violence."

It's indisputable the violence is widespread. Likening a marriage license to a hitting license, the University of New Hampshire's Murray Straus estimates a minimum of 5.7 million American women are assaulted by their husbands every year.

And not only married women: One study in Minneapolis found that 45 percent of domestic-assault victims were unmarried. The new automatic-arrest laws cover not just wife beating but assaults on ex-spouses, in-laws, and unmarried housemates, gays included.

Says Donna Stringer, director of Seattle's Office for Women's Rights, "Most men who beat up their partners wouldn't get into a fight in a bar, or punch a coworker because they know they couldn't get away with it."

Local outrage is one way to get domestic violence addressed. In Seattle it was sparked in 1982 when a local lawyer representing a battered woman was gunned down by her assailant in the lobby of his downtown office building. His law partners formed a bar association task force on domestic violence that drafted the mandatory arrest law. It was adopted unanimously by the Washington Legislature last year.

The new frontier, Ganley adds, must be prevention — starting with school programs teaching children that conflicts and anger needn't lead to hitting and physical violence.

But the first, dramatic change comes from letting potential batterers know they'll face the full power of the law for their actions. Shelters for battered women play a role, Tulonen says. "But what we really need are shelters for men — places to get their brains fixed."

Neal Peirce is with *The National Journal*, a weekly publication on government news.

Study: Arrest deters family violence

WASHINGTON (AP) — Victims of assaults by family members are nearly twice as likely to be attacked again if the police do not arrest the attacker, according to a federally funded experimental study released Monday.

The experiment, conducted in Minneapolis in 1981-82, found that arrest, even if not followed by conviction, was a far more effective deterrent than the traditional police responses of removing the attacker from the scene for eight hours or just providing advice and mediation.

James K. Stewart, director of the Justice Department's National Institute of Justice, which funded the experiment, said the results show "the police should use arrests quite frequently in typical domestic violence cases if they want to reduce assaults."

The experiment was conducted by the Police Foundation, a private, non-profit police reform group, and by the Minneapolis Police Department in misdemeanor assault cases between family members where there was no life-threatening or severe injury. The three responses — arrest, removal and advice — were used on a random basis.

In 35 percent of the cases where police did not make an arrest, victims surveyed later said there was a repeated assault within six months. But in those cases where police made an arrest, only 19 percent of the victims reported repeated violence.

The results were even more dramatic when measured by official police reports rather than follow-up interviews. In 22 percent of the households in which no arrest was made, another crime report was filed within six months. But a repeat police report was found in only 10 percent of the households where an arrest was made.

The study also found that when police officers took time to listen to the victim before making an arrest, the deterrent effect doubled. The study suggested that this procedure lets the suspect know that the victim can influence police behavior.

Like other studies of family violence, the Minneapolis experiment found that its 314 cases usually involved unmarried, minority or mixed-race couples with less-than-average education and a greater-than-average likelihood of being unemployed and having a previous police record.

Of the 136 arrests in the study, only three resulted in convictions, prompting Stewart to conclude that "arrest appears to deter violence even when the courts take no action."

Noting that this was the nation's "first controlled experiment in the use of arrest," Stewart said, "Some police departments around the country, including New York City, Houston, Dallas and Minneapolis, have already revised their policies in light of these results." Preliminary findings were released a year ago.

The study's co-authors, Police Foundation vice president Lawrence W. Sherman and sociology professor Richard A. Berk of the University of California at Santa Barbara, said that women's groups had pressed police departments in recent years to increase arrests in family violence cases.

But Sherman and Berk pointed out that 22 states still bar police officers from making arrests unless they have a warrant or they actually witness the assault. "This report shows that, at the very least, those laws need to be changed," Sherman said.

A Police Foundation survey of police departments serving more than 100,000 people found that only 10 percent currently encourage arrests in domestic assault cases. Almost none of the departments kept separate statistics on domestic assault cases.

Minneapolis Police Chief Anthony V. Bouza attributed the traditional reluctance to make arrests in such cases to "the absence of legislation that would enable officers to make arrests in misdemeanor cases that did not occur in their presence; the male-dominated psychology of a police world that did not relish interference in a 'man's castle' and affairs, and the notable reluctance of cowed women to come forward or, having found the courage, to see the process of arrest and prosecution through."

Opinion and comment

An officer died, a problem continues

Anaconda Police Officer Tim "Sox" Sullivan has fallen to one of the greatest fears of policemen — walking in on a domestic dispute, and not walking out.

The emotions involved in the battles among spouses, divorced persons and lovers are strong, sometimes overwhelming.

Policemen, called upon to serve and protect, know the inherent dangers in such situations. In his 17 years of service, Sullivan, no doubt, responded to myriad "domestics" as they are known.

The social pressures brought on by hard economic times, and the harsh realities of unemployment and divorce sometimes are not manifested as violently as when Officer Sullivan and Ida Terkla were murdered.

But, such violence is always a possibility.

No amount of potential, non-police, community intervention can stop every domestic violence situation from erupting into murder. But, such community programs can help.

When Officer Sullivan received the call to the Terkla home last Sunday he might have been thinking about the possibility of being shot.

He might have thought only of preventing a further problem.

Whatever the case, he sacrificed his life to serve and protect.

Anaconda, other Montana cities and the Legislature should take a renewed look at the problems surrounding domestic violence.

There may well be some untried methods of early intervention. If some solutions can be found, Officer Sullivan's death, while remaining tragic, might lead to the prevention of similar deaths in the future.

EXHIBIT I
3/21/85
SB 449

February 1985

Dear Legislatures:

I would like to take a few minutes of your time to tell how manditory arrest could have helped my mother and I.

I am a 19 year old female who was abused by my step father when in my early teens. I also watched as the same man abused my mother. My mother and I never called the police on him. We knew that he would calm down when the police arrived; but the abuse would have gotten worse after they left.

We endured the abuse for about five long years and by this time my self-confidence and self-esteem was down but my hatred for men was up.

I feel manditory arrest could have brought the abuse to a quicker end in several ways. First he would have realized that the abuse was not acceptable behavior

He would have had to think twice about hitting us since the police could have come and arrested him on the spot. But the basic way it would have helped and it is that he would have gotten the help he needed. Maybe if the manditory arrest had been enforced my mother and he would be still married but happy together; and maybe I wouldn't be so bitter.

Please consider passing the manditory arrest issue.

Sincerely,
Annette

EXHIBIT J
3/21/85
SB 449

Butte Christian Community Center
P. O. Box 634, Uptown
Butte, MT. 59703
782-8511

March 20,1985

SAFE SPACE
battered women's & children's shelter

TESTIMONY: HOUSE JUDICIARY COMMITTEE: SB 449

My name is Kelly Rosenleaf. I'm the Director of Safe Space which is a crisis line and shelter program for vitims of domestic violence and rape in the Butte area. I have held this position for over two years.

Thus far, in fiscal year 1984-85 Safe Space has worked with 74 women and 68 children who live in violent homes. Approximately 40% of our referrals come form the sheriff's department. I would like to take some time to outline a few of the cases that have recently been referred by the sheriff's department.

*Six months ago Safe Space received a call to pick up a woman and her infant child at the station. The woman had several bruises and probably broken ribs but refused to seek medical help for financial reasons. As the woman talked about her home life and the current violent incident, it became clear that the situation was immediately life threatening. The batterer had recently served five years and had been paroled from MT State Prison for killing a cow. The incident that brought the client to out attention was that a neighbor had called the sheriff becaouse the woman was being chased down the street by her husband with an ax. The sheriff took the woman and her child to the station and called us. No arrest had been made. I asked my client if she had filed a complaint, if she wanted her husband arrested. She replied that the officer had not asked if she wanted to file a complaint and did not explain the assault law to her. She stated the police had been to her home before and had never discussed arresting her husband so she assumed no law had been broken. She expressed anger that a cow'a life seemed to be worth more in the eye's of the law than her's.

* In January, I visisted a client in St. James Hospital who was there with a broken pelvis, numerous bruises and scratches. The batterer had thrown the television set at her. This woman was very upset about her daughter who was still at home with her boyfriend. She decided upon release form the hospital she would go home, get her daughter and begin looking for her own place. She was afraid to sign a complaint because of what might happen to her daughter, and because she knew her boyfriend would not be held long and would blame her for his arrest, possibly becoming violent again.

Butte Christian Community Center
P. O. Box 634, Uptown
Butte, MT. 59703
782-8511

SAFE SPACE
battered women's & children's shelter

TESTIMONY: HOUSE JUDICIARY COMMITEE: SB 449 (Cont.)

* A few months ago I worked with a woman from Jefferson County who had filed assault charges against her husband because he had beaten and threatened her with a gun. She also filed for a divorce and temporary restaining order. The county seat is Boulder ; she lived in another small town. The sheriff said he would try to send a deputy later in the week to seve the warrant and restraining order. This woman and her three children were at Safe Space three weeks before these papers were served and she felt safe enough to return home. Our usual limit on how long families can stay is two weeks.

We see women at Safe Space regularly who have cuts, bruises, broken bones, black eyes, stab wounds and who have been threatened with guns. About 20% of our referrals are directly from the hospital. These women have expressed a distrust of the legal system because they have failed to get any response from them in the past. Many fear what will happen if they sign a complaint, fear they will be blamed and beaten, and that law enforcement will not protect them.

Several officers on the Butte force have expressed a feeling of helplessness because they are unable to make an arrest for something they did not see unless the victim signs a complaint. They have grown frustrated with women who are afraid to sign and in my experience do not seem to be explaining the system and procedures to my clients.

My experience is that law enforcement officers and county attorneys are extreely reluctant to work with assault cases that occur within families. I hear form these professionals that"these women will never testify anyway and it's her word against his" ; We don't know who to believe" (as the woman is having stab wounds stitched in the emergency room). I've heard from the county attorney's office " Well, I'm not sure what we can do but we'll put it on file." The few cases I have seen actually prosecuted, the batterer is released on one hundred doolars bail within an hour . Later he gets a three months deferred sentence.

I'm concerned that current law views women as the property of men, giving husbands and boyfriends the right to abuse them without legal sanctions. I wonder along with my client if in fact, cows are worth more than women in the eyes of the law.

If you believe that women have the right not to be abused within their homes I urge you to support SB 449.

Kelly Rosenleaf
Director

EXHIBIT K
3/21/85
SB 449

A little over a year ago I left my husband, an Alcoholic, because of his abusive behavior to me & my daughter. At that time the abuse was verbal with threats of physical harm.

I returned to Butte in June of 84 hoping that the separation may have opened his eyes. It didn't! One day during the last week in July, he tore my blouse off me while I was driving on the freeway. He was also very profane. A few nights later he came home and pulled all the drawers out of our dresser, dumped clothes all over & proceeded to tear up the rest of the apartment. While he was tearing things up he again was verbally abusive & threatened me again with physical harm.

After these 2 incidents I contacted the Butte Alcoholic Center and the D. A.'s office about involuntary committment.

EXHIBIT L
3/21/85

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

March 21, 1985

Testimony of the Women's Lobbyist Fund (WLF) by Gail Kline, before the House Judiciary Committee in support of SB 449

Mr. Chairman and members of the House Judiciary Committee:

For the record, my name is Gail Kline, representing the Women's Lobbyist Fund, whose membership increased last Saturday by adding 11 new organizations which were accepted at a Board meeting to the existing 17 groups whose membership is around 3,000. The WLF supports SB 449.

SB 449 did require arrest but did not mandate a certain amount of time in jail. SB 449 was patterned after Washington State's new law that was passed unanimously by their legislature after a lawyer was killed. Their new law requires automatic arrest and two days in jail where there is evidence of doemstic assault. SB 449 as introduced required arrest. We want "requiring" put back in. SB 449 does not require a certain amount of time in jail and the accused is processed through our system as in other crimes.

Payton v New York (100 S. CT 1371 (1980) 445 U.S. 573, 63 L.Ed. 2d 639) is a Supreme Court case dealing with prohibiting a warrantless and nonconsentual entry into a home by police to arrest a person who killed the manager of a gas station 2 days earlier. This case was recommended to me and if it is the closest case that can be found to compare SB 449 and entry into a home, it is clear that domestic assault is an area that has been totally ignored.

The Court did not mention the fact that in the two days between the death of the victim and the entry into the suspect's home, a warrant could have been obtained. It did say that exigent circumstances were needed to invade the sanctity of the house.

A definition of exigent circumstances is an emergency with the possibility of strong public danger. If a person is not arrested immediately, there could be further danger or violent assault.

SSB 449, page 5, lines 13 through 16, mentions what constitutes exigent circumstances for making an arrest in Montana's domestic abuse situations.

With the testimony heard here today, a newspaper headline - "Anaconda grieves for the slain officer it loved", and an editorial - "An officer died, a problem continues", Montana people cry out for some bold new laws. SB 449 is a proposed bold new law.

When we ignore violence in our homes, what are we saying about family life? All the family members are victims in domestic violence and in need of help.

The state is also a victim. A recent client of a shelter in Montana, who is fifty years old, had a severe concussion, broken jaw and broken knee cap, and was recently told by a doctor that she couldn't work again. We will be paying each year of her life for medical and welfare expenses.

In addition, her husband is serving 8 years in the Montana State Prison and we will be paying $12,600 each year to have him in prison due to his violent "learned behavior". His imprisonment will cost our state over $100,000 over the eight year period not counting interest and at today's prices.

As for future custody of children for fathers, please consider that "in one-half of families where wife abuse occurs, the children are battered as well." "The Burning Bed", Viewer's Guide.

An article from L.M. Boyd, March 1985, said,"'Any male person who shall willfully beat, bruise or mutilate his wife' would have been subject to punishment, if the Pennsylvania legislature of 1886 had passed the proposed bill to that effect. But the legislators wouldn't pass it. What do you make of that?"

What will history be able to say about Montana's laws?

Please support SB 449 with requiring arrest and recognize that Montana women are first class citizens entitled to equal protection with cooperation and compassion.

EXHIBIT M
3/21/85
SB 449

Montana Catholic Conference

March 21, 1985

CHAIRMAN HANNAH AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

I am John Ortwein representing the Montana Catholic Conference. The Montana Catholic Conference is the liaison between the two Catholic Dioceses of Montana in matters of public concern.

I am here today as a supporter of Senate bill 449.

The bill as it was initially proposed mentioned one of every two women in the United States would be abused during her lifetime. That translates to an abusive situation occurring every 18 seconds somewhere in the United States.

A study by the United States Catholic Conference entitled: Violence in the Family; A National Concern/A Church Concern, shows that a disproportionately large number of attacks by husbands seem to occur when the wife is pregnant, thus posing a grave threat to the life of the unborn child.

Research by Dr. Lenore Walker indicates a definite cycle composed of three phases in most domestic violent situations. The first is the tension-building stage; the second is the explosion; and the third is the calm, loving, respite stage. With these stages being so well documented it would seem to us that an arrest should be made at any time for the offense of domestic violence.

The Montana Catholic Conference urges your support of Senate Bill 449.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

EXHIBIT N
3/21/85
SB 294

WOMEN'S PLACE

Women working together to end domestic and sexual violence

Testimony for SB 294
Senate Judiciary Committee

I am here as a representative of many women, both victims of sexual assault and crisis counselors, who believe marital rape is a dehumanizing and aggresive act of violence against women. The law which currently acknowledges sexual assault as a violation of women fails to recognize that rape by a spouse is equally violAting. A survivor of marital rape experiences the same post-rape syndrome as a survivor of stranger or acquantance rape; fear, humiliation, guilt and physical symptoms of stress. We believe that no one has the right, ethically or legally, to overpower a woman's rights to her body and her emotions, Senate bill 294 would sanction this belief by extending and acknowledging the legal rights of married women.

Rape does occur in marriages and is often accompanied by other acts of violence used to control and humiliate women. One wonam, who was raped by her husband, sought help through the Battered women's Shelter and Women's Place in Missoula. This client was married for ten years, has two children and was

127 East Main Room 218 Missoula, Montana 59802 543-7606

recently divorced. She was willing to be quoted for use in this testimony to support the fact that rape in marriage is very real and is a violation of human rights.

(quote)"To talk about the actual rape, it was really terrifying. I don't think it would have been more tarrifying if a stranger had done it. Because it was so violent, and he was smothering me.....I couldn't breathe. He was talking about killing himself and I didn't know if I would make it through the night. He said it wasn't that bad because we were married. That it wasn't that big of a deal. His family, his brothers all said it was fine.....it's understandable because they would do the same thing."(unquote)

When a man rapes his wife, he is no longer in the role of a trusted companion; the man becomes a stranger, untrustworthy, physically aggressive and often violent. Yet the law, as it currently reads, does not view this as a crime of violence. Technically, it was this man's right, and any man's right because there is no no law against it. The state of Montana is legally sanctioning this violence. The social values supported by the law, state that it is morally ok to victimize one's wife.

(quote)"He couldn't understand why it bothered me, he still doesn't understand..... he thinks he had a right to do it. He couldn't understand why I wanted a divorce".

The responsibility of the Legislative body is to establish laws. Through these laws, social standards and values are instilled in the minds of individuals. So as legislators, you are guiding and determining these social values. With a law against marital rape, men will begin to question their rights to violate their wives, and view this act as morally wrong. This is the first step towards ending sexual assault within marriages.

Marital rape is prevelant in Montana, yet no statistics are kept by law enforcement officials because it is not prosecuteable. Since October of 1984, there were 578 domestic violence cases reported in Montana. It is estimated by women who worked with these cases that 50% involved marital rape. It is frustrating and discouraging for women when they do not have the legal system as an option for regaining control in their lives.

Members of the opposition to marital rape legislation have used the argument that women would use this as a vindictive weapon against their husbands; a cry wolfstrategy for getting even. This is an unjustified argument when one considers the personal nature of reporting a rape. Rape victims face a great deal of personal vulnerability and exposure through the process of reporting, and the decision to report is not an easy one to reach. Rape exams, which are

important for gathering evidence for prosecuting, are often painful, expensive, and frightening. It is hard to imagine a woman putting herself through this experience just to get even. This trivial concern negates the seriousness of this issue.

From a professional perspective, it is necessary for agencies to work together fo stop domestic violence in the family, including sexual assault. These agencies includesupport services, shelters, and law enforcement agencies. Agencies cannot give adequate services without also providing legal referrals and options for women. Senate bill 294 would aid in acheiving more tangible options for support by granting married women legal rights for protecting themselves against spousal rape. We strongly urge you to legislate and ensure enforcement of laws against marital rape, in hopes of providing love without fear.

Susan Wall-MacLane 2/14/85
Bill Tulp 2/14/85
Kerry Wall-MacLane 2/14/85
Sue Silverberg 2/14/85
Mark Cundiff 2/14/85
Diana Moffatt 2/14/85
Cynthia K. Cook 2/15/85
Pat Edwards 15Feb85
Amy Hellsen Domestic Violence Program Co-ordinator - Women's Pla

EXHIBIT O
3/21/85
SB 294

294

Mr. Chairman and members of the committee:

Any law that exempts a man from accountability for the sexual/abuse of or other physical a woman simply on the grounds that he is married to the woman, is not only a violation o ' the fundamental constitutional right to equal protection under the law, but a flagrant violation of the loftiest ethical understanding to which the majority of our nation presumes to subscribe. There is no more justification for such a legal exemption than to condone anadult's beating or molestation of a child simply because the adult happens to be the child's parent.

That legal flaw has been grounded in a pre-Christian assumption about women in general and wives in particular—an assumption that ~~women~~ married women are not so much the partners of their husbands as they are their property. Thus this historic exemption was not for reason of thinking that husbands were incapable of raping their wives, but that they had a possessive relationship to their wives that they did not have to other women. The spurious argument that the state had no right to interfere in episodes of human cruelty simply because it was inflicted in a domestic setting has been ~~XXXXX~~ a serious illustration of societal irresponsibility which, at long last, our society has begun to question out loud, and for reason of which many of our states are changing their laws.

My argument is not that a law should be passed because the Christian ethic demands it, although I believeit does, for in a society that cannot constitutionally favor any particular religious tradition that would be a false reason. I'm here simply to lift up a human and, if you please, humanistic concern that calls for a higher ethical sensitivity than our traditional understanding of these matters has demonstrated.

There are some things we need to know in considering this bill and its amendments. We need to know that a marriage license and vow does not, of itself, protect a woman from sexual or other physical ~~XXXXXXXXXXXX~~ abuse. We need to know that until our laws are changed on this matter, married women will continue to be unprotected from cruelties that can and do take place within the home. We need to know that the present exemptions of accountability ~~for~~ on the part of husbands, in fact, provides protection to oppressive attackers which we would under no circumstances ~~condone~~ outside the home.

If the married woman, brutalized physically or sexually, were your daughter or mine, there is ~~XXX~~ little question what our judgment would be about the attacker, even if it was our son-in-law. This bill needs to be ~~worddd~~ in such a way to as guarentee as much protection to a family member as to a stranger from unconscionable physical and sexual abuse.

Many states in our union have already written such laws. I don't want to see Montana be one of the last to do this, but one of the next. I urge you to bring that about.

Pastor, St. Paul's United Methodist
Church, Helena, Montana

EXHIBIT P
3/21/85
SB 294

February 18, 1985

Capitol Station
Helena, Montana 59801

Dear Legislators,

I am the Legislative Representative from the Montana Coalition Against Domestic Violence and I am urging you to pass Senate Bill 294 (Redefining our Marital Rape Law.)

The Montana Coalition Against Domestic Violence is a network of Individuals and Organizations concerned about aggressive behaviour in our society, and interested in promoting a non-violent enviournment. Through technical and emotional support we will work to improve our response to DOMESTIC VIOLENCE (SPOUSE ABUSE AND CHILD ABUSE) in our Communities. Our Primary Purpose is to provide and maintain a standard for non-violence in human relationships.

The M.C.A.D.V. sponsered a 'LOVE WITHOUT FEAR" WEEK this past week around the State including Valentine's Day, so I think it is appropiate that we are addressing protective legislation dealing with a violent crime such as Marital RAPE.

In 1979, The State Task Force on Spouse Abuse (which I chaired for 4½ years) introduced SB 409 which eliminated the exclusion regarding rape between spouses if they are living apart "whether under a decree of judicial separation or otherwise." The Victim who testified on this Bill grew up in Missoula. She married and moved out of State, but found herself in a very violent relationship. She changed her name and moved into a different town in Montana and thought he would never find her. One night she came home and he had broken into her apartment, slashed all of her furniture with a knife, and slashed her 17 times and raped her. The 1979 Legislature passed this first protective legislation dealing with this problem.

As you are already aware, we are <u>not talking</u> about 'NORMAL FAMILY RELATIONSHIPS.' In 1984, my staff and I worked with 570 Women and Children in our Mercy Home Shelter, and 789 ADDITIONAL FAMILIES in outreach and aftercare. Because of our Educational efforts we are doing much more prevention work.. We use an in-depth 3 page 'Confidential Intake' form to get the case histories of the different types of abuse and we find RAPE is part of the Physical Violence in 70% of our cases.
I advocated and testified in Court this past year with a client who:

- -had a .357 Magnum Pistol held to her head while he raped her.
- - whose husband broke into her apartment (breaking a restraining order) with a shotgun and raped her.
- - whose husband drank all day, was on amphetamines all evening, and raped her repeatedly all night.
- -whose husband raped her after she was in labor and had asked him to take her to the hospital to deliver their child.
- -whose husband raped her in front of their son, after a physical beating. (These are just a few of the cases we've worked with.)

Researchers and service providers have found that Children raised in a family where there is 'Spouse Abuse' <u>learn'violence is acceptable or normal behavior</u>' and become abusers themselves even if they themselves are not abused.

Service providers in Montana are trying to offer options and education throughout the State against this '<u>learned behaviour</u>'. We ask for your continued support in this 'PROTECTIVE LEGISLATION' of SB 294.

Sincerely yours,

Caryl Wickes Borchers

Caryl Wickes Borchers, Exec. Director Mercy Home
Chair, State Task Force on Spou
Abuse 1978-1982
Leg.Rep. MONTANA COALITION AGA
DOMESTIC VIOLENCE

EXHIBIT Q
3/21/85
SB 294

RE: MARITAL RAPE - Senate Bill No. 294

Dear Legislators:

I have been asked to speak on behalf of many women in Montana who have been, are, or will be victims in a battering relationship. Women are victims in three types of situations: dating, marriage, and even after divorce. However, I would like to speak in reference to the issue of the married woman who has been raped by her husband.

I grew up in a religious family as my father is a minister. I have loving parents and while growing up, violence was in no way allowed in the home (aside of typical childhood spankings), and my parents, sisters and I shared mutual respect for one another. Also, having gone to private Christian schools all my life which provided a sheltered enviornment, I was quite naive to domestic violence.

After graduating from college, I became the victim of a battering relationship. I met a kind, loving, compassionate man who, after a time was no longer able to camouflage his flip side which consisted of insane jealousy, outbursts of violence that involved filthy language, knives, a gun, a pipewrench, throwing at me whatever knickknacks or other things he could get his hands on, manipulation, a drinking problem, severe beatings, and the list goes on. In addition to these things, I found out after I divorced him, that he had been in prison for almost killing his first wife (something he also nearly succeeded in doing to me on several occasions). After I left him, he served time again in prison in another state for almost killing a young man with a hammer. And the last thing I add to this list is marital rape.

Marital rape is something that most often occurred after a violent outburst during phase three of the battering cycle. This phase is made up of kind and contrite loving behavior by the batterer. In my own experience this happened many, many times. There were also occasions when my husband wanted me to take part in unnatural sexual relations. I always refused, and he always forced it on me regardless of how I felt about this degrading, immoral behavior. I can remember in particular one of these times when he badly beat me on the back with his heavy-heeled shoes that he wore to church.

Dr. Lenore Walker, one who has done an extensive study on the battering relationship, states in her research book, The Battered Woman, the following:

> Most men feel that their wives' sexual availability is guaranteed by the marriage license. p. 126.
>
> Marjory Fields, the New York City attorney specializing in domestic violence, states that if all the marital rapes were added to the official rape rate, the resulting figures would be overwhelming. Most of the women interviewd in this study felt they had been raped by their batterers. p. 108.

These women are trapped in this type of relationship for many reasons that time will not allow me to go into, and in many cases, they cannot speak for themselves. It takes a tremendous amount of courage and fortitude to make "the break" go get help. Marital rape, up until the past few years, has been a gray area that has now turned black. It is a very large part of the fears of its victims as it can be unpredictable.

Further marital rapes need to be prevented by putting these actions on the criminal's side. Let him take responsibility for his criminal behavior.

Thank you for your consideration and support.

EXHIBIT R
3/21/85
SB 294

February 19, 1985

Dear Legislators,

The act of rape is purely a crime of violence. It is not a sexual act or a crime of passion. It is brutal violence. The idea persists that women are victimized by strangers. In reality, statistics show 75% of all rapes to be acquaintance rapes. Add to this total the number of marital rapes and the number would be overwhelming.

As a volunteer working with battered women, I see a strong need for a law protecting married women from this violent crime. Women who have been physically assaulted by their husbands run a greater risk of becoming victims of rape than the average individual. These spouses need not be living apart for the criminal act of rape to occur.

The accounts, by battered women, of sexual assaults and marital rape are numerous. This story of one victim illustrates the need for legal action to be taken against the perpetrators of this violent crime.

Helen first came to us after she had been divorced from her husband, John, for two years. At this time John was fighting her for the custody of their two youngest children. It was only after working with us for a period of three years that Helen was able to recount the atrocities she was subject to in the course of their 11 year marriage.

The sexual assault John committed against Helen took numerous forms. While some were more physically and emotionally damaging; all the sexual abuse resulted in sexual degradation. Helen is quoted as saying, "Not only did I not feel like a woman, I no longer felt like a human being."

John's favorite fantasy, and one frequently lived out was to rape Helen. She was supposed to resist. Many time John committed this crime, seriously endangering Helen's health. The delivery of Helen's first child was a painful and difficult one. On the very day that she returned home from the hospital John raped her, tearing through still - tender stitches. On the day she returned home from the hospital after gall bladder surgery, John raped her again. The more she cried and tried to resist, the more pleasure he seemed to derive. It seemed to Helen that John could only enjoy sex if he made her cry by hurting her first.

Helen was not the only victim of John's violent nature. He tried on a number of occasions to rape his brother's wife as well as other married women in their neighborhood. Helen was the only victim, however, not protected by law.

The brutal assaults on Helen are not uncommon today. While marital rape does not happen in typical loving homes; it does, in fact, happen. Married women are entitled to protection from the crime of rape, regardless of the marital status of the criminal. Please provide women with this protection by supporting Senate Bill 294 - redefining the marital rape law.

Thank you.

Sincerely,

Noreen Beer

EXHIBIT S
3/21/85
SB 294

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

March 21, 1985

Testimony of the Women's Lobbyist Fund by Gail Kline, before the House Judiciary Committee on SB 294

Mr. Chairman and other members of the Judiciary Committee:

For the record, my name is Gail Kline, representing the Women's Lobbyist Fund (WLF), speaking in favor of SB 294.

SB 294 only removes the words "not his spouse" from Section 45-5-503, sexual intercourse without consent. Yet, by removing these three words you as legislators will make a positive impact on family life.

In Montana, marital rape is not a crime and can't be prosecuted. So the seeds of family violence are sown and the cycle of violence grows.

In this, the 49th Session, you recognized rape as a violent act and included sexual intercourse without consent, in HB 103 for delinquent youth.

Now, we are asking you to recognize that rape in marriage is a crime being committed in Montana homes and that it will not be tolerated.

In the U.S. Department of Justice, Attorney General's Task Force on Family Violence, Spetember 1984, page 4 said, "The legal response to family violence must be guided primarily by the nature of the abusive act, not the relationship between the victim and the abuser."

As of a month ago, this violent act, rape in marriage, is illegal in 24 states plus Washington D.C. according to the Women's Histoy Research Center, Inc. West Virginians just changed their law.

By passing SB 294, we make a positive impact on family life and add individual dignity for the victim of rape. We comply with our state constitution in that "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."

The WLF urges you to pass SB 294.

EXHIBIT T
3/21/85
SB 294

Montana Catholic Conference

March 21, 1985

CHAIRMAN HANNAH AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

I am John Ortwein representing the Montana Catholic Conference.

I am here as a supporter of Senate Bill 294.

Since we usually tend to think of social norms that call for gentleness and love within a family, it is difficult to accept the fact that violence is a reality for many persons within the married state.

The dictionary defines violence as the "unjust and unwarranted exertion of force." It would seem to us that sexual intercourse without consent preformed within the married state is one of the grossest forms of violence that can a person can be subjected to. Such acts not only are physically violent acts upon the other's person, but are a result of a more basic form of violence-- the corruption of moral character, the deadening of conscience.

The marriage license is not a license for abuse. It is a license for persons to nurture one another and care for one another.

The Montana Catholic Conference asks your support for Sentate Bill 294.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

Address to the New York County Lawyer's Association,
May 3, 1984

MA 3 May, 1984

EXHIBIT U
3/21/85
SB 294

MARITAL RAPE: THE MISUNDERSTOOD CRIME

David Finkelhor, Ph.D.
Associate Director
Family Violence Research Program
University of New Hampshire
Durham, NH 03824

Marital rape is a crime with a name, but without a reality. Even where it exists in our legislation, it does not exist in our imagination. Despite debates in the congress and in the courts, people have only the vaguest and most misleading picture of what it is. The stories of the victims of this crime -- victims humiliated by their assailants, ashamed among their closest friends, deprived of the protection of the law, and ignored by the professionals -- these stories have not yet touched the conscience of the community.

It was to hasten this process that my colleague Kersti Yllo and I recruited and interviewed fifty women who had been sexually assaulted by their husbands. The women were ordinary women, most of them clients at family planning agencies who were asked as part of their regular medical history if they had ever been sexually assaulted by their partner. Many were telling their stories for the first time.

The depth of popular ignorance about the problem of marital rape runs deep. When we asked groups of students, for example, to invent vignettes of marital rape, one wrote, "He wants to. She doesn't. He wins". Can you imagine a stranger rape so described: "He wants to. She doesn't. He wins." No; the imagery of stranger rape has knives and dark alleys and terror and violence and degradation.

So does marital rape! People are apt to think of marital rape, if they think of anything at all, as a bedroom squabble over whether to have sex tonight. No wonder they rate it in surveys as being about as serious an offense as driving while drunk. But marital rape does have brutality and terror and violence and humiliation to rival the most graphic stranger rape.

Among the fifty women we interviewed:

--one had been raped at knifepoint by a husband who held her up against the wall and threatened to kill her.

--one was jumped in the dark by her husband and raped in the anus while slumped over a woodpile.

--one was gang raped by her husband and his friend holding blackjacks after they surprised her alone in a vacant apartment.

--one had her baby kidnapped by an estranged husband who compelled her to have sex as a condition for returning the child.

--one had a 6 centimeter gash ripped in her vagina by a husband who was trying "to pull her vagina out".

None of these atrocities (and there were others of equal brutality) were ever reported to the police or to a newspaper. Some were never reported to anybody.

And these were <u>marital</u> rapes. If other people had these images inscribed in their memories when they thought of marital rape in the same indelible way that my colleague and I do, I do not think we would hear nearly so much nonsense about this problem.

However, this imagery of marital rape is not the whole reality either. From a survey we did of 521 women in Boston and from one Diana Russell did of 930 women in San Francisco, we estimate that marital rape is amazingly frequent -- occurring to as many as 10 to 14% of all married women. When talking about a problem of these dimensions, it is no more fair to say that marital rape is always a savage attack than it is to say that it is always a bedroom squabble. We are talking about a spectrum of which both of these are a part.

To make some sense of this spectrum, my colleague and I, after carefully analyzing the cases of the women we interviewed, found that it was useful to divide them into three broad categories. We decided to call these three categories battering rapes, non-battering rapes and obsessive rapes.

Battering rapes were the most brutal and included most of the incidents I listed earlier. They occurred in relationships where, in addition to the sexual abuse, there was a large amount of physical abuse. These husbands tended to have problems with alcohol and drugs. They had enormous reservoirs of anger which they vented on their wives and often other people in their environment. The rapes tended to take place in capricious and unpredictable circumstances, much like the other violence. They seemed to have little to do with sexual issues per se. In fact, many of these women said they made themselves sexually available whenever their husband wanted them. Rather, these men seemed to be motivated by an intense desire to punish, humiliate, degrade, and retaliate against their wives using rape as the vehicle. (About forty-five percent of the women we interviewed suffered from battering rapes.)

The non-battering rapes were substantially different. They occurred in more middle class marriages where there was much less of a history of violence and abuse. The immediate precipitant of these rapes was more likely to be a specifically sexual grievance, for example, over how often to have sex or what kinds of sex. The force involved was often more restrained, enough to gain sexual access, but not enough to cause severe injury. These rapes seemed to be motivated less by anger than by a desire to assert power, establish control, teach a lesson, show who was boss. (Another forty-five percent of the rapes were of this sort.)

Finally, there was a third kind of marital rape we uncovered in about 10% of the situations that we called obsessive rapes. In these relationships, the husbands had unusual sexual preoccupations. Most were obsessed with pornography; they wanted their wives to help them make it. Most were obsessed with their sexual problems; they were afraid of being impotent or homosexual. Often they had highly structured rituals about sex. They could only get aroused if their wives were in a certain position, or if they touched them in a certain way, or if they "staged" a rape. There was a sense that many of these men needed violence or struggle in order to have sex. They found the humiliation very stimulating. The women felt as though they were being used as masturbatory objects. There was a definite sadistic component to sex

These three -- battering, non-battering and obsessive -- were the types of rape we identified from our interviews with marital rape victims. There may be other types; we may need to refine our conceptions. The important point is that marital rape happens in a wide variety of contexts. We need an imagery that encompasses this variety, and we can only get it by listening to the stories of the women it happens to.

The absence of these stories from the conscience of the community results in another misunderstanding about marital rape -- this one concerning its impact. People do not believe that marital rape hurts. In 1979, a nationally syndicated columnist invented some experts to bolster his own prejudices and wrote that "many U.S. jurists agree that when a husband compels his wife to engage in sex relations, she suffers relatively little of the psychological trauma incurred in rape by a stranger" (Lloyd Shearer, Parade Magazine, April 22, 1979).

(Notice how the husband only "compels his wife" while what the stranger does is rape.)

"This isn't like he's grabbing some lady off the street", argued John Rideout's defense attorney Charles Burt. "This is a woman he may have made love to hundreds of times before." In other words, if he had made love to her hundreds of times before, how traumatic could one more time be?

Opinions like this betray a fundamental misunderstanding of the trauma of rape in general as well as the trauma of marital rape in particular. Rape is traumatic not because it is with someone you don't know, but because it is with someone you don't want -- whether stranger, friend or husband.

Burt's idea is akin to saying that if your business partner empties your joint account and runs off to Venezuela, it shouldn't hurt, because after all, you'd written him hundreds of checks before.

Rape is the intimate violation of a person's trust and autonomy. Prior intimate contact only makes the violation that much more so.

In fact the studies that have looked at this question empirically have indeed found that the victims of marital rape do suffer greater and longer term trauma than other rape victims. This finding is not surprising to those who have talked to marital rape victims and have come to recognize the three special injuries of marital rape: the betrayal, the entrapment and the isolation.

More so than victims of any other kind of rape, the victims of marital rape suffer a profound betrayal. Among the women we interviewed, the fact that someone whom they had loved and needed could violate them in such an intimate way destroyed their ability to trust others. "I thought so highly of him and he turned out to be a rapist," said one woman. The experience also sapped their confidence in themselves and their faith that they had the capacity to choose trustworthy companions. Years later, many of these women found it impossible to contemplate intimacy with a man. This is a component to marital rape that has no parallel in stranger rape.

A second component that makes marital rape different and more traumatic than other forms of rape is the entrapment. Most marital rape victims are raped not just once but many times. Half of our interviewees had been sexually

assaulted twenty times or more by their husbands. They lived for months, sometimes years, with ongoing violation. Many grappled with never-ending anxiety about when the next forced sex episode might occur. This took its toll in the form of chronic terror, emotional numbing, involuntary panics, and repetitive nightmares that often lasted for years after the relationship had ended and the threat of rape had gone. In the sexual sphere, victims suffered from flashbacks and inability to engage in sex. The corrosive impact of marital rape could be summed up thus: when you are raped by a stranger you have to live with a frightening memory. When you are raped by your husband you have to live with your rapist.

Finally, while all rape victims suffer shame and stigma, few suffer the total isolation of marital rape. No relatives or friends commiserated with these women about the pain. No police or court confirmed the judgement that they had been wronged. In their isolation they usually blamed themselves, and saw themselves as inadequate and different. It was a profound psychological scar that was difficult to erase.

It is to erase this scar of isolation that I think we owe our first priority. The debate about criminalizing marital rape speaks to many issues: justice, fairness, equality, deterrence of crime, and retribution against offenders. Yet the issue that is paramount for me is compassion for victims.

We must reach out to the victim of marital rape and extend legitimacy to and compassion for what they have suffered. Doctors need to be aware, for example, that it is not a simple matter for some women to avoid sex post-operatively, even though their recovery urgently requires it. Family planning agencies need to take into account that in some women's marriages, contraceptives like a diaphragm will not be adequate protection.

Attorneys need to recognize and alert divorcing women to the particular vulnerability they face from embittered husbands during the period following a separation. Marriage counselors need to know that the unspoken and unacknowledged grievance plaguing many wives is that their husband sexually assaults them.

(Incidentally, it is interesting to note that in the whole 25 year literature on sex therapy and marital sex, one can search in vain for any reference to the problem of marital rape, an experience that may be occurring to one in ten wives.)

Marital rape has been a non-problem for too long. Unfortunately, when people suffer from non-problems, they tend to become non-persons, both in their own eyes and in the eyes of others. Making marital rape a crime will put a few offenders out of our community, but it will bring a whole lot of victims back in. The invitation is long overdue.

WITNESS STATEMENT

Name Amy Pfeifer Committee On

Address 200 Woodford #2 Missoula Date 3/21/85

Representing Women's Law Caucus Support ✓

Bill No. SB 449 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

NAME Karen S. McRae BILL NO. SB 294

ADDRESS 421 Daly #5 Missoula, MT 59801 DATE 3-21-85

WHOM DO YOU REPRESENT? Women's Place - Missoula

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Karen Abbott BILL NO. SB 449

ADDRESS 425 S. Idaho St. Butte, Mt. DATE 3-21-85

WHOM DO YOU REPRESENT? Retired Women

SUPPORT YES OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. - SB 294 (Sen. Crippen); SB 332 (Sen. Towe); ~~SB 352 (Sen. Lybeck);~~ SB 449 (Sen. Regan); ~~SB 453 (Sen. Van Valkenburg)~~ SJR 19 (Sen. Manning)

DATE March 21, 1985

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JOE THARES	HELENA MT	SB 453	
Marti Adrian	Missoula	SB 294 SB 449	
Karen S. McRae	Missoula	SB 294 SB 449	
Ann Hefferedan	Missoula	SB 294 SB 449	
O Schlenger	Helena	SB 332	
Glen Haffstetler	Kalispell	SB 352	
Lois Fitzpatrick	Helena	SB 332	
T. Gregory Hunt	Missoula	SB 453	
Kelly Rosenleaf	Butte	SB 294 SB 449	
Karen Abbott	Butte	SB 449	
Lark Francoeur	Butte	SB 449	
Judy Davis	Helena	SB 332	
MARC RACICOT	HELENA	SB 453	
Harold Hanson	Billings	SB 453	
Ted Gunderson	"	SB 453	
Mike Schaefer	Billings	SB 453	
Bob Fuller	Butte	SB 453	
Chris Melton	Missoula	SB 453	
Colin Calhoun	Helena	SB 294 SB 449	
Bob Reid	Missoula	SB 453	
Amy Pfeifer	Missoula	SB 449	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

Nicole Parker Mate Tabacman SB 332

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Brenda Schye Mont. Arts Advocacy SB 332

Robert Nelson Helena - MT SB 294

Gail Klug (WLF) Great Falls, MT SB 294

CS-33

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. SB449 DATE March 21, 1985

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Cathy St. John	Great Falls, mt	✓	
Barbara Greene	Bozeman, MT	✓	
Nadya Stevenson	Great Falls MT	✓	
Connie Peckman	Great Falls MT	✓	
Robert Taylor	Helena MT	✓	
Mary Gallagher	Missoula	X	
Jimmy Quinn	Missoula	✓	
Gail Kline (WLF)	Great Falls	SB449	
Diana Smith	Missoula	—	
Melinda Lake	Bozeman	SB449	
Dick Carter	Missoula	SB449 ✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.