REINSTATING COMMON LAW MARRIAGE

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Rights of Domestic Partners
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In 1895 the California legislature abolished common law marriage by deleting the relevant clause from the statutory definition of marriage. (FN 1). The purpose of this paper is to show that the justifications for its abolition are no longer valid considering the societal changes that have taken place since its abolition. Upon analysis, it appears clear that our society today would be better off if common law marriage were to be recognized again in California. Therefore, it is recommended that the California legislature reconsider the virtues of common law marriage and take appropriate action for its reinstatement.

I. Common Law Marriage

A. Definition

Common law marriage is a judicial recognition that a man and woman are legally married even though the couple, for one reason or another, has not obtained a marriage license. It is an attempt by the state to recognize tacit marriage contracts where there has been no marriage ceremony. In states where it has not

been abolished by legislation, the doctrine is used by courts in order to declare that an essential marriage exists although the formal elements are missing. A valid common law marriage is identical to a valid ceremonial marriage; the same marital rights and responsibilities pertain. It is not a lesser degree of marriage, it is simply an alternative method of becoming married.

B. Requirements of Common Law Marriage

Requirements for finding a common law marriage vary from state to state. However, generally the requirements are:

1) capacity to marry
2) a present agreement to be husband and wife
3) an agreement to be husband and wife in the future
4) cohabitation
5) holding out to the public as husband and wife
6) community reputation as husband and wife

(FN 2).

Not all common law states require each of these to be met. While some states are less stringent than others, all require an agreement between the two people to be married. The existence of common law marriage has come to depend to a great extent upon the duration and character of the relationship between the parties. The primary requirements in those states that still recognize common law marriage are cohabitation for some duration and

evidence that the parties held themselves out to the public as husband and wife. (FN 3). Thus, the additional requirement of an agreement to be married or a marriage contract is often inferred from the cohabitation and the public representation. (FN 4).

C. States Which Currently Recognize Common Law Marriage

There are currently 13 states that recognize common law marriage, as well as the District of Columbia. They are:

1) Alabama
2) Colorado
3) Georgia
4) Idaho
5) Iowa
6) Kansas
7) Montana
8) Ohio
9) Oklahoma
10) Pennsylvania
11) Rhode Island
12) South Carolina
13) Texas

(FN 5)

While California is not a common law state, it should be noted that it does recognize valid common law marriages accomplished in a common law state. (FN 6). Also, California has a Putative Marriage Doctrine, designed to allow all the

rights, privileges, and benefits which obtain in a legal marriage to flow to parties of a null marriage who had a good faith belief that their marriage was legal and valid. (FN 7).

II. Public Policy

A. Policy Against Common Law Marriage

There are four main policy concerns which have often been expressed when legislatures have abolished common law marriages as legal marriages: 1) It weakens the sanctity of the marital relationship; 2) It causes uncertainty regarding inheritance rights; 3) It provides a fruitful source of perjury and fraud; and 4) It encourages vice.

These policy concerns do not withstand scrutiny under the standards of society today.

The first argument is that recognition of common law marriages debases conventional marriage. It has been argued that if we recognize common law marriage, people will come to place less value on the marriage institution; common law marriage is an offense to the decency and morality of the formal institution of marriage. There seems little risk of debasing conventional marriage so long as the traditional evidence of common law marriage is required. When a valid common law marriage is

proven, there is no ostensible difference between common law marriage and ceremonial marriage in the lives of the spouses. The institution of marriage is more readily debased when conclusive evidence of its existence is placed on the occurrence of a ceremony. A good example is Hewitt v. Hewitt, 77 Ill.2d 49, 394 N.W.2d 1204 (1979). In this case, Robert and Victoria Hewitt lived together since college when Victoria became pregnant with their first child. Over the 15 year period of the relationship, the Hewitts had 2 additional children, Victoria fulfilled homemaker responsibilities, and she also apparently supported Robert while he attended dental school. Victoria alleged that at the outset of the relationship, Robert had promised to share his future earnings and property with her, and upon dissolution of the relationship, she brought suit to enforce that promise. The Supreme Court of Illinois held that cohabitation agreements are not enforceable because they contravened the Marriage and Dissolution of Marriage Act which disfavors allowing property rights to knowingly unmarried cohabitants. Thus, after 15 years of being a mother and housewife and helping Robert to increase his earning capacity, Victoria was left with nothing. It would be far more equitable and reflective of reality to recognize marriage in such cases. Furthermore, not recognizing common law marriage in this type of context allows for the potential for the more sophisticated partner in such a relationship to avoid marital obligations merely by not ceremonially marrying.

The Hewitt court focused on the public interest offered

through discouraging cohabitation and channeling persons into ceremonial marriage in accordance with state law. (FN 8). Thus, this first policy concern includes the idea that if common law marriage is not recognized, people will be discouraged from living together and will marry formally instead. Statistics show that this argument is not tenable. Census figures, according to one author, reveal a 700% increase in unmarried cohabitation between 1960 and 1970. (FN 9). From 1970 to 1976, figures show an eightfold increase in instances of unmarried cohabitation. (FN 10). In 1976 it was estimated that 6 to 8 million people were involved in unmarried cohabitation relationships. (FN 11). Although the estimates vary, and there is a lack of precise data regarding the number of Americans now cohabitating, it seems clear that the number of unmarried cohabitatants is increasing rapidly and that cohabitation is becoming more and more socially acceptable. Furthermore, most sociologists agree that the number of unmarried cohabitants will continue to grow, and call for legal action in order to protect the legal rights of the vast numbers of people involved in such relationships. (FN 12). Reinstatement of common law marriage would help eliminate many of the potential inequities inherent in the associational practices of contemporary couples.

In sum, the abolition of common law marriage does not channel people into formal, ceremonial marriages. Rather, people have continued to cohabitate without the obligations and benefits of a formal marital status. If marriage has been debased in the

way the argument claims, cohabitation, and not common law marriage, is the culprit. And, if this is so, then perhaps legalizing common law marriage would discourage cohabitation; people who do not wish to have the obligations of marriage imputed to them would be hesitant to engage in such living arrangements. Finally, it should be remembered that common law marriage promotes marriage; the doctrine is a means of finding a valid marriage where the formalities have not been met, and where otherwise no marriage would exist.

The second argument is that common law marriage causes uncertainty regarding inheritance rights. The idea is that the children born of such relationships will be deemed illegitimate and therefore not able to inherit. This argument is premised on the idea that if common law is not recognized, couples will be encouraged to marry formally, the children will be legitimate, and no ambiguities regarding inheritance rights will exist. An initial problem with this argument is that, as has just been shown, failure to recognize common law marriages has not resulted in more formal marriages. So, inheritance rights are not made more certain by not recognizing common law marriages.

Even apart from the practical consequences of recognizing common law marriage with regard to legitimacy, the point pertaining to inheritance rights is moot. The Supreme Court has held that the Equal Protection Clause prohibits discrimination against illegitimate children. (FN 13). Because of the possible

constitutional questions regarding this type of discrimination, some states have eliminated the status of illegitimacy altogether, or provided that the civil effects such as support and right to inherit flow from the parent-child relationship, whether or not the child is legitimate. In California, the notion of illegitimacy was abolished in 1976 when the Uniform Parentage Act was adopted and codified. Thus, California Civil Code Section 7002 provides that the "parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents." And per section 7001, "parent and child relationship" means the legal relationship "to which the law confers or imposes rights, privileges, duties, and obligations." It is clear that inheritance rights are no longer a problem in California.

Further, Marvin v. Marvin-type claims can be raised in probate court. (FN 14). Therefore, unmarried cohabitation can also bring a degree of uncertainty to the inheritance rights of heirs. As a result, recognizing common law marriage in California will not substantially alter this function one way or another. Walter Weyrauch's 1960 prediction regarding common law marriage has proven true:

> [The] abolition of common law marriage will not result in greater certainty. Informal marriage will continue to exist in changed appearance by manipulation of legal doctrines other than common law marriage which lawyers are so able to invent in case of need. The outcome will be ... the exchange of one ambiguity for other ambiguities.

(FN 15).

The third argument is that recognizing common law marriages encourages perjury and fraud. This argument rests of the faulty premise that courts, using the established rules of common law marriage, would be unable to separate fraudulent from legitimate claims of marriage. If courts were to insist upon objective evidence that the parties have lived openly as man and wife for a substantial period, there would be no greater risk of fraud or imposition on the court here than in the trial of any other question of fact. The remedy for the risk of fraud is not refusal to recognize common law marriage, but a rigorous insistence of all its elements. Requiring a general reputation and habit of marriage, mandating a clear and convincing standard of proof of marriage, and enacting Dead Man's Statutes are all impediments to fraud in the common law marriage context.

Besides, fraud exists in all sorts of contexts, and as will be discussed below, the same concerns are inherent in cohabitation litigation under Marvin v. Marvin and its progeny.

The fourth argument is that recognition of common law marriages encourages vice. The idea that common law marriage promotes sexual relations between unmarried people is clearly the concern of a bygone era. The argument cannot be taken seriously given the extent of non-marital sexual activity prevalent in California--a state that has abolished common law marriage. Furthermore, the decriminalization of sex between consenting

adults who are not married evidences a change in public policy on this subject. (FN 16).

B. Policy Favoring Common Law Marriage

There are valid policy reasons for recognizing common law marriages. First, it promotes marriage. The doctrine allows the law to vindicate the bona fide expectations of the parties. It allows people who have taken on the burdens and responsibilities of marriage to get the benefits and rights of marriage as well. It also enables children of irregular relationships to be protected from the social stigma which can attach to offspring of such relationships, thereby allowing them greater self esteem and confidence.

One great advantage of recognition of common law marriage is that it would demonstrate the state's tolerance of any of several forms of family and marriage. The state has the same concerns of family stability, care of children, and support obligations in informal marriage-like relationships as it does in formal marriages. These concerns should not be abandoned by the state simply because marital formality has not been met. The state should signal that marriage is more than just a contract, a license, an economic partnership or a church ceremony by recognizing marital relationships in terms of the real values involved, such as love, emotional support, security and

happiness. Without common law marriage, there is more injustice and suffering than there would be with it; this is especially true among those social and economic classes who have not accepted middle class marriage standards. As one law review article explained:

> If such [marital] obligations and restrictions are not applied to de facto spouses, an intolerable anomaly is created. On the one hand, the state would be proclaiming its interest in protecting spouses with little earning capacity, or with the custody of minor children; on the other, the public could see that these policies could be circumvented merely by not obtaining a marriage license. Such a rule would encourage, albeit unintentionally, the more sophisticated spouse to cohabit rather than marry, thereby both discouraging marriage, and leaving the unsophisticated cohabitant unprotected.

(FN 17).

In a country known for its cultural diversity, American marriage law should tolerate cultural diversity enough to allow for marriages in ways other than the white middle class method. The states that currently recognize common law marriage do so in order to protect spouses' property rights and to protect children while recognizing and preserving a diversity of cultural lifestyles. (FN 18). California especially is thought of as one of the states most tolerant of differences among cultures. It is time for the state to identify and accept the different ways different segments of our society regulate spousal relationships and provide for a way in which the parties to such relationships may have their expectations vindicated.

III. Cohabitation Agreements

Although most states do not recognize common law marriage, as unmarried cohabitation has become more prevalent and society more tolerant, courts have begun to give recognition to the equitable interests involved in non-marital relationships. Since there is no legal tradition with regard to cohabitation, courts in states that do not recognize common law marriages are struggling to pronounce rules by which to deal with the many legal disputes that crop up in non-marital relationships. The contracts resulting from such relationships are usually referred to as cohabitation agreements.

A. Marvin v. Marvin

The landmark decision of Marvin v. Marvin has become a model for many state courts faced with property claims by one unmarried cohabitant against the other. (FN 19). In Marvin, plaintiff Michelle Triola sued Lee Marvin, who she had been living with for almost 6 years, for half the property that was accumulated during the relationship. She claimed that they had orally agreed to combine their earnings and efforts, and that they agreed that she would give up her career to devote her time to Marvin, and that in return Marvin would provide for her for the rest of her life.

In reversing both the trial court and court of appeals (which had dismissed for failure to state a cause of action), the California Supreme Court remanded, recognizing the legal rights of unmarried cohabitants. The court recognized the expectations and equitable rights of couples who live together for a time, and said that when necessary, property should be divided in accordance with the parties' own "tacit" understanding. (FN 20). The court further implied that the law of contracts, trusts, partnerships, or quantum meruit may be used to create appropriate remedies according to the family relationship in dispute.

B. Reaction to Marvin

The caselaw regarding cohabitation agreements since Marvin v. Marvin is a trail of inconsistent state court decisions, some adopting the analysis of the Marvin court, others rejecting it. For example, shortly after Marvin came down, the Supreme Court of Oregon upheld an express agreement whereby plaintiff was to provide all the amenities of married life and in return was to receive half of all the property accumulated during the relationship. The Supreme Court reversed the trial court, which sustained defendant's demurrer, noting that the couple's express agreement included "all the burdens and amenities of married life." (FN 21). At the other extreme is the Supreme Court of

Illinois' decision in Hewitt. (FN 22). There the court rejected unmarried cohabitants' property rights in terms of either contract law or equity between the parties. The court maintained that plaintiff's claim involved immoral consideration, and was therefore completely unenforceable as against public policy.

There are at least three theories regarding whether or not cohabitation renders an agreement unenforceable. The Illegal Consideration Doctrine holds that if any part of the consideration for an agreement consists of "meretricious"--sexual--relations, the entire agreement must fail. The Severance Doctrine (which may depend on the state's criminal statutes regarding adultery and fornification) holds that if the sexual part of the consideration can be severed from the rest of the consideration, then the agreement may be enforced. Finally some courts completely reject the Illegal Consideration Doctrine, holding that cohabitation agreements do not violate public policy.

Some courts make a further distinction between express and implied agreements, refusing to enforce the latter. For example, in Marone v. Marone, 50 N.Y.2d 481, 407 N.E.2d 438 (1980), the New York Court of Appeals held that the plaintiff's cause of action based on an implied contract must fail because it was too amorphous, and defied equitable enforcement. Thus the court rejected Marvin with regard to implied agreements. However, the court held that the express agreement could be upheld so long as sexual relations did not compose part of the consideration, thus

applying the Severance Doctrine. With the public policy disputes and multitude of doctrines regarding cohabitation agreements, it is no wonder there is judicial confusion regarding such agreements. As Justice Yetka of the Supreme Court of Minnesota stated: "The elimination of common-law marriage obviously did not eliminate the institution, but only the rules which must be applied to it." (FN 23). It is ironic that the rules pertaining to cohabitation agreements are more varied and more difficult to implement than the requirements of common law marriage. Justice Underwood of the Supreme Court of Illinois seems to feel the varied rules that have been created dealing with cohabitation agreements are unnecessary legal fiction. With regard to the Severance Doctrine, he stated: "[I]t would seem more candid to acknowledge the return of varying forms of common law marriage than to continue displaying the naivete we believe involved in the assertion that there are involved in these relationships contracts separate and independent from the sexual activity..." (FN 24).

IV. Reinstating Common Law Marriage

Common law marriage is more equitable and consistent than the doctrines that have been created in its stead to deal with the same basic problem of unmarried cohabitation. Common law

marriage should therefore be reinstated in California, which would be a fairly simple task. California Civil Code Section 4100 defines marriage and gives the requirements for it. The statute now reads: "Consent alone will not constitute marriage; it must be followed by the issuance of a license and solemnization as authorized by this code, except as provided by Section 4213." Before 1895, after the word solemnization, the statute read: "or by a mutual assumption of marital rights, duties, or obligations," and there was no license requirement. Deletion of this clause resulted in the abolition of common law marriage. Reinserting this clause, or one similar, would reinstate common law marriage, provided common law marriages would not require a license. Alternatively, the legislature could elect to insert more detailed requirements, in order to reduce the potential for fraud and prevent lawsuits.

Although the legislative action would be simple, reinstating common law marriage would make a significant difference in the lives of the many California couples currently living in de facto marriage relationships. Common law marriage would promote marriage and vindicate the parties' marital expectations. It would help eliminate many of the potential inequities inherent in our current law pertaining to the living arrangements of contemporary couples. And, it would demonstrate that California is tolerant of marital and cultural diversity. For all of these reasons, common law marriage should be reinstated in California.

Notes

1. See CAL. CIV. CODE Section 4100, Historical Note, (West 1983).

2. 1 HOMER H. CLARK., JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES Section 2.4 (2d ed. 1987).

3. Caudill, Legal Recognition of Unmarried Cohabitation: A Proposal To Update and Reconsider Common-Law Marriage, 49 TENN. L. REV. 537, 564 (1982).

4. See TEX. FAM. CODE ANN. Section 1.91 (Vernon 1975)

5. HOMER, supra note 2, at 103.

6. Tatum v. Tatum, 241 F.2d 401 (1957).

7. CAL. CIV. CODE Section 4452 (West 1983 & Supp. 1988).

8. See Hewitt v. Hewitt, 77 Ill.2d at 58, 394 N.E.2d at 1207.

9. Glendon, Marriage and the State: The Withering Away of Marriage, VA. L. REV. 663, 686 (1976).

10. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS-POPULATION CHARACTERISTICS, SERIES P-20, NO. 306, MARITAL STATUS AND LIVING ARRANCGEMENTS: MARCH 1976, at 5 (1977).

11. Boston Evening Globe, May 26, 1976, at 2, col. 1.

12. Newcomb, Cohabitation in America: An Assessment of Consequences, 41 J. MARRIAGE & FAM. 597, 598 (1979).

13. See e.g., Gomez v. Perez, 409 U.S. 535, 538 (1973).

14. Marvin v. Marvin, 18 Cal.3d 660, 557 P.2d 106, 134 Cal.Rptr. 815 (1976); In Re Estate of Fincher, 119 C.A.3d 343, 174 Cal.Rptr. 18 (1981).

15. Weyrauch, Informal and Formal Marriage, U. CHI. L. REV. 88, 109 (1960).

16. Brown Act, 1975 Cal. Stat. 71; see Pryor v. Municipal Court, 25 Cal.3d 238, 599 P.2d 636, 158 Cal.Rptr. 330 (1979).

17. Oldham & Caudill, A Reconnaissance of Public Polciy Restrictions Upon Enforcement of Contracts Between Cohabitants, 18 FAM. L.Q. 93, 117 (1984).

18. Comment, Common Law Marriage and Unmarried Cohabitation: An Old Solution to a New Problem, 39 PITT. L. REV. 579, 580-581 (1978).

19. Marvin v. Marvin, 18 Cal.3d 660, 557 P.2d 106, 134 Cal.Rptr. 815 (1976).

20. 18 Cal.3d at 684, 134 Cal.Rptr. at 830.

21. Latham v. Latham, 274 Or. 421, 427, 547 P.2d 144, 146 (1976).

22. Hewitt v. Hewitt, 77 Ill.2d 49, 394 N.E.2D 1204 (1979).

23. Carlson v. Carlson, 256 N.W.2d 249, 251 (Minn. 1977).

24. Hewitt, 77 Ill.2d at 60, 394 N.E.2d at 1209.

DAILY JOURNAL 3-15-88

$3.4 Million Malpractice Award Left Indigent Family on Charity

Associated Press

Lynval Ayton, surrounded by children Desmon, 13, Linval, Jr., 8, Patrick, 17, Suzette,15 and Maudeline, 3. Ayton, an unemployed migrant worker and his six children were forced to rely on charity despite winning a $3.45 million medical malpractice lawsuit because attorneys and a hospital caring for his comatose wife split the award.

FORT LAUDERDALE, Fla. (AP) — An unemployed immigrant and his six children were forced to rely on charity despite winning a $3.45 million malpractice suit because attorneys and a hospital caring for his comatose wife split the award.

Those involved say the treatment of Linval Ayton's family is entirely legal under Florida law, which does not recognize his 20-year common-law marriage, and does not allow the children to benefit unless their mother dies.

"We were sympathetic. All the judges were sympathetic," said J.B. Spence, the high-powered personal injury attorney who handled much of the case. "But everyone was locked in a set of legal handcuffs," he added. "The culprit here is the law."

The tragedy for Ayton, 43, an illiterate Jamaican immigrant, began when his longtime common-law wife Maudeline Ford, then 42, entered the Broward Medical Center for what should have been a routine childbirth in January 1985.

Ford ran a small store and had been the only support of the family after Ayton ruptured a disk and lost his job as a school janitor.

But something went wrong during a Caesarean section to deliver the baby, and Ms. Ford's heart stopped. In the time it took to get her heart started again, Ms. Ford's brain suffered damage that has left her comatose.

The baby was born in excellent condition.

Ayton's sister-in-law eventually called attorney Phillip Auerbach after seeing his ad on television, and Auerbach in turn brought in Spence.

There is dispute over whether the attorneys told Ayton he and his children would be provided for under a possible settlement.

But whatever Ayton was told, quirks in Florida law deprived the family of any benefits from the $3.45 million eventually awarded after 30 months and nine volumes of litigation.

One quirk was that state law does not recognize common-law marriages, even though Ayton and Ms. Ford had been together almost 20 years. That means he had no legal right to benefit from loss of her companionship.

The six children, ranging in age from 3 to 19, could have received money except for another twist — state law recognizes their loss of companionship only when the mother dies. And modern technology is still keeping her alive in the North Miami Medical Center, at the cost of $1,000 a day.

Ayton and the children wound up relying on the sister-in-law, who would sometimes drop off a chicken or a loaf of bread, and charity.

"I went to the Red Cross and the Salvation Army and begged for food," Ayton said. "Mostly canned food, vegetables and corn. We were living by the mercy of God."

The sympathetic judge in the case, Circuit Judge James Reasbeck, eventually tried to give the family $104,000. But Probate Judge Raymond Hare forced Ayton to pay it back a few months later.

"There was no legal basis for him to have it," said Hare. "He wasn't her legal spouse."

Attorneys Defend Fee

The attorneys say their 45 percent fee, plus thousands of dollars in expenses, were legitimate and legal. Spence said the case was very difficult, and called winning it "a home run."

Ms. Ford won a total of $1.8 million, but that money was put into a trust fund to pay for her medical expenses. Attorneys say the hospital bills will be paid out of the interest, and the children will eventually inherit the principle.

But the fund's administrator, Fred Koerner, assistant vice president of Barnett Banks, disputes that.

He said Ms. Ford's care now costs $380,000 a year, and has used up almost half of the principle.

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PROTECTING FAMILY SURVIVORS: AMENDING THE WRONGFUL DEATH STATUTE

To: Tom Coleman
From: Renata Turner
Date: 9-19-88

Introduction

The California wrongful death statue is purely a creature of statute.[1] The statute currently gives a cause of action to heirs, as defined by Probate Code 6401, step-children, dependent parents, putative spouses, and minor dependent household members.[2] Excluded from the list of claimants are domestic partners[3]; consequently, the court refuses to extend the cause of action to domestic partners, holding that only the legislature can expand the action to this class of claimants.

The following discussion will demonstrate the necessity of reforming the wrongful death action to include domestic partners. First, the policies of tort law that are frustrated by the statute's current application will be examined. Secondly, examples of the unjust decisions resulting from the strict application of the statute will be given. Thirdly, the legal

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[1]Steed v. Imperial Airlines, (1974) 12 Cal.3d 115.

[2]See Calif.Civ.Pro. Code 377(b)(1)(2)(3)

[3]For purposes of this discussion, domestic partners shall mean two persons, regardless of gender, who live together share the common necessities of life, and consider their relationship to be that of a family.

recognition of the need to grant relief to domestic partners will be explored. Finally, a recommendation for the amendment of the statute will be proposed.

I. Tort law policies

The large number of American families comprised of domestic partners makes the exclusion of the this class of persons from the wrongful death statute problematic. Recent census figures show that as of 1986 there were more than 2.2 million unmarried-couple households in the nation.[4] These adults suffer the same injuries as those suffered by legally recognized couples when their partners are killed by the wrongful acts of a third party.[5] Nevertheless, they are often left without a remedy; a result that is contrary to basic tort principles in California of spreading loss[6] and compensating victims for the wrongful acts of others.[7]

More specifically, the failure to allow a plaintiff to recover because of his or her marital status defeats the policies behind the wrongful death action. These distinct aspects of the statute are: (1) compensation for survivors, (2) deterrence of

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[4]Task Force on Family Diversity, Final Report Strengthening Families:A model for Community Action

[5]See Butcher v. Superior Court, 139 Cal.App.3d. 58, 188 Cal Rptr. 523 (1983)

[6]Ursin, Judicial Creativity and Tort Law, 49 Geo. Wash. L.R. 299.

[7]Levy & Ursin, Tort Law in California: at the Crossroads, 20 San Diego L.R. 417(1983)

conduct, and (3) limitation upon the damages recoverable.[8] Whenever the survivor of a domestic partner is denied a cause of action, each of the above aspects is disregarded. There is no deterrence to the tortfeasor because he is allowed to escape liability, not because his conduct is less egregious but because his victim is not married to the grieving survivor. The defendant is not spared excessive damages, he escapes damages completely. The victim, in turn, is left without any compensation and must either bear the loss alone or resort to public assistance, thereby placing the loss on society.

Finally, the California voters demonstrated their strong support for compensating victims by the enactment of the Victims Bill of Rights.

> The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a Bill of Rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern.
> The rights of victims pervade the criminal justice system, encompassing . . . the right to restitution from wrongdoers for financial losses suffered as a result of criminal acts . . . .[9] (emphasis added)

II. Decisions that deny relief to non-marital cohabitants.

Courts have repeatedly denied recovery to domestic partners even when their relationships resemble that of a marriage in

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[8]Hartado v. Superior Court of Sacramento Co., (1974) 11 Cal. App. 3d 574. 114 Cal. Rptr. 106.

[9]See Ledger, infra

every respect save the marriage license. While the court asserts that it is constrained by the wrongful death statute, the adverse decisions are fortified by the erroneous assumptions that marriage is the only indicator of a significant and stable relationship.[10]

In Harrod v. Pacific Southwest Airlines, 118 Cal.App.3d. 155, 173 Cal Rptr. 68, the decedent, Paula A. Blake, was killed in the notorious crash of PSA's flight 182 on September 25, 1978. Her fiance sought relief under the wrongful death statute. The couple had lived together for over a year and were engaged to be married. They had pooled their earnings to purchase items including a house held in joint title. The couple's actions clearly manifested the stability of their relationship and their reliance of future support from each other. Nevertheless, the court, while acknowledging that the wrongful death statute was designed to compensate for future loss denied relief. The court based it's decision on the doctrine that only the legislature is entitled to determine who may sue under the wrongful death statute.

In Garcia v. Douglas Aircraft, (1982) 133 Cal App. 3d. 890, 184 Cal. Rptr. 390, the fiance of another airplane crash victim was denied relief under the wrongful death statute. The couple had lived together and were engaged to be married only eight days after the decedent's death. The court found that meretricious spouses are not covered under the wrongful death statute and therefore there was no cause of action. They concluded that the

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[10]Blumstein and Schwartz, American Couples, (1983, Morrow and Company P. 85)

legislature could deny such claimants' damages since the absence of marriage indicated a lack of permanence, a necessity when granting wrongful death damages designed to compensate for future loss. Undoubtedly, the couple in Garcia had manifested the permanence of their relationship. Furthermore, the loss the plaintiff suffered was clearly a future loss, which the court explicitly recognized as the kind the wrongful death statute was designed to compensate. Nevertheless, the court denied relief admitting that the recited rationale may not be valid. Id at 895. They again justified their decision on the idea that the legislature must grant relief to the plaintiff's class of claimants.

Not only has the court's interpretation of the legislative intent precluded domestic partners from claiming actions under the wrongful death statute, but from other causes of action as well. The courts look to the statute when deciding cases under theories of loss of consortium and negligent infliction of emotional distress. For instance, in Ledger v. Tippitt (1985) 164 Cal. App. 3d 624, 210 Cal. Rptr. 814 (disapproved by Elden v. Sheldon infra, on other grounds), the court denied relief to a plaintiff under the loss of consortium theory based on the fact that non-marital cohabitants were not included in the wrongful death statute. The plaintiff had lived with the decedent for two years and they had a child together. Yet, the plaintiff was denied relief after witnessing the brutal stabbing of her partner and having him die in her arms. Ironically, because of the close relationship between the plaintiff and the decedent, the plaintiff would have been allowed to recover emotional injuries from the

State Restitution Fund.[11] The existence of the fund reflects the desire of the State to compensate victims however, it is ridiculous to needlessly burden State funds for injuries caused by wrongdoers who escape payment.[12]

In Elden v. Sheldon, (1985) 164 Cal. App. 3d., the court of appeals denied relief to unmarried cohabitants relying on the express language of the wrongful death statute as an indication that such claimants should not recover under the loss of consortium and negligent infliction of emotional harm. The California Supreme Court affirmed the ruling of the Court of Appeals.[13] However, the court failed to give a rational reason to limit recovery to married persons.[14]

III. Decisions that lend support to relief for domestic partners

Both the court and the legislature have recognized the need to expand the class of claimants entitled to survivor benefits.

In Butcher v. Superior Court, (1983) Cal App. 58, the court granted relief under a loss of consortium claim to a plaintiff who shared a non-marital cohabitation arrangement with the victim of a car accident. The court refused to adhere to the wrongful death statute holding that the loss of consortium cause of action is a common-law action. As such, the law must change with the needs

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[11]Gov.Code 13960, Subd.(a)(3),(b), and Subd.(d)(1).

[12]See Ledger, infra at 827 n.10

[13]See Elden v. Sheldon, 88 Daily Journal D.A.R. 10885

[14]Id (Broussard,J., dissenting)

of society. The court followed the federal case of Bulloch v. U.S., (D.N.J.1980) 489 F. Supp. 1078, which allowed a cohabitant wife's claim, by considering such factors as: (1) the similarities between the cohabitational and marital claims and relationships; (2) policies that indicated that cohabitants should not be penalized[15]; and, (3) the fact that marital status is irrelevant when assessing liability.

Additionally, the court concluded that non-marital relationships were no longer an abnormality and that tortfeasors should expect that when they kill an adult it is probable that the adult is cohabiting with a domestic partner. The Butcher court also looked at the status of the actual relationship rather than its legal status to determine whether the relationship was stable and significant. Placing the burden of proof on the plaintiff, the foreseeable cohabitant relationship is established if evidenced by duration, economic entanglement, and cohabitation.

The Butcher decision has been criticized, and unfortunately not followed.[16] Nevertheless, it is not the only example of the court's recognition of the domestic couple when extending survivor's rights. In fact, the court has acknowledged the need to expand the class of claimants to domestic partners even in decisions that deny relief.[17] The courts have also allowed recovery under the worker's compensation statute which require a

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[15]For example, Marvin v. Marvin, (1976) 18 Cal. 3d 660.

[16]Hendrix v. General Motors Corporation, (1983) 146 Cal. App. 3d 296, 193 Cal Rptr. 922.

[17]Coon v. Joseph, 237 Cal. Rptr. 873 (1987) (Barry-Deal,J.,concurring)

petitioner only to be a good faith member of the deceased's household.[18]

In Norman v. Unemployment Insurance Appeals Board, (1983) 34 Cal. 3d 1, 192 Cal. Rptr. 134. 663 P.2d 804, the appellate court held that a survivor's unmarried relationship with the decedent did not bar her recovery from benefits merely because she was not married to her mate.

In Donovan v. Worker's Compensation Appeals Board, (1982) 138 Cal. App. 3d 323, 187 Cal. Rptr. 869, the appellate court reversed and remanded a decision that denied worker's compensation benefits to a same gender domestic partner of a work-related suicide victim. On remand, the California Worker's Compensation Appeals Board found that homosexual couples may be granted the same credence as heterosexual unmarried couples. The board found that Donovan was a good-faith dependent household member of the deceased employee and granted his claim for benefits.[19]

Finally, the history of the wrongful death statute itself indicates a willingness of the legislature to extend the class of claimants when necessary. Since its enactment in 1862, the statute has been amended eight times.[20] The 1975 amendment was enacted in response to the court's decision in Steed v. Imperial Airlines[21], which denied relief to an unadobted step-daughter for the

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[18]Labor Code 3503

[19]Los Angeles Times, December 13, 1983

[20]Levy & Ursin, supra p.424

[21]12 Cal. 3d 115 (1974)

wrongful death of her step-father.[22] Justice Burke writing the dissent to Steed supports the hypothesis that the California legislature has historically responded to evidence of the financial bonds of a family relationship extending the definition of heir under 377.

> In my view, the (1968) amendment illustrates a legislative policy to permit such actions by all persons who have incurred damages substantially identical to those incurred by decedent's heirs at law. Id at 377.

The legislature's response to the extension of the wrongful death statute to include additional dependents, coupled with the recognition of the expansive definition of the family[23] supports the proposition that the legislature will expand the right of the action to include domestic partners.

IV. Amendment Proposal

Therefore, it is recommended that the Task Force propose amendment of the California wrongful death statute by adding the following to Civil Procedure Code 377(b):

> (4) Other dependents, whether or not qualified under paragraphs (1), (2), or (3) if at the time of the decedent's death they resided for

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[22]LEGISLATIVE COUNSEL DIGEST, 5 For A.B. 428, 1975-76, Reg. Sess.,(1975)

[23]See Moore Shipbuilding Corporation v. Industrial Accident Commission, (1921) 185 Cal. 200, 257; cited with approval in MacGregor v. Unemployment Insurance Appeals Board, (1984) 37 Cal.3d 205 at 212.

> the previous 180 days in the decedent's household and were dependent or partially dependent on the decedent within the meaning of Labor Code 3503.

By enacting the above amendment, the legislature will ensure that the wrongful death statute conforms to California's tort principles. Such a revised statute will conform to the needs of a greater number of families. Further, it will advance the interests of society, as well as the rights of victims and survivor's of criminal or civil misconduct.

PROPOSAL TO EXPAND PREMARITAL COUNSELING IN CALIFORNIA

To: Tom Coleman
From: Renata Turner
Date: 9-19-88

INTRODUCTION

The following discussion focuses on the institution of marriage as it relates to (1) teenagers, (2) divorcees, and (3) couples entering prenuptial agreements. The objective of this discussion is to explore the possibility of mandatory participation of the above-mentioned couples in premarital counseling before a marriage license is issued.

Additionally, it will be suggested that the confidential marriage license is abolished or in the alternative modified to prevent current abuses.

PREMARITAL COUNSELING

---Teen Marriages

Premarital counseling has already been recognized by the legislature as a possible solution to the divorce rate.[1] In 1970, the legislature enacted Cal. Civ. Code 4101 which requires any couple in which one party is under the age of 18 yrs. to participate in premarital counseling in order to receive a marriage license. Cal. Civ. Code 4101(c) provides:

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[1]Hogoboom, Premarital Marriage Counseling For Teenagers: One Year's Experience in California, 22 Buff. L.Rev. 145 (1972)

> . . . the court shall require the parties to such prospective marriage of a person under the age of 18 years to participate in premarital counseling concerning social, economic, and personal responsibilities incident to marriage.

The court however has the discretion to waive such counseling for reasons ranging from the couple's exhibited maturity to their inability to pay for counseling.[2] Such judicial discretion undermines the effectiveness of premarital counseling. Most couples, in fact, escape the premarital counseling scheme. For instance in 1987 less than 6% of teenagers seeking a marriage license in Los Angeles County were required to engage in counseling.[3] The quality and content of the counseling for the few couples required to participate ranged from professional, private counseling to unstructured, public counseling[4]. The county has no guidelines or minimum requirements for the counseling procedures except that the counseling sessions last at least one(1) hour.[5] Most counseling is provided by the clergy, however, some clergy are not trained or educated in the areas of marital issues or marriage counseling.[6]

The lack of adequate counseling and the failure to make counseling mandatory for all applicable couples may explain the

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[2]Hugh McIssacs, Director of Family Court Services, Los Angeles Superior Court.

[3]See Table 1

[4]H. McIssacs, supra.

[5]Id.

[6]Hogobomm. Supra, at 153

ineffectiveness of 4101 and its failure to impact the dissolution rate among teen marriages.[7]

Specific problems with the statute include: (1) the failure of the statute to define "premarital Counseling"; (2) the failure to allocate funds for the program; and (3) the failure of the statute to mandate in-house counseling for all teenagers.

The following proposal addresses each of these concerns. First, premarital counseling should be structured counseling. Specific procedures should be designed to make applicants aware of the complex dynamics involved in the marital relationship. The counseling should consist of lectures, group counseling and/or individual counseling. All counseling should consist of at least four (4) hour-long sessions.

Secondly, funds should be allocated to ensure the success of the objectives of the statute. Although this writer is not informed of the dynamics of the state budget, an economical and efficient method of appropriating funds is essential if the premarital counseling requirement is to be taken seriously and be effective.

Finally, while providing in-house counseling may impose an extreme burden on the conciliation courts, there should be a method of ensuring that counseling received meets minimum standards. Following the guidelines of Utah's premarital counseling scheme[8], it is suggested that each county establish a premarital counseling board. The primary function of this board

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[7]See Hogoboom, supra.

[8]See Utah Code Ann. 1953, 30-1-31 to 35

will be developing a master plan for the implementation of the statutory premarital counseling requirements and contracting with social service and/or private agencies to provide the needed services. Further, the court should not be allowed to waive the counseling requirements without a showing of good cause specifically defined by the legislature.

For the foregoing reason it is proposed that Cal. Civ. Code 4101 is amended to reflect the above objectives.

---Divorcees

California's divorce rate currently exceeds that of the nation.[9] Therefore, expanding the premarital requirement to other couples should be explored to promote the State's interest in creating stable, satisfying and enduring marriages and families. Specifically, targeting couples which one or both parties have been previously divorced may offer a starting point for a more expansive application of the premarital requirement.

A current Utah statute provides excellent guidelines for a statutory scheme mandating premarital counseling for divorcees. Utah Code Ann. 1953 30-1-30 to 35 requires premarital counseling for all couples in which one party has previously been divorced. If a couple fails to comply with the counseling requirement, they must wait six months before a marriage license is issued. This statutory scheme opens the doors to counseling for that couple

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[9]The national divorce rate is 5.3 per 1000 couples while California's rate is 5.8 per 1000 couple. California State Office of Vital Statistics.

thereby allowing a forum to address problems that may dissolve a second marriage. The six month waiting period diffuses constitutional arguments by allowing the couple to enter marriage without compliance.

---Prenuptial agreements

Prenuptial agreements are governed by the Uniform Prenuptial Agreement Act found under Cal. Civ. Code 5300 et. seq. Section 5311 provides that (1) no consideration is required for prenuptial agreements and (2) the agreements must be in writing and signed voluntarily by both parties.

The following is a list of general requirements for prenuptial contracts:

1. Agreements cannot be included in prenuptial contractsif they:

(a) purport to affect the parties' support obligations to each other.[10] or

(b) adversely affect rights to child support.[11]

2. Prenuptial agreements are unenforceable if unconscionable when executed and the burdened party could not have had adequate knowledge of the other's wealth or financial obligations.[12]

3. Prenuptial agreements may not promote divorce since divorces are generally against public policy.[13] (emphasis added)

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[10]See Marriage of Higgason, 10 Cal.3d 476 (1973)

[11]Cal. Civ. Code 5312(b)

[12]Cal.Civ.Code 5315(a)(2)(A)(B) (West 1988)

[13]Cal. Civ. Code 5312(a)(7)

It may be argued that the very nature of the prenuptial agreement promotes divorce. First, the agreement is a document created solely in contemplation of divorce. Secondly, it makes the possibility of divorce an easier option by softening the financial blows associated with divorce.[14] Finally, it sets the stage for dissolution rather that solutions if there are problems in the marriage. For these reasons it is suggested that the Prenuptial Agreement act be amended to include the following provision:

> 5312(c)
> All prenuptial agreements must provide a provisional clause mandating marital counseling before the agreement can be executed.

Such a provision will diffuse the indirect 'pro-divorce' flavor of the prenuptial agreement by encouraging dialogue between the couple before the dissolution of the marriage.

A further suggestion is that premarital counseling be required if both parties are not represented by separate counsel when entering the prenuptial agreement. There is inherent unequal bargaining power when one party presents a prenuptial agreement, particularly when that party has a higher financial standing. Premarital counseling would neutralize the bargaining power by providing a neutral and open forum for the couple to not only discuss the prenuptial agreement but feelings surrounding it.

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[14]See Making it Legal, Orange County Reporter, Aug.4, 1988 at p.1.

CONFIDENTIAL MARRIAGES

The confidential marriage was created by Cal. Civ. Code 4213 which provides that heterosexual couples that have been living together may be married without obtaining health certificates. The marriage certificate is maintained as a permanent record however, it is not open to public inspection. The statute was originally designed in 1878 as a method of allowing couples living under the guise of marriage to escape public humiliation by 'secretly' legitimizing their relation thereby securing inheritance rights for their children.[15]

Recent studies however have revealed that the use of the confidential marriage is being abused by persons who merely want to escape the hassles of obtaining health certificates. The statute has also been used as a method of securing citizenship for aliens.[16] The fact that no records were kept of these marriages including demographics that facilitate accurate vital statistics, lead to the amendment of the statue in 1982. The 1982 amendment requires that couples swear that they meet the requirements under law to get married and also requires clerks to keep a alphabetical listing of these marriages.

Even with the 1982 revisions of the statute, the number of confidential marriage licenses issued continues to rise.[17] If the

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[15]California Nonlicensed Marriage:A first look at their Characteristics, California Center for Health Statistics, Report Register No. 81-10037 (Dec. 1981)

[16]Id

[17]See Table 2

increase in the number of wconfidential marriages continues, the passage into the institution of marriage by the regular method will become obsolete.

Given that society no longer places the traditional stigma on unmarried couples[18] and that the confidential marriage provision needlessly opens the door to abuse, it is recommended that the confidential marriage license is abolished.

Some couples may argue that the stigma of children born out of wedlock prevails; therefore, it is recommended in the alternative that confidential marriages is allowed only for those couples who are the parents of minor children.

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[18]See Marvin v. Marvin, (1976) 18 Cal.3d 660

TABLE 1

MARRIAGE STATISTICS

Marriage licenses issued

	Regular	Confidential
Los Angeles Co.[1]		
1986	41,306	30,987
1987	42,271	34,159
Orange County[2]		
1986	14,020	
1987	14,751	
Statewide[3]		
1985	145,433	No record

DIVORCES

Statewide[4]	
1981	140,473

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[1]Los Angeles County Clerks Office

[2]Orange County Clerk's Office

[3]California State Office of Vital Statistics, Sacramento

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Table 2

TEENAGE MARRIAGES

Los Angeles County	
1986	896 - consents
	54 - differentials[5]
	4 - denials
Total	954
1987	829 - consents
	79 - differentials[6]
	42 - denials
Total	960
Statewide[7]	
1985	
Bride under 18 years	1,331
Groom under 18 years	319
Total	1,650

[5]See n. 1

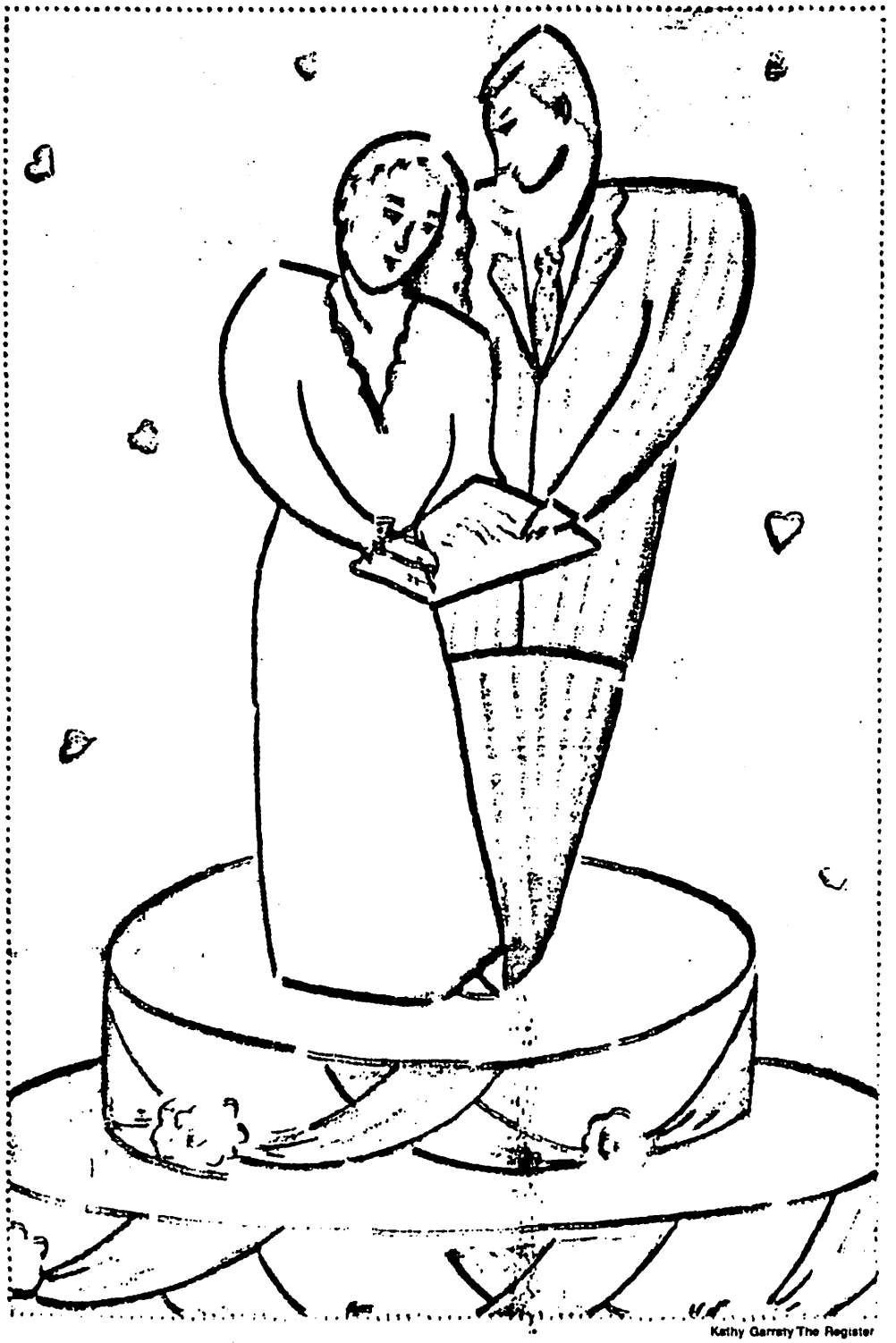
[6]Differentials include couples that were required to comply with certain requirements before their license could be issued. This requirement included premarital counseling.

[7]See n.3

FAMILY
Accent

MARRIAGE

MAKING IT LEGAL



Kathy Garrsty The Register

ORANGE COUNTY REGISTER AUG. 4, 1988

Fear of divorce drives couples to protect finances and feelings

By Dawn Bonker
The Register

Ten days to go, and she was busy with the last-minute details of her wedding.

So was he. The groom-to-be, a successful Orange County businessman, called his lawyer and ordered up a prenuptial agreement for his bride-to-be.

In the event of divorce, all his assets held before and accumulated during the marriage were forever his.

Sign it, he said. She felt betrayed. My friends tell me I'd be crazy not to, he said. She felt hurt.

But she signed, telling her lawyer that she didn't want her fiance to jump to the wrong conclusion about her motives in marrying an older, wealthy man. But these days, she feels like half a wife.

"What he did was protect himself even after we married. I'm not even a part of that. When I clean the house, when I drive the car, when I go shopping with him for furniture or art, I'm cognizant of the fact that it's his house we're furnishing. So there's a part of me that feels more like a kept woman than a wife."

■

Prenuptial agreements — and the mixed emotions they can bring — are not new. Love and law have long commingled among old-money families, where fortunes were kept tied to blood, shielded from the interlopers who came and went on the arms of heirs and heiresses.

But the storm of divorce that has swept the country in the past two decades now is driving many more common folk to protect themselves the next time around.

Nearly half of all marriages are projected to end in divorce, and even as they vow "'til death do us part," more people are adding a few clauses about property and money should love should run out first. New laws also have been enacted to govern the form and enforcement of the growing crop of prenuptial contracts.

Romantic? Probably not, divorce attorneys and marriage counselors agree. Pragmatic? Probably.

"It's just becoming more fashionable now because it requires the two

Please see MARRIAGE/5

■ **COURTING:** Developments cause dilemmas in field of family law/5

MARRIAGE: Prenuptial agreements flourish in age of divorce

FROM 1

parties to be more realistic and less illusional," says Newport Beach marriage and family counselor Mike Nissen, who conducts premarital workshops for a local church.

Marital veterans who enjoy double-digit anniversaries know that there's more than romance holding them together. But the rustling of contracts at the altar leaves everyone, including the attorneys who make them their business, squirming with unease.

"It's not prenuptial planning. It's divorce planning," says Lisa Keehen Hughes, a Santa Ana trial attorney with a substantial portion of her practice devoted to family and domestic relations.

Hughes, who didn't make a prenuptial agreement for her second marriage, says prenuptials can set a negative tone for a marriage.

"If you go into the marriage thinking of it as it is supposed to be, you never think of a prenuptial . . . If you do the prenuptial, it gives you a mind-set that it's OK to get a divorce," she says.

Marc S. Tovstein, a Santa Ana family-law attorney and president of the family-law section of the Orange County Bar, agrees.

"Personally, I find that they fly in the face of the trust that you expect in a relationship," Tovstein says.

The very act of writing a legal document intended to guide a marriage's demise conflicts with wedding vows, which are usually made in a religious or spiritual context and assume a lifelong commitment, Nissen says.

On the other hand, he says he can understand the motivation — the need to protect against hurt — behind agreements. People remarrying with a prenuptial usually aren't abrogating emotional commitment. They know there's no contract to protect the heart. But they are realists. And if the only thing they can set down in concrete are finances, they feel like they at least have that cushion to fall on, he says.

In addition, the process of writing prenuptial agreements actually can help root out and address problems in the relationship that otherwise might not have arisen until after the wedding, he says.

"It does tend to bring out some unresolved issues that need a closer look, and that's healthy," he says.

Attorneys in the field, however, say they see few couples astute enough in courtship to recognize the conflicts that foretell a troubled marriage.

Tovstein tells a story about a man whom he thought should have seen a warning light after he presented a prenuptial agreement to the woman pregnant with his child. She wanted more rights and participation in his business. He balked. She threatened to have an abortion if he didn't comply.

Tovstein advised his client to be wary of someone who would make pawns of children in a game for her own advancement. But the man agreed to some concessions, although not all his fiancee sought, believing he could safely assume she was bluffing.

"That's a relationship that's doomed to fail. And what they're playing with is more than money."

■

Nonetheless, prenuptial agreements are useful. Hughes and Tovstein offer them as wedding gifts to clients whose divorces they have handled. For many other people, they recommend them. Young adults starting out with little more than a Sears couch and a set of dishes don't need them. But second-timers and people who have delayed marriage until they're successful professionals usually have a passel of assets worth protecting and shouldn't ignore the divorce odds, attorneys say.

Moreover, they're legal.

California is one of 12 states to adopt the Uniform Premarital Agreement Act, which defines how prenuptials should be written and enforced. Stories circulate of couples who use prenuptial contracts to divide up everything from closet space to child-rearing responsibilities and dictate childbearing schedules and household chores. But California courts are likely to uphold only property agreements, not demands on behavior, Tovstein says.

California law, though, does not include the clause that permits spousal support to be waived in a contract. Whether the exemption opens a reprieve for people who signed away their support rights is uncertain until appellate courts are asked to hear some challenges, Tovstein says. The act prohibits waiver of child support.

Despite their legality, prenuptial agreements still sit uncomfortably with the courts, which question the value of any contract that encourages divorce.

"The state really has a desire for the parties to get together and stay married. It provides stability in the community and the home and less problems with the kids," says Orange County family law-department Judge Ragnar Engebretsen.

But the law, like many people getting married these days, is a realist. The premarital act lays out requirements for a fine-tuned prenuptial agreement. One of the biggest killers of prenuptials is that they were signed under duress without benefit of legal counsel. Those so-called "wedding-bell" contracts usually are considered unfair by the courts.

"The classic example is the situation where the man says, 'Well, I'm not going to marry you if you don't sign these papers,' and it's presented a couple days or couple weeks right before the wedding," Engebretsen says.

If couples can keep good accounts, they can avoid a prenuptial contract, Hughes says. A state law passed in 1984 permits people to exempt personal property from California community property laws if they can trace it and prove that it wasn't assets accumulated during the marriage. For example, if one spouse contributes the entire down payment to a house, that's personal property. But the equity gained from the mortgage payments invested into the home during the marriage is community property.

"The intent of the Legislature is really that if you come into a marriage with property, you keep it. You can trace? You get it. It's divorce planning by the Legislature," Hughes says.

The catch, though, is that few people are adept at estate management, and assets are not easily tracked as time passes.

"Do you know how difficult it is to maintain different estates?" she says. "They start abrogating their own agreement. Twenty years away, I'll bet you everything's been so commingled you can't trace it."

COUPLES WORKGROUP:

Research Materials

on

DOMESTIC VIOLENCE

TASK FORCE ON FAMILY DIVERSITY
Councilman Michael Woo
January 28, 1987

Lora Weinroth, Ph.D., J.D.
Directing Attorney
Battered Women's Legal Counseling Clinic
Los Angeles, CA

My name is Lora Weinroth. I am the directing attorney of the Battered Women's Legal Counseling Clinic in Los Angeles, a privately funded not-for-profit organization.

I am also co-counsel for plaintiffs in the class action suit LULA MAE THOMAS et al v CITY OF LOS ANGELES et al brought against the Los Angeles Police Department because of the LAPD's refusal to provide non-discriminatory law enforcement to the victims of domestic violence.(1)

My comments are based on my work at the BWLCC, my work on the Thomas suit, my readings in the field of domestic violence and my recent canvass of battered women's shelters in Los Angeles, workers on domestic violence hotlines and consultation with a number of attorneys working in the field. (2)

I wish, first of all,to define my terms. I shall use DOMESTIC VIOLENCE to mean violence between adults, presently or formerly cohabiting whether married to each other or not, or who are parents of a child, or who are or have been in what the Legislature calls "dating" relationships. I am not addressing child or elder abuse both of which deserve separate treatment.

We should also distinguish between domestic violence on the one hand and "family disputes" on the other. "Disputes," which

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(1) Lula Mae Thomas, Marjorie Hubbard and Deborah Harris et al. v. The City of Los Angeles et al., Los Angeles Superior Court case number CA #000572; a Stipulated Consent Decree and Judgment was entered into on November 7, 1985, the court retaining jurisdiction until December 31, 1989. A major element of the Consent Decree are the STANDARDS AND PROCEDURES FOR LAPD RE: DOMESTIC VIOLENCE CRIMES to be circulated by the LAPD to all sworn personnel and complaint board personnel.

(2) I particularly recommend, in the field of law enforcement, Gail A. Goolkasian, Confronting Domestic Violence: A Guide for Criminal Justice Agencies, U.S. Department of Justice, 1986, and P. A. Langan. C. A. Innes, Preventing Domestic Violence Against Women, U.S. Department of Justice, 1986.

often include mental and emotional abuse, while extremely destructive of the family and particularly damaging to the children, do not involve conduct which is cognizable as criminal. Domestic violence, on the other hand, is such conduct as the California Penal Code defines as assault and battery. We must note that under the California Penal Code, the criminality of conduct is independent of the relationship between victim and assailant. (3)

Domestic violence is considered to be among the most underreported of crimes; nonetheless, research in the field has led to a number of uncontroverted findings: (4)

1. 98+% of all victims are women.
2. Between 50 and 80% of all women will be victims of domestic violence during their lifetime.
3. 7 out of 10 assaults against women are perpetrated by a spouse, ex-spouse, boyfriend or ex-boyfriend.
4. Most domestic batteries take place in front of the children.
5. Domestic violence seems to escalate over time both in frequency and seriousness.
6. Much domestic violence seems to be learned behavior and generationally transmitted, particularly from father to son.
7. Domestic violence cuts across all the ordinary demographic classifications: it seems to be relatively independent of occupation, socio-economic circumstances, number of children and ethnicity.

I don't want to confront the committee with a catalogue of horrors. Let me just say that plaintiffs' declarations submitted to the court in the Thomas class action suit do not make edifying reading. Similarly, a nationwide study published by the Department of Justice in 1986 indicates that law enforcement agencies classified as "simple assaults," i.e. misdemeanors, 2/3 of the cases of domestic violence which came to their attention when, in fact, half of these so-called misdemeanor assaults injured the victim to an extent which, in stranger-on-stranger violence, would have led to a felony classification. (5)

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(3) In fact, the California Legislature has recognized the particular vulnerability of the victim of domestic violence when the abuser has the victim within reach at all times. Penal Code §273.5(c) raises a battery upon a cohabitant to the level of a felony upon a showing of a lesser injury than required for a felonious battery on a stranger.

(4) Please also see "Myths" in Appendix.

(5) See Preventing Domestic Violence Against Women, supra.

A slightly different analysis reveals that more than 2/3 of the victims of non-stranger violence sustained injuries, 25% of the victims required medical attention, and over 25% of the incidents involved guns, knives, bludgeons or other weapons. (6)

Obviously, domestic violence is an endemic problem of the utmost seriousness. What can the City of Los Angeles do?

It would be unrealistic to expect the city to effectuate, singlehandedly, the profound cultural changes which would make all of us abandon our beliefs in the efficacy of violence as the privileged solution to our problems. This does not mean that the City of Los Angeles is powerless.

1. Law Enforcement

Police officers are the first representatives of "the law" in the community; officers immediately and visibly communicate society's attitude toward domestic violence.

(a) Strict supervision and monitoring at all policy and field levels of police personnel to ensure that statutes, case law and court decrees are obeyed; particular attention should be paid to presumptions of arrest (7); whom to arrest (cf. Civil Code §50 regarding self-defense), and enforcement of restraining orders.

(b) Expanded and professional training in the laws governing domestic violence and restraining orders, appropriate police response to domestic violence incidents, including the criminality of domestic violence, the presumption in favor of arrest, the seriousness and frequency of injuries sustained by victims, enforcement of restraining orders, such training to take place in the Police Academy and periodically at roll call training.

Some training time must be devoted to undoing the myth that domestic violence incidents are among the most dangerous calls for police officers. FBI statistics from 1973 through 1984 show that "domestic disturbances ... are one of the least frequent types of incidents involved in police homicide" and that "low assault and injury rates [2% to 8% ...on police officers] are associated with domestic disturbances." (8)

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(6) See Confronting Domestic Violence, supra.

(7) See Attorney General's Report of 1984 cited in Confronting Domestic Violence, supra.

(8) See Confronting Domestic Violence, supra.

(c) Appropriate prioritizing of police dispatch. Arrest seems to be the most effective single deterrent to continued domestic violence. (9) Moreover, recidivism, when it does occur (in less than half the cases) does not result in injuries more serious than those sustained before police intervention. (10)

It is not enough to encourage women to call the police; what it essential is that the police respond in a timely manner to such calls (see "Data Collection" below), and respond appropriately; "crisis intervention" has been discredited for a number of years. (11)

(d) Continuous funding of more extensive hand-outs advising victims of legal and community resources available (also see "Community Outreach" below).

2. Data Collection

Monitor and supervise data collection by law enforcement personnel and prosecutors (see "Prosecution" below) regarding domestic violence to ensure that data for all cases and complete data be assembled,(including weapons, injuries, medical treatment, restraining order violations, written dispositional statements) be instituted and maintained. Such data will permit informed decisions regarding the appropriate levels of resources, officer and prosecutorial preparation, training and accountability for domestic violence and will facilitate and improve the number and quality of cases brought for prosecution. (12)

3. Prosecution

The justice system has the duty to provide adequate legal remedies in cases of domestic violence as in all other cases of criminal conduct and must deliver the clear message that domestic violence will not be tolerated.

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(9) L. W. Sherman and R. A. Berk, "The specific deterrent effects of arrest for domestic assault," American Sociological Review, 1985.

(10) See Preventing Domestic Violence, supra.

(11) See Confronting Domestic Violence, supra; an arrest should be made "unless there are good, clear reasons why an arrest would be counterproductive [and would] invite circumvention." Also see Preventing Domestic Violence, supra.

(12) A number of benefits derive from intensive data collection, in addition to those indicated above. For example, police procedures, policies and training materials can be refined; officers will have information regarding recidivism or dangerousness of situation before arriving on the scene; officers' awareness and attention to domestic violence is increased.

It appears that the Los Angeles City Attorney's Domestic Violence Program stopped in 1983 for lack of federal funds. The City should fund such a program and pay particular attention to:

(a) appropriate prioritizing of prosecutions;
(b) prompt prosecutions;
(c) elimination of so-called "office hearings" conducted by non-attorneys;
(d) written policies establishing criteria and procedures for deputy city attorneys with particular attention to efforts not to discourage complaining witnesses from testifying;
(e) avoidance of outright dismissals in favor of deferred prosecution with conditions of diversion; written statements justifying dismissals and office-hearings;
(f) initiation of communication with victims (13);
(g) routine requests for no-contact orders as a condition of bail, release or diversion;
(h) facilitating access to court hearing dates and appropriate LAPD divisions to complaining witnesses.

4. Community Outreach

(a) Establishment of a viable and well-funded Coordinating Committee for all city domestic violence agencies, public and private;
(b) liaison with Conciliation Court personnel to insure proper training;
(c) production and distribution (police, courts, schools, welfare and community agencies, hospitals, hotlines, shelters) of multilingual informational booklets regarding domestic violence, victims' rights, welfare organizations, the criminal process and the mechanics (not substantive legal advice) of obtaining civil restraining orders;
(d) encouragement of Saturday or night sessions of Family law departments;
(e) fund shelters for battered women;
(f) fund transitional houseing (post-shelter) for battered women;
(g) fund counseling for batterers.

These are just a few of the many possibilities for a city as diverse, large and financially stable as Los Angeles which could do something to alleviate the life of battered women.

Thank you for your time and attention.

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(13) See "Domestic Violence Case Summary," Denver, and "Contact Letter" used by the City of Seattle in the Appendix.

APPENDIX

I. Myths

Violence in the family is a private matter.

The California Legislature does not see it that way, nor do the victims. If battered women do not unfailingly avail themselves of the criminal justice system, or of available civil remedies, it is becuase they have learned that society is not responsive and are afraid of retaliation. (1)

Domestic violence is provoked by the victim.

The abuser may not like what his victim is saying, or what he's getting for dinner, but, unless we tacitly give him the right to chastise or "discipline" "his" woman, such so-called provocation does not excuse, and we must not condone, physical retaliation. Further, research indicates that many, and many serious, batteries are perpetrated without even the semblance of such "provocation," since they often take place without any previous exchange of words, many times while the victim is asleep, cooking or taking care of the children.

The woman must like it or she would leave.

About 1/3 of all domestic violence incidents take place after the woman has attempted to sever the relationship or obtained a divorce, particularly during exchange of custody for visitation purposes.

We must also remember that economic and cultural constraints still impose a heavy burden on the woman who "leaves." Women still get only 59¢ for every comparable male dollar; after divorce, the woman sees her standard of living drop by as much as 73%, while the ex-husband sees his rise by 42%. (2)

Moreover, women are still taught that it is their fault if the relationship founders; they are to be nurturing, passive, subservient, helpless, childlike and incapable of autonomous behavior. (3)

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(1) Retaliation is not only physical. The abuser, who often controls the purse strings and almost always has greater earning ability, will drag his victim through years of exhausting (financially and emotionally) court battles over, for example, child custody.

(2) Lenore J. Weitzman, The Divorce Revolution, and see article from the New York Times attached; the remarks by the Hon. S. M. Lachs are particularly instructive.

(3) "Who gives this woman in marriage?"

The perpetrator is sick, an alcoholic or a drug abuser.

Domestic violence, since 40-60% of all men perpetrate it, cannot be classified as aberrant behavior; recent work indicates that such conduct is relatively independent of substance abuse.

The perpetrator is incapable of handling stress.

Lots of people get mad at lots of people; we all of us have been angry at our boss or our employees, the IRS field agent who audits our tax return, or the bank clerk who won't cash our check. We don't, for the most part, go around beating them up and we certainly can't do so with impunity, or with the quasi-certainty that at worst we'll have to suffer crisis intervention or a touch of counseling.

III. See attached Denver Police Department DOMESTIC VIOLENCE CASE SUMMARY and the letter used by the Seattle Family Violence Project.

THE CENTER
THE GAY & LESBIAN COMMUNITY SERVICES CENTER
A Non-Profit Human Services Organization

Family Diversity Task Force Public Hearing

Testimony on Lesbian and Gay Domestic Violence

Presented by Lynn Warshafsky, MA, Counseling Director, Los Angeles Gay and Lesbian Community Services Center

7 April 1987

The following provides an outline of testimony made before the Family Diversity Task Force on the issue of domestic violence within the lesbian and gay family.

Introduction

I have been asked to discuss violence within lesbian and gay relationships. I want to note here that I will be discussing **domestic violence - battering** specifically rather than other forms of violence. For our purposes here, what constitutes **battering** is conceptualized similarly in the gay community as in the heterosexual community. That is, "violent and coercive behaviors whereby (one partner) seeks to control the thoughts, beliefs or conduct of (the other partner) or to punish the intimate for resisting the perpetrator's control over (her or him)." (Lobel, 1986)

I must preface this discussion of lesbian and gay partner abuse with the statement that raising this issue in a public forum is perceived as risky by many lesbians and gay men. In the gay and lesbian community's efforts to bring legitimacy to their relationships, they face homophobic attack, misconceptions and misunderstanding. As with heterosexuals, lesbians and gay men need to be able to seek help for and discuss their relationships. They need to be able to do this without fear that their homosexuality itself will be scrutinized rather than the behaviors and feelings that disrupt their family unit.

Lesbian and Gay Partner Abuse in the Los Angeles Community

Domestic violence exists in lesbian and gay relationships. Anecdotal evidence suggests that such battering appears to follow many of the same patterns as heterosexual battering. We can speculate that battering exists with the same prevalence in gay and lesbian relationships as in heterosexual relationships.

In Los Angeles, lesbian partner abuse has only been addressed within the lesbian community over the last 4 years or so. Gay male partner abuse remains unaddressed in any kind of organized fashion.

For lesbians, most of the work on domestic violence has come from grass roots organizing and lesbian and gay community agencies. Despite the efforts of these individuals, much silence continues to surround lesbian battering, a silence which is only beginning to be broken.

Efforts to understand the prevalence and dynamics of gay and lesbian partner abuse, as well as the couples' service needs have resulted in surveys, needs assessments, research and groups (direct service). Most of what we know comes from anecdotal evidence from organizations who provide direct service to lesbians and gay men. Additionally, lesbians who have been battered are starting to speak out and some of their stories have been published.

There is still much to learn. We need to understand the differences and similarities between lesbian and gay domestic violence and heterosexual domestic violence in order to assure appropriate service. We assume that those issues which are unique to the gay and lesbian community, internal and external homophobia, coming out and struggling to maintain a relationship that has no legitimacy in the culture as a whole, compounds some of the problems which lesbians and gay men may face.

Both lesbians and gay men have difficulty identifying the violence in their relationships as abuse and stepping forward to seek help. Battered gay men and lesbians may defend themselves and confuse this with being a "co-batterer".

Disbelief and denial is not an unusual reaction for a battered individual. For lesbians, this may be exacerbated by the commonly held belief that women are not violent and that women do not hurt one another. Male socialization teaches men that they can not or should not be victims. We can speculate that much fewer gay men than women identify violence in their relationship as battering and seek help. For gay men, the problems are exacerbated by even fewer services or resources directed toward their needs.

Some Barriers to Sensitive Services

Theoretically, shelters available for battered women would be able to

accomodate lesbians who have been battered. However, lesbians who have sought help from shelters have often experienced homophobia and sexual orientation discrimination. A battered lesbian may find it difficult to shelter her children if their biological mother is the battering partner. The battered lesbian has no legal right to take the children from the battering home environment if she feels that they are also threatened. Some lesbians may utilize shelters but never mention that their partner is a woman. Finally, protecting the safety of the battered lesbian can present unique problems as the batterer may present herself as a battered woman in order to gain access to her partner in the shelter.

Lesbians and gay men have reported many negative experiences with law enforcement and thus do not tend to see them as their protectors, as a resource for them when they are in need, or as people who will take their concerns seriously. In some cities, police file "mutual assault" charges when intervening in a battering situation - leaving the fact of partner abuse unacknowledged. Additionally, gay men and lesbians are reluctant to utilize the criminal justice system for restraining orders and the like. Those with children may fear that seeking help could jeopardize their child custody.

Recommendations

The following actions are recommended to the City of Los Angeles to address the issues of lesbian and gay domestic violence:

1) It is recommended that the City Attorney's office convene a time-limited task force comprised of law enforcement, community agencies, shelters and key individuals in the lesbian and gay community to examine the issue of lesbian and gay partner abuse.

2) It is recommended that such a task force gather information from agencies and shelters working with lesbians and gay men, from battered lesbians and gay men themselves, from law enforcement and other sources to assist the Los Angeles community in furthering its understanding of lesbian and gay partner abuse and barriers to effective use of services, law enforcement and the courts;

3) It is recommended that following input from the above described groups that the Task Force make further recommendations on how to best help battered lesbians and gay men;

4) It is recommended that the City support and encourage research which will help us understand the similarities and differences between domestic violence in heterosexual families and domestic violence in lesbian and gay families;

5) It is recommended that the City Attorney's office take reports of discrimination based on sexual orientation experienced by gay men or lesbians who have been battered and who have not been fairly assisted by law enforcement, the or the courts;

6) It is recommended that the City assure that homophobia workshops are provided to law enforcement - perhaps through a training for trainers, and that family courts and police intervening in domestic disputes be trained to be especially sensitive to the needs of the battered gay man or lesbian;

7) It is recommended that the City support domestic violence programs designed specifically for lesbians and gay men including education programs or community "speak-outs", through funding such programs in full or in part;

8) It is recommended that the City of Los Angeles provide full legitimization to lesbian and gay family units in the diverse forms that they are constituted;

9) It is recommended that the City require all City agencies, including those funded in whole or in part by the City of Los Angeles, to formulate policies which explicity state their intent to protect the rights of lesbian and gay families and treat lesbian and gay family units with the same level, kind and quality of service or benefit provided heterosexually married couples.

Summary

Lesbian and gay partner abuse is a known problem in lesbian and gay families. While the incidence is not known, anecdotal evidence allows us to speculate that it probably has the same rate of prevalance as in the heterosexual community. Further, we can assume that battering dynamics are similar in homosexual and heterosexual families though the gay and lesbian experience will be colored by such unique factors as internal or external homophobia, coming out and struggling to maintain relationships that are not validated by the culture as a whole.

Lesbians and gay men have faced discrimination and insensitivty by traditional social service agencies, shelters, law enforcement and the criminal justice system and thus may be less likely to seek help from these sources. Lesbians and gay men fear homophobic insensitivity if they come forward for help. Such fear can leave a battered gay man or lesbian protecting his or her batterer before having to confront an insensitive, anti-gay system.

Legitimization of the lesbian and gay family is essential. Such legitimacy can be provided through a "domestic partnership" which provides that lesbian and gay relationships constitute a legal partnership with all of the rights afforded heterosexually married couples.

Change in attitude is long-term, on-going work. While it is important that this work take place through such means as homophobia trainings, it is also important that City agencies including those funded in whole or in part by the City of Los Angeles, reflect their commitment to sensitive and accessible services through their written

policies and procedures.

The City of Los Angeles' Family Diversity Task Force should be commended for its work in seeking to understand the issues which affect families in the Los Angeles community and in its vision of family as a social unit which encompass a broad range of lifestyles and configurations.

Respectfully Submitted,

Lynn Warshafsky, MA
Counseling Director

1. Lobel, Kerry, ed. Naming the Violence 1986

A.B. No. 4349

AN ACT to amend Section 1000.8 of the Penal Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved June 16, 1988]

[Filed June 16, 1988]

LEGISLATIVE COUNSEL'S DIGEST

AB 4349, Roybal-Allard. Crime: domestic violence.

Existing law provides for a person charged with a misdemeanor act of domestic violence that the court may order the diversion of the defendant and refer the defendant for counseling.

This bill would require the referral to be for batterer's treatment counseling directed specifically to the violent conduct of the defendant, but would provide that this requirement does not prohibit the court from ordering the defendant to be diverted and referred to another appropriate counseling program if it determines that there is no available batterer's treatment counseling program.

This bill would state various legislative findings relative to the need to provide batterer's treatment counseling programs and to encourage counties without existing batterer's treatment counseling programs to establish a program on or before January 1, 1990.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares that in many cases persons charged with a misdemeanor act of domestic violence who are diverted and referred to counseling programs do not receive counseling which is appropriate to the offense for which they are charged. The Legislature further finds that materials applicable to batterer's treatment programs are readily available and that the establishment of these programs in each county would greatly benefit both the defendant and the victim.

It is the intent of the Legislature in enacting this act to provide that defendants in domestic violence cases shall be diverted and referred to counseling in batterer's treatment programs. It is further the intent of the Legislature to encourage counties without existing batterer's treatment programs to establish these counseling programs on or before January 1, 1990.

SEC. 2. Section 1000.8 of the Penal Code is amended to read:

1000.8. (a) The court shall hold a hearing and, after consideration of the probation department's report and any other information considered by the court to be relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and waives his or her right to a speedy trial and if the defendant should be diverted and referred for batterer's treatment counseling directed specifically to the violent conduct of the defendant. The court, in determining the defendant's eligibility for diversion, shall consider the nature and extent of the injury inflicted upon the victim, any prior incidents of domestic violence by the defendant, and any factors which would adversely influence the likelihood of successful completion of the diversion program. If the court does not deem the defendant a person who would be benefited by diversion, or if the defendant does not consent to participate, the proceedings shall continue as in any other case. If the court orders a defendant to be diverted, the court shall make inquiry into the financial condition of the defendant and upon a finding that the defendant is able in whole or part to pay the expense of such counseling the court may order him or her to pay for all or part of such expense.

Nothing in this subdivision shall prohibit the placement of a defendant in another appropriate counseling program if the court determines that there is no available batterer's treatment counseling program.

(b) At such time that the defendant's case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of him or her shall be exonerated, and the court shall enter an order so directing.

(c) The period during which further criminal proceedings against a person may be diverted pursuant to this chapter shall be for no less than six months nor longer than two years.

The court shall set forth in writing or state on the record its reason for granting or denying diversion. The court's decision in such matter shall be final and shall not constitute an appealable order.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the most effective means to prevent future domestic violence at the earliest possible time, it is necessary that this act take effect immediately.

BATTERED WOMEN'S ALTERNATIVES

Crisis Counseling • Support Groups • Legal Advocacy • Safe Home Program
Shelter • Speakers' Bureau • Batterer Treatment • Information and Referral

July 21, 1988

Contra Costa Times
P. O. Box 5088
Walnut Creek, CA 94596

Editor:

As Executive Director of Battered Women's Alternatives (BWA), I was startled by your July 15th article headlined "Program for Wife Beaters is Criticized as Ineffectual." Who could be criticizing us, I wondered. BWA has the largest and one of the most highly regarded Men's Programs for batterers in the nation. In fact, Gannett Broadcasting Corporation singled us out in its documentary on domestic violence released last winter.

Reading further, I discovered the article was actually expressing the personal opinions of a Los Angeles Deputy City Attorney about the effectiveness of diversion programs based on her Los Angeles experience. I hope everyone reads beyond the headline.

But even so, the article is misleading about diversion. Diversion means the batterer must get counseling to avoid criminal prosecution. Diversion, per Penal Code article 1000.6, enacted in 1979, is ordered by a judge and is monitored by each county's Probation Department. To be diverted the batterer must not have gone through another diversion program in the past five years, must not have violated probation or parole or been convicted of a violent crime in the past seven years. The batterer is referred to counseling. At the completion of treatment the treating professional or program must report the outcome to the probation officer who, in turn, makes a recommendation to the judge regarding the final disposition of the case. Thus, batterers are not pulled out of the criminal justice system, unless one equates the criminal justice system with the correctional system.

Now of course the effectiveness of diversion is dependent on the effectiveness of counseling programs and the vigilance of the probation department. BWA studies reveal that 80% of the men who complete our 18-month program stop this behavior and remain nonviolent at least through the one-year follow-up period.

Sincerely,

Rollie Mullen

Rollie Mullen
Executive Director

P.O. Box 6406, Concord, CA 94524 © Business: 415/676-2845 © Crisis: 415/930-8300

Diversion Program For Wife-Beaters Called Ineffective

Will State Audit Help?

By HALLYE JORDAN

SACRAMENTO — Critics of a state program that allows first-time wife beaters to avoid prosecution by enrolling in counseling programs are hoping a recently authorized audit of the system will accomplish two goals.

Not only do they want to see better protection for domestic violence victims, they also want to see batterers who drop out of the court-ordered counseling put behind bars instead of left on the street.

The audit of the state's 9-year-old domestic violence diversion program was requested last month by the chair of the Joint Legislative Audit Committee, Assemblyman Bruce Bronzan, D-Fresno, after a series of newspaper articles appeared outlining complaints about the program.

"Critics of the diversion program decry a lack of state standards, poor monitoring by probation departments, little coordination, inadequate internal controls and loopholes that allow people to slip through the system," Bronzan said in a letter asking Auditor General Thomas W. Hayes to examine the program. The assemblyman has indicated he would be willing to carry legislation correcting whatever problems the audit turns up, according to Michael Boccadoro, a Bronzan aide.

(Deputy Auditor General Mary Noble said that last week's appointment of Hayes to fill the state Treasurer post, left vacant when Jesse Unruh died a year ago, shouldn't delay the start of the audit. But until projects already underway are completed, it is difficult to estimate when the audit will begin, Noble said.)

Some Successes

Few would disagree that the concept of diversion, when it works, works well.

"I've had some people come back to court who have successfully completed the counseling sessions and they are a completely different person," said Los Angeles Deputy City Attorney Alana Bowman. "It's like looking at a 'before-and-after' commercial."

Bowman said the absence of anger shown by defendants who have succeeded in breaking the cycle of violence is remarkable. "And it can happen," she said.

But too often the programs are not completed, and the abuse continues.

In fact, Bowman said a study has indicated 80 percent of domestic violence defendants who are sent to diversion programs return to court with proof they've enrolled in counseling but then never attend a session.

"They go to court, show their letter and then run," she said.

Bronzan has pointed out that domestic violence experts see California's diversion program as an ineffective and poorly monitored bureaucracy used by batterers to sidestep punishment.

And counselors and prosecutors of domestic violence cases claim that when the program fails and the batterers slip through cracks in the court system, it is the victims who suffer.

"Sometimes I think it is almost better to see one of these cases dismissed because of a lack of evidence than to see the batterer put into a diversion program, fail it and see that nothing happens," said Janet Carter, director of the San Francisco Family Violence Project's criminal justice advocacy unit. "That just sends a message to both the victim and the abuser that (domestic abuse) is OK."

Since 1979, state law has allowed municipal court judges to give diversion to first-time, misdemeanor spousal-abuse defendants. Those who successfully complete counseling services within two years have the charges dropped and the arrest erased from their records. Those who fail should face criminal charges.

Alternative to Incarceration

Proponents of the law say victims of abuse often are hesitant to press charges against their husbands or live-in boyfriends for a variety of financial and emotional reasons. The diversion program gives these victims a second alternative to sending the abuser to jail.

"This is an alternative to incarceration," said Barbara Phillips, director of the Orange County Victim/Witness Assistance Program. "Often, since the first step (of pressing charges) is so difficult to take against the people they love, this gives them the chance to help and rehabilitate him."

But if the batterer drops out of the counseling program and continues his pattern of abuse, the victims have additional reasons to press charges. "If it doesn't work, they've done everything they can," and are more willing to carry through with prosecution, Phillips said.

Critics of the program, however, say it is probably too late to successfully prosecute a batterer if the defendant has dropped out of the program or resumes beating his wife. By that time, evidence has been lost, witnesses have moved and often the victim has fled.

The success of the program varies from county to county. Most observers agree communications between courts, probation officers and counselors about the defendant's progresses is the key point in successful rehabilitation.

But the program is plagued by too few and overworked probation officers, lack of high-quality counseling and judges needing to get defendants out of the courts at least temporarily.

Critics of domestic violence diversion claim defendants participate in counseling only to beat the criminal conviction.

"In some you may see a true desire on the

See Page 22 — DIVERSION

The Los Angeles Daily Journal Monday, September 19, 1988

Diversion for Spouse-Abuse Defendants Under Fire

Continued from Page 1

part of the batterer to succeed, but some may think they don't belong, but since they've got a choice between the diversion program or jail, the decision wore them down," said Los Angeles Senior Assistant City Attorney Cheryl Ward Smith.

Without communication with counselors and probation officers, these defendants may not be identified by the courts until it's too late, she said.

For that reason, it is important for prosecutors to keep criminal charges alive while the defendant goes through the diversion program, said Susan Aguilar of the Sacramento District Attorney's Office.

"We (conduct the program) as a pre-prosecution program so that the person being diverted understands that he has the opportunity to not be convicted. But he has to clean up his act, or he has the threat of prosecution hanging over his head," Aguilar said.

The Los Angeles City Attorney's Bowman said her office also operates on a pre-prosecution basis, but she would prefer having the defendant plead guilty and receive the program as probation. That way, if the defendant fails the program, prosecutors are not forced to reinterview witnesses and dredge up old evidence.

One of her office's objections, Bowman said, "is too often we end up trying a lot of old cases. We end up dismissing most of them that come back for a lack of evidence."

Study Found Failures

Bowman said she conducted a study of 200 cases of spousal abuse filed in the city attorney's San Fernando branch. Of those defendants who were placed into the diversion program, half failed to successfully complete it or refrain from future abuse. But in prosecuting those who failed the diversion program, the city attorney was successful only in one case.

Another finding that surfaced through that study was even more disturbing: One-third of the defendants sent to diversion had prior convictions.

For example, although prosecutors opposed allowing those defendants with prior convictions to enter the program, judges granted them diversion anyway, Bowman said.

Smith, who also serves as co-chair of the Los Angeles County Domestic Violence Council, said that judges who are not trained in domestic violence may not realize how dangerous this practice can be.

Bowman insists that the city attorney's office only opposes diversion programs for defendants it has determined will not benefit from counseling.

"I think prosecutors often are seen as the 'hang 'em high' group, but we're trying to stop the abuse before it gets to the felony level," she said. By prosecuting those defendants now, the city attorney's office actually is trying to reduce the court's time, Bowman maintained.

"Secondly, it's a lot cheaper to investigate and prosecute a misdemeanor than it is to investigate and prosecute a felony," she said.

Nancy Lemon, a professor at Boalt Hall School of Law at the University of California, Berkeley, and co-chair of the California Alliance Against Domestic Violence, said she thinks victims should have a say in whether the defendant should be given the chance to enter a diversion program.

"In some cases, the defendant is already in counseling and more wouldn't help," she said. But Lemon added that the type of counseling available also should play an important role in determining whether the defendant should participate.

Carter of the San Francisco Family Violence Project agreed that problems arise when there is little monitoring of counseling programs the courts use.

"Here, a defendant can go to any program or private therapist he wants, even though that therapist may know nothing about domestic violence and insist on joint counseling with the victim," Carter said.

Joint counseling at an early stage "plays into the victim's belief that the abuse is her fault," Carter said.

Jean Fromm, a psychologist with Alternatives to Violence in Long Beach, which provides counseling for self-referrals as well as those assigned by courts, said another problem with the diversion program is that there are few guidelines for how long a defendant should spend in counseling.

Don Latimore, director of Adult Court Services in Orange County, said counselors often tell probation officers that although a defendant is progressing, "we can't solve a problem five or six years in the making in five or six months, but two years could do it."

Latimore said his "best guess" is that about 90 percent of the defendants in diversion program "make it, which means they are not rearrested or referred back to us.

"But that doesn't mean they don't continue to batter their wives."

DIVERSION PROGRAMS COMMENTS

Comments from Rollie Mullen, Executive Director, Battered Womens Alternatives, Concord, Ca.

- Diversion programs depend upon the effectiveness of county follow through
- Battered women's agencies like the concept of diversion programs, but want stronger guidelines
- Some courts sentence the batterer to counseling, but it can be to any counselor, (their personal counselor,) who may not be skilled in coping with domestic violence cases.
- Diversion programs can be of 2 kinds:
  1. require counseling, any counseling, any length of time
  2. require a complete treatment/counseling program
     usually 8 to 12 months - once a week counseling
- Some times diversion programs get lost in the bureacracy of the court system, probation may not follow through and place a batterer in a diversion program
- If a batterer drops out of a diversion program, does probation even care or follow up - many times not.

Domestic Violence Effort Gets a $40,000 Bail-Out

9-14-88
DAILY JOURNAL

By DONNA PROKOP

SANTA ANA – A unique program operated out of Orange County Superior Court that helps victims of domestic violence obtain emergency protective court orders has won a temporary reprieve Tuesday from its financial problems when the Orange County Board of Supervisors voted unanimously to provide a $40,000 bail-out.

The funds will allow the Domestic Violence Assistance Program, which provides the only service of its kind in Orange County to victims of domestic abuse, to keep operating until next April. An 11-member citizens advisory panel was formed to find permanent funding for the program.

In another action Tuesday, the supervisors asked County Counsel Adrian Kuyper for an opinion on the legality of a recently qualified ballot initiative that would ban new jails from being constructed in cities outside of Santa Ana. The measure, which would throw into jeopardy county plans to build jails in Anaheim and Orange, is expected eventually to be placed on the June 1990 ballot.

In a preliminary legal opinion, Kuyper said the measure could have the effect of banning the construction of any future jails in Orange County.

Meanwhile, the Domestic Violence Assistance Program, run by the state-financed Victim/Witness Assistance Program out of a second-floor office in the County Courthouse, was begun in 1982 at the request of the Family Law Court. Last year, it helped an estimated 2,000 victims of physical and emotional abuse obtain temporary restraining orders.

Lauded

The program has been widely lauded by superior court judges and members of the legal community. A panel of 37 attorneys volunteer their time to provide legal assistance to domestic violence victims under the program.

Barbara J. Phillips, director of the Victims/Witness Assistance Program, notified the Board of Supervisors last month that if the program does not get emergency funding, it would have to close down its work with court orders in domestic violence cases at the end of this month.

Phillips said the Victims/Witness Assistance Program was not specifically funded to handle the restraining orders. She said the rapidly increasing demand in the domestic violence area had forced the agency to decide to eliminate the service so it can continue to carry out its state mandate of providing assistance to crime victims and witnesses.

In 1982, in its first full year of operation, the program helped 313 people obtain court orders in domestic-violence cases. In the last fiscal year, it helped 1,947, Phillips said.

Taking up the program's cause, Board of Supervisors Chairwoman Harriett M. Wieder submitted a motion approved on Tuesday calling on the county to provide an immediate $40,000 grant to the agency to continue its temporary restraining order assistance from Oct. 1 to April 30.

The money will allow the agency to hire additional staff members to assist domestic violence victims fill out the necessary court papers for the restraining orders. The Orange County Superior Court has agreed to provide additional space for the program in the courthouse.

The board also voted to establish an 11-member citizens committee that would seek permanent, private-sector funding. The panel will be chaired by Marilyn Nielsen, wife of Irvine Co. Vice Chairman Thomas H. Nielsen.

In other action, the board voted to delay a decision on whether to place an initiative banning new jails from being built outside the county seat in Santa Ana on the June 1990 ballot. Over the protest of proponents, the board granted County Counsel Kuyper's request for an additional 45 days to allow him to further study the ramifications and legality of the initiative.

Thwarting Plans

If passed, the measure could thwart county plans to build a proposed 6,000-bed jail in Gypsum Canyon, which lies in unincorporated county territory just east of Anaheim Hills, as well as two other jails in the cities of Orange and Anaheim. County officials fear that if any of those jails are blocked, the county could be faced with violating a federal court order to alleviate crowding at its main jail in Santa Ana.

Santa Ana city leaders have vowed to challenge in court any decision to put another jail in Santa Ana. On Tuesday, they asked the supervisors to proceed with plans to construct the Gypsum Canyon jail before county voters cast ballots on the initiative.

The initiative, sponsored by "Taxpayers for a Centralized Jail," a group of residents near the Gypsum Canyon site, qualified for the ballot last month after more than 112,000 petition signatures were submitted. Only 65,110 signatures of registered voters were needed for the measure to qualify.

In a four-page letter to the board, Kuyper promised to advise the board within 45 days of the avenues the county could take to challenge the initiative in court. He noted that the measure "could well be used to prevent the construction of a jail anywhere" in Orange County since it not only bans new jails outside of Santa Ana, but prohibits the siting of jails within 600 feet of any school, a requirement that could be difficult to meet, he said.

"The phrase 'any school' appears to be broad enough to cover any conventional public or private grade school, high school or college, but could well be considered to include any classroom, nursery school and perhaps even Sunday school," Kuyper wrote in his preliminary legal opinion.

But Kuyper told the board that "it appears that the subject of the proposed ordinance is properly within the initiative process." He cited *Citizens Against A Jail v. Board of Supervisors*, (1976) 63 Cal App. 3d 559.

DAILY JOURNAL 8-29-88

Domestic Violence Program Threatened

Help in Seeking Court Orders Could Be Cut Because of Funding Shortage

By DONNA PROKOP

SANTA ANA – Hundreds of domestic violence victims who turn to the Orange County Victims/Witness Assistance Program every month to help obtain protective orders are in danger of losing that emergency assistance unless $100,000 can be raised by Sept. 30, program officials have announced.

The state-funded, non-profit agency, which services thousands of crime victims annually, will no longer be able to provide one of its key programs – domestic violence restraining order assistance – because of an overwhelming increase in the number of domestic violence victims seeking help, said Barbara Phillips, the overall program director.

The Domestic Violence Assistance Program was begun in 1982 at the request of the Superior Court Family Law Division. But the non-state-mandated program must be discontinued Sept. 30 unless alternative funding for operating costs is found, the Victims/Witness Assistance Program Board of Directors has decided.

Funding that had been used for domestic violence will be used to meet the increased demands for the state-mandated programs offered by Victims/Witness Assistance Program.

"Everyone needs our help. And we just need to recognize that we cannot continue to provide temporary restraining order assistance and fail to provide services to all other crime victims and their families," Phillips said.

Each year, more than 2,000 victims of domestic violence are referred by law enforcement agencies and Superior Court staff to the Victim/Witness Assistance Center, located on the second floor of the Central Courthouse in Santa Ana. Last fiscal year, 1,947 violence victims received protective orders by representing themselves in court through the assistance of agency staff, a 622 percent increase over 1982, when the program began.

Paperwork

Under the program, agency staff and a panel of 37 volunteer attorneys help domestic violence victims – the elderly, women and their children, and sometimes men – fill out the often complex paperwork necessary to obtain temporary restraining orders. The orders are aimed at preventing continued physical or verbal abuse against victims by their mates, children or others.

Orange County Superior Court Judge Leonard Goldstein, in a letter sent Thursday to county Board of Supervisors Chairwoman Harriet M. Wieder, urged the board to help find funding for the program. The county, which is not responsible for funding the victims-aid program, is nevertheless searching for a way to keep the program from dying, a Wieder aide said.

"This service not only responds to the needs of the community, but provides assistance to the courts as well," Goldstein wrote in his two-page letter to the supervisors.

"These support services have resulted in extensive time savings for the court and speedy issuance of the protective order for the applicant. No longer must victims be turned away for incomplete or unacceptable applications only to be exposed to physical danger and required to return again and again."

Phillips said the crush of victims of domestic violence has hurt the Victim/Witness Assistance Program's ability to help other victims of crime, prompting the program's governing board to make the decision last month to cease the restraining order assistance program. The non-profit agency is funded by the state Office of Criminal Justice Planning, which raises the money from penalties levied against convicted offenders. In fiscal 1988-89, the Orange County program received a $600,000 victims-aid grant.

Phillips said the services the agency must provide to the public are outlined by the state Penal Code section that set up the victims assistance program. Temporary restraining order assistance is "an optional service that cannot in any way jeopardize the provision of primary services," she said.

Among the primary services the agency must provide under state law, she said, are crisis intervention; emergency assistance; resource and referral counseling; assistance in filing compensation claims for victims of crime; orientation to the criminal justice system and court accompaniment.

Wieder is working now to set up a "blue-ribbon" task force with public- and private-sector representatives to raise the money to continue the program, said Rod Speer, executive assistant to Wieder. He said the key to the bail-out effort will be to secure private sector support since "there's just no money in the county to continue this program on an extended basis."

"The supervisor doesn't want to see (the program) die. She is very concerned about women in need of this kind of emergency help," Speer said.

Wieder had placed an item on the agenda for Tuesday's supervisors meeting that would have called on county staff to "begin a revenue search to address the short-term needs" of the domestic violence assistance program and to establish a blue-ribbon committee to secure long-term funding for it.

Services

But because of uncertainty over who should be on the panel, the item has been postponed until the Sept. 13 meeting, and interim efforts will be taken to try to avert a shut-down of the program in late September, Speer said. He said "the key" to saving the program will be private sector contributions.

Among its services as part of the domestic violence program is providing an explanation to victims of the ex-parte hearing; the need for prior hearing notice to the defendant of the pending action; instructions on court proceedings; service of orders to the defendant; and assurance that all appropriate law enforcement agencies receive copies of the signed court order.

Domestic Violence Diversion Gets Mixed Reviews

DAILY JOURNAL 7-21-88

Associated Press

A 9-year-old domestic violence diversion program set up to rehabilitate wife beaters has come under criticism as an ineffective and poorly monitored bureaucracy used by defendants to sidestep punishment.

Under a 1979 law, municipal court judges can place first-time misdemeanor spousal abuse defendants in domestic violence diversion programs.

There have been no comprehensive studies to determine the overall effectiveness of the law in California, but limited surveys show success ratios barely above 50 percent.

Critics say the programs operate under no state standards, they are poorly monitored by understaffed probation departments and they are being used by many defendants to escape the wrath of the criminal justice system.

The Los Angeles City Attorney's Office has such little faith in the law it has adopted an official policy of contesting its use.

"Diversion pulls domestic violence cases out of the criminal justice system and treats them differently than other assaults and batteries between strangers," said Deputy City Attorney Alana Bowman, coordinator of the office's domestic violence prosecution unit.

Los Angeles Municipal Court Commissioner Jerry Richardson, who hears up to 75 domestic violence cases a week, more than any other judge in the county, disagrees.

"I personally think it is the appropriate thing to do, rather than taking a (guilty) plea and getting one spouse angry at the other spouse," he said.

"If you get them . . . in front of somebody to talk about the problems they have, cases of jealous husbands who think the wife is cheating . . . the way she dresses, the way she looks at other men, if they could have a forum with trained professionals, I think they'd be much better off."

Bowman counters, "We're not here to do marriage counseling."

The Los Angeles Herald Examiner interviewed 25 domestic violence experts about diversion programs, and most believe the programs to be problem-plagued.

"I think domestic violence diversion is a good idea in the abstract, but not in its execution," said Orange County Municipal Court Judge Pam Iles, a member of the federal Commission on Victims Services Administration.

"It works in favor of the offender, not the victim. The interest of the criminal justice system should be to protect the victim, not the offender. This law says the system doesn't care about the victim."

Cynthia Friedman, a board member of the Southern California Coalition on Battered Women and the executive director of Haven House, a battered women's shelter in Pasadena, fears the law will be overused as a release valve for the pressure placed on courtrooms by added domestic violence arrests.

Administration of the law suffers from "very little coordination" and is pocked with "loopholes that allow people to slip through the system," said professor Barbara Star of the University of Southern California School of Social Work.

"I'd hate to add another level of bureaucracy, but there needs to be a lot better internal controls," Star said. "And with the increase in arrests, caseloads are going to be greater and the demands on programs themselves are going to be stressed."

Under the law, a defendant has 24 months to complete a diversion program. If successful, his case is dismissed and his arrest record erased.

Since 1979, 1,615 men have been entered into diversion programs in Los Angeles County. During the first 11 months of 1987, 538 men were referred to such programs.

Los Angeles police arrested nearly 5,000 suspected wife beaters in 1986 and another 5,000 in 1987, compared with only 600 such arrests in 1985. At the same time, the county Probation Department is operating under a budget far smaller than it was 10 years ago. Caseloads per officer, which averaged 150 in 1978, are up to 2,000 for some officers today.

Bowman points to what she calls the erroneous assumption that courts are dealing with first-time offenders.

"By the time a woman first calls police, she has probably been beaten 10 to 15 times before," she said. "What we find is that the first police report is the tip of the iceberg."

There are no guidelines on how many sessions a defendant must take part in. Bowman said she knows of one program requiring only two.

Los Angeles Daily Journal
Thursday, August 18, 198
Section II

Lawyers Help in Domestic Violence Cases

By WILLIAM VOGELER

None of them looked like they had ever been beaten up.

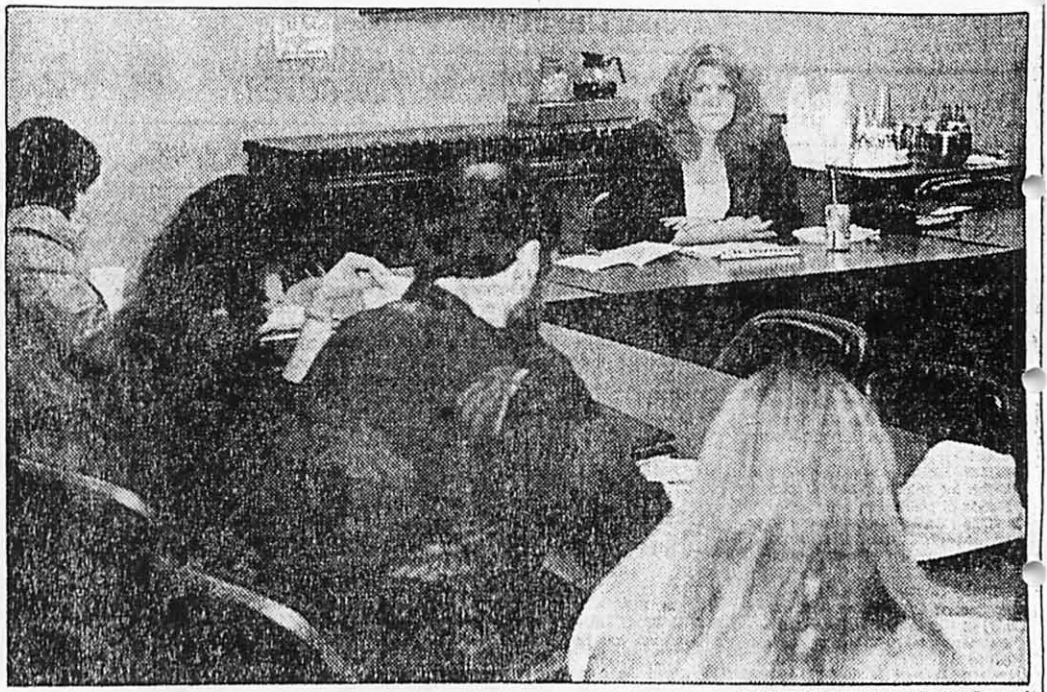
They came from circumstances least likely to be associated with wife beating, child and parent abuse. They were all well-dressed, proper-looking business types. One woman was an in-house counsel for Texaco, another woman worked in the accounting department of a major Los Angeles bank and another practiced contract and corporations law.

But they came to learn how to volunteer their legal services to people seeking temporary restraining orders to stop domestic violence.

About a dozen attorneys attended one of the training sessions at the Los Angeles County Bar Association Board Room sponsored by the Barristers division of the county bar a recent Thursday night. Madeleine Bryant-Kambe, attorney administrator for the Domestic Violence Counseling Project, taught the newest volunteers how to obtain court orders to temporarily evict people who abuse others in their homes. And after the two-hour instruction, she invited the attorneys to give one morning a month to the project, which operates out of Department 8 at the Los Angeles County Superior Court.

The attorney-administrator described the domestic violence courtroom traffic as "very busy." Since the Barristers began its service in 1985, the project has steadily assisted 10 to 12 parties a day and has helped as many as 24 people in one day. These people would otherwise often abandon their efforts to obtain restraining orders because of the technical requirements in filing. However, with the Barristers' help, those individuals often get immediate relief, Bryant-Kambe said.

"You get instant gratification," she told the new volunteers. "You see them walking out with a smile on their face."



ROBERT LEVINS / Daily Journal

Attorney Madeleine Bryant-Kambe conducts a class for lawyers on volunteering to help in domestic violence cases.

Something Real

Each of the attorneys at the training session seemed eager to help.

"It is a great opportunity," said Carolyn Covault, comparing the volunteer work to her usual duties as in-house counsel at Texaco.

"It's not the faceless entity," she said. "It's these people that need us the most."

Attorney Angela Oh said she was concerned about domestic violence in the ethnic community.

"This is a big issue in the Korean community," she said. "It's acceptable to people in that culture, unfortunately."

Marie Bacca, an attorney and CPA, said she had been waiting to work with a program like the Domestic Violence Counseling Project since she was admitted to the bar.

"I was looking for this kind of change," she said. "A chance to do something a little more real."

During the periodical training sessions, with the next one scheduled for Aug. 22, Bryant-Kambe gives attorneys a nuts-and-bolts introduction to the practice of obtaining temporary restraining orders. She reviews the forms used to get the orders and tells the lawyers about how the court, clients, police and lawyers interrelate in the process.

"It's not just helping women," Bryant-Kambe said. "Sometimes we're helping children. We get a lot of people, parents of schizophrenics — these are extremely violent people."

She explained that applicants for temporary restraining orders must show an incident of violence within the past month to obtain an order.

"You need some violence in order to get the person excluded from the residence," she said, such as a threat of bodily harm, pushing, or forcing a person into sexual relations. "Any touching like that is enough to get the person out of the house."

She pointed out that a temporary restraining order is effective only against people dwelling in the same residence as the applicant. An order will not work against someone who is living in a detached, separate building, she said.

Bryant-Kambe also emphasized the importance of filling out application forms completely and accurately. For example, she said if there is a school-age child in the home and the order does not include a "stay away" instruction and specify the child's school address, the child will not be legally protected while in school from people who are served with the order.

"When they get served with this order, that's when the child snatching takes place," she said.

Occasionally, an applicant for a restraining order is actually the abusing party, Bryant-Kambe said. She recalled a woman who had sought help in getting an order against an older man, claiming he had beaten her up. Then he showed up at a later hearing.

"He's covered with cuts and bruises," Bryant-Kambe said. "He's a mess."

Fortunately, he was not thrown out of the house.

"We have unfeasible stories everyday, and most of them are true," Bryant-Kambe said. "It's serious business what we do. It does protect people, but it also puts somebody else on the street."

Burned Out

One man, a retired attorney, said he sought out the Barristers project to keep off the street.

Bob Solton, who volunteers two or three days a week to the Domestic Violence Counseling Project, said he had started to get burned out on doing mergers and procurements and retired at age 51 to pursue other interests.

"I wanted to do something unrelated to what I had been doing for the last 15 years," he said.

He saw a posting at the courthouse about the project, and after trying it out, he decided to devote more time to it. He's been a volunteer at Department 8 for three years.

"This is sort of my way of helping humanity," he said. "It's just that certain feeling you get when you make someone's life better."

Activists Overcome Denial

Frontiers June 3 87

Lesbian Battering Issue Gains Attention

by Corinne Lightweaver

Turmoil on the home front is difficult for anyone to deal with. But when you're a lesbian in a community that doesn't recognize domestic violence among its own, where can you turn for help? Police, social service providers and mainstream crisis centers don't exactly sound friendly to lesbians. And until recently, the lesbian community itself preferred to look the other way rather than deal with the fact that women can and are being violent to other women.

"It's an issue that lesbians for the most part have ignored," says Del Martin, author of *Battered Wives* and co-author of *Lesbian/Woman*.

But times are changing. A lot of educating around homophobia has paid off, and battered women's shelters in the Bay Area are increasingly reaching out to lesbians, say lesbian activists.

"I think there's definitely an increased awareness of the issue," says Liz Naidoff, co-director of San Francisco's WOMAN, Inc. and coordinator of the agency's Lesbian Services Program.

The biggest myth is that lesbian battering doesn't happen or that women aren't violent. — *Naidoff*

Denial is one of the greatest problems to overcoming lesbian violence, say experts. Part of denial process is creating or perpetuating myths to avoid dealing with the reality.

"The biggest myth is that lesbian battering doesn't happen or that women aren't violent," says Naidoff. Other myths hold that the batterer must be a "bar dyke" (another stereotype in itself. Naidoff points out) or wants to be a man, that the bigger woman is the aggressor, that the victim stays because she likes it, or that butch-femme roles are involved. One of the most harmful myths is the belief that lesbian violence is somehow different than other types of domestic violence because it "pathologizes lesbians," says Naidoff.

The battering dynamic between lesbians "has less to do with roles, than with one person in the relationship feeling she has to control the other person," says Audrey Martin, MFCC, an Oakland therapist who works with battered lesbians.

"Because of the issue of homophobia and misogyny in general, it makes it very hard for us to talk about this," says Naidoff. Discussion of lesbian violence is so closeted, in fact, that some lesbians who call WOMAN, Inc.'s crisis line for counseling say that although they are in therapy, they have not discussed their battering situation with their therapists.

Naidoff says the denial occurs on three levels: among lesbians and couples themselves, in the lesbian community at large, and in the service provider community.

Despite lack of recognition of the problem at large, a lot has been done around the country to raise the level of awareness. At the National Coalition Against Domestic Violence (NCADV) Conference in St. Louis last summer, Naidoff was one of several presenters speaking on lesbian violence.

A new book, *Naming the Violence: Speaking Out About Lesbian Battering*, edited by Kerry Lobel, is seen by many in the field as a groundbreaking book certain to make information on lesbian battering more accessible to battered lesbians and service providers alike. Formerly Director of the Southern California Coalition on Battered Women, Lobel is currently chair of the NCADV.

WOMEN, Inc. (Women Organized to Make Abuse Non-Existent), which started in 1978, officially began providing lesbian services in late 1984 when the program received a $1,500 grant from the Golden Gate Business Association. Last year, the agency received 140 calls from self-identified lesbians.

The agency offers a 24-hour crisis line with crisis intervention, information and referrals, one-to-one peer counseling, support groups, weekly restraining order clinics, legal advocacy including accompanying women to court, and education and outreach to the community and service providers.

The ten-week support groups consist of 6-8 lesbians with two facilitators. Some of the women have been battered in the past and others are still in battering relationships. WOMAN, Inc. is currently forming another support group and looking for interested participants.

"I think that support groups are probably the most helpful for battered women," says Cheryl Dajczak, a volunteer group facilitator for WOMAN, Inc., "because they learn so much from each other and have an opportunity to break out of their isolation."

While few resources are available for battered lesbians, even fewer are available for lesbian batterers.

Morgaine Wilder, MFCC, has worked with lesbian batterers for four years and runs a group for batterers in San Francisco. Other than a few therapists in the Bay Area working with individuals and couples, and a twelve-step program started six months ago called Overcoming Violent Behavior Anonymous, there are few resources available. Consequently, lesbian batterers must depend on existing resources such as suicide prevention crisis lines and battered women's services, which are often ill-equipped to deal with either a lesbian or a batterer.

"People have a lot of stereotypes about who's the victim and who's the batterer and I don't think those hold true," says Wilder. "There's no profile of a batterer."

Although no statistics are available to substantiate their hunch, many experts believe that the majority of batterers come from battering families where they learned about violence in the home.

"I don't think one violent incident in a relationship constitutes a battering relationship, but it does need to be attended to," says Wilder. If the violence continues, however, the individual or couple needs to seek help, she says.

Wilder emphasizes that people need to take violence seriously. If a friend says she has hit her lover or is being battered, people shouldn't turn away or just listen sympathetically, stresses Wilder. Take action and urge her to get help; intervention is necessary to stop the pattern of violence, says Wilder.

COUNTY

BAR UPDATE

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DOMESTIC VIOLENCE PROJECT PUBLISHES INFORMATION BROCHURE

The Domestic Violence Project of the Association's Barristers has published a new information brochure to assist those in need of the Project's services.

The pamplet, which is being distributed with the assistance of local law enforcement and community organizations, explains the services offered by the Project and tells those involved in a domestic violence situation how to utilize the project in obtaining a temporary restraining order from the Court or in dealing with a restraining order that has been taken out against them.

Located in Department 8 of the Los Angeles Superior Court Central District in downtown Los Angeles, the Project opened its doors in 1982 and moved into the Courthouse in December of 1985. Its present hours are Monday, Tuesday and Thursday from 1:30 p.m. and Friday from 9 a.m.

The Project does not provide representation in family law or other matters, but does provide volunteer lawyers who assist persons involved in a domestic violence situation with the completion of the forms required by the Court to obtain a temporary restraining order. Should the individual require legal assistance, the Project's volunteers provide information on how to obtain legal representation. Referrals to a variety of legal services providers and shelters are also offered.

Barristers Domestic Violence Project Committee Chair Andria K. Richey said, "This new brochure will help many persons who otherwise might not seek assistance with this kind of problem to utilize the valuable services the Project provides."

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Survey Reveals Police More Inclined To Make Domestic Violence Arrests

WASHINGTON (AP) — Police in nearly half the nation's cities make arrests in cases of minor domestic violence rather than trying to mediate or take other actions, a major change over two years ago, a private research organization said Tuesday.

The increased preference for arrests was attributed to a study showing reduced repeat family assaults when police make arrests, to an attorney general's task force report recommending arrests, and to increased awareness of family violence.

A survey of police forces in big and medium-sized cities by the Crime Control Institute found 46 percent reported that arrest was their preferred policy for dealing with minor domestic assaults.

The survey, conducted in June 1986, was released in a report by the institute, a private research organization financed in part by the federal National Institute of Justice.

The number reporting a policy of arrests was up from 31 percent in a similar 1985 survey and just 10 percent in a 1984 survey.

"Arrest is now the preferred policy. That's the first time, probably in history, that has been the case for this kind of offense," said Lawrence W. Sherman, president of the institute and co-author of the report.

Officer Discretion

Police departments previously tended to leave action in minor domestic assaults to the discretion of the officer, to have the officer try to mediate, or to encourage one member of the fighting family to leave the home for a few hours or days.

Sherman and James K. Stewart, director of the Justice Department's National Institute of Justice, cited a 1984 study in Minneapolis that found arrests and overnight jail time seemed to deter repeat episodes of domestic violence.

"The assaulter is told officially that this sort of behavior is a criminal offense," Stewart said at briefing on the survey. "That never happened before . . . There is a very important symbolic statement that says this is illegal behavior."

The federally financed experiment in Minneapolis concluded there was a 2½ times greater likelihood of another assault within six months if there was no arrest when police are called to a domestic assault, Stewart said.

The survey finding represents a major change in thinking by police departments in cases of domestic violence, usually between husband and wife, a woman and her boyfriend, or others with close relationships.

'Family Situations'

Stewart said police have tended to treat such cases as "family situations" which they tried to manage in 15 or 20 minutes, "and move on to the next call." In addition, he said, there was a view in the 1970s that arresting and jailing the assaulter hurt the family economically — and ultimately hurt the woman or victim.

He said the 1984 findings were surprising to police and showed that police "could have an impact on future violence." A 1984 attorney general's task force on family violence recommended a policy of arrests, and several states have changed laws to make it easier for police to make arrests — without the victim pressing charges — in cases of misdemeanor assault.

The findings were based on responses from 146 of 173 cities with more than 100,000 population and a municipal police force. It found that 35 percent of police departments still allow officers total discretion, with the remainder divided between mediation and recommending separation.

Among the cities reporting changing their policy to one of arrests were New York, Los Angeles, Dallas, Denver, Minneapolis and Washington, D.C.

Federally financed studies are being conducted in six other cities — Omaha, Neb.; Milwaukee, Wis.; Charlotte, N.C.; Colorado Springs, Colo.; Atlanta and Dade County, Fla. — to see if arrests makes a difference there.

New York State Grants $40,000 to Gay Antiviolence Group

New York State has given the New York City Gay and Lesbian Anti-Violence Project a $40,000 grant to set up a program to help victims of domestic violence.

The grant, which was made by the state Department of Social Services' Child and Family Trust Fund, will establish what is apparently the first state-funded gay domestic violence program in the country.

David Wertheimer, executive director of the antiviolence project, said the new program will aid lesbians and gay men who are battered by lovers or by other family members.

A full-time staff member will be hired to coordinate services, which will include: setting up a network of "safe homes" where victims can stay on a short-term basis; offering professional and peer counseling; advocating on behalf of clients; and instituting community education and outreach. The program is scheduled to begin Nov. 1.

"Our experience suggests that family and domestic violence is not a phenomenon limited to the heterosexual population," Wertheimer said. "Some lesbians and gay men experience violence directed against them from family members, roommates and lovers. The grant is an important acknowledgement of the problem, and marks a first attempt in New York to address the issue with a significant allocation of public monies."

The program will focus primarily on four New York City boroughs—Manhattan, the Bronx, Brooklyn and Queens. A domestic violence project cosponsored by Lambda Associates of Staten Island and the primarily city-funded Victims Services Agency is already in operation in the fifth borough, Staten Island.

The antiviolence project, a 6-year-old nonprofit social services agency, currently has an annual budget of $153,000, most of which comes from state agencies. It provides an array of services to victims of antigay assaults, ranging from crisis counseling to advocating for victim compensation. Although the organization has frequently received inquiries from battered gay people, it was able to provide only limited services.

In the first seven months of this year, Wertheimer said, the project received 33 calls relating to domestic violence— about 12% of the total calls.

"This is without any outreach," he noted. "These are cases that are coming to us, not because we are seeking them or announcing that services are available. They are individuals who are calling us because there's nowhere else to call.

"We feel that those numbers, from a population where no outreach has been done, are just the tip of the iceberg."

Wertheimer gave several examples of recent calls to the project

David Wertheimer said that "family and domestic violence is not a phenomenon limited to the heterosexual population."

• A gay man who said he had been repeatedly beaten by his lover over the last 1½ years. He called after he finally told his lover to move out and changed the locks only to find his lover attempting to get back into the apartment.

• A lesbian who had been battered in a previous relationship and was finding that this past experience was making her current, nonviolent relationship very stressful.

• A person with AIDS whose lover demanded that he leave their apartment, even though both names were on the lease. When he refused, his lover became physically abusive, forcing him out on the street.

"Many people do not have a place to go and are left without support systems when they experience domestic violence," said Wertheimer. "They feel very isolated and alone. It is for these people in particular that a program like this is most needed. . to assist them as they regain control over their lives and decide how they want to address the problems that they face."

Wertheimer said he hoped that the "safe homes"— apartments and houses offered by trained volunteers—would be used as refuges by gays seeking to leave violent situations. The safe-home hosts will be trained to provide services to the frequently traumatized victims

According to officials at the antiviolence project, one reason a gay-operated domestic violence program is desperately needed is that mainstream service agencies have not dealt adequately with either gay men or lesbians.

"The reception lesbians have received when they have sought help at battered women's shelters has, with one or two exceptions, been less than welcoming," said Ann Lahiff, the project's assistant director.

She said many such programs have only a limited understanding of battering within lesbian relationships, and homophobic attitudes of staff and clients at the shelters make most of them inhospitable to lesbians.

But Wertheimer said the lesbian and, particularly, the gay male communities also need much better education about domestic violence. "Among gay men, there is virtually no awareness of what domestic violence is," he said. "That's one of the problems the program hopes to address."

—Peter Freiberg

Los Angeles Times

Sunday, May 4, 1986

More Arrests for Spouse Beatings: Results Disputed

By DAVE PALERMO, *Times Staff Writer*

Felony arrests for spouse beating have skyrocketed in Los Angeles under new police guidelines, drawing applause from some women's groups but protests from police and prosecutors.

Law enforcement officials say they are being flooded with futile paper work that does little more than blot the reputations of otherwise law-abiding citizens.

The guidelines were worked out as part of the settlement last year of a class-action lawsuit against the city by three women who complained that police were reluctant to arrest wife-beaters.

Procedural guidelines drawn up by the department as part of the settlement require officers to make felony arrests in domestic violence cases even when injuries are minor and regardless of whether the victim wants the case prosecuted, said Sgt. Bob Canfield, an instructor in domestic violence at the LAPD Academy.

As a result, Canfield said, there were 917 felony arrests in domestic violence cases between January and April, a 718% increase over the same period last year.

The new policy pleased attorneys for the women who brought the lawsuit, who alleged that a police double standard led to arrests in most other battery cases but not in cases of domestic violence, leaving many women unprotected.

"It is our hope that this is going to be a very strong message, not only to the individual abuser but to society as well, that this is unacceptable behavior," said Lora Weinroth, an attorney for the three plaintiffs.

"The message is: 'Buster, you don't do that sort of thing. We don't approve of it.' " She added, however, that police may be overreacting to the terms of the settlement.

Some prosecutors and police are concerned that the policy, coupled with a recent amendment to the state Penal Code section on spouse abuse, is burdening police with paper work and needlessly subjecting minor offenders to the trauma of being jailed and left with a felony arrest record.

They contend that the guidelines limit police discretion, forcing officers to make arrests even when the injury is only a scratch. Police also say the guidelines prevent them from considering the likelihood of a successful prosecution or the possibility of a reconciliation between the man and woman.

The three female plaintiffs in the lawsuit, filed in 1979 by San Fernando Valley Neighborhood Legal Services and the Battered Women's Legal Counseling Clinic,

Please see **BEATINGS**, ~~Page 9~~

(over)

Continued from Page 1

said they were beaten by their husbands on several occasions and, despite repeated calls to police, the men were never arrested. They alleged that police discouraged them from seeking criminal charges by saying it was a civil matter, or warning them that a jailed husband could lose his job and the family would have no income.

Lula Mae Thomas of North Hollywood, the first to seek legal action against the city and Police Department, alleged that between 1972 and 1979 she was assaulted at least 15 times by the father of her two children. Thomas said she called police after each beating but he was never arrested.

Becomes Class Action

The suit became a class action when two other San Fernando Valley women joined the litigation.

Under terms of the settlement, approved by the City Council last year, the Police Department agreed to treat victims of domestic violence the same as other battery victims.

The department's 7,000 officers signed the agreement, and a manual titled "Standards and Procedures Regarding Domestic Violence" was circulated throughout the department earlier this year.

The crux of the issue lies in a section of the guidelines, which states in part: "When a California statute provides for alternative felony or misdemeanor charging . . . [officers] shall treat the domestic violence offense as a felony for arrest purposes, and book the suspect on the felony charge in the same manner as they would for similar or identical non-domestic violence offenses."

Complicating the matter is state Penal Code Section 273.5, defining felony spouse abuse, which was amended last year to cover any injury "whether of a minor or serious nature, caused by a physical force."

Section 273.5 cases are considered "wobblers" in law enforcement jargon, meaning charges can be filed either as misdemeanors or felonies. The decision is left to the arresting officer, detective supervisor and prosecutor.

In the past, police either made no arrests or treated such arrests as misdemeanors if the injury was not serious or the victim declined to prosecute.

But police say that because they fear that violating terms of the settlement could lead to additional litigation, they are now making far more felony arrests. They complain that this leads to time-consuming investigations for cases that are then turned over to the district attorney, despite the slim chance that the suspect will be prosecuted.

In addition, some prosecutors are irked at having to spend time reviewing cases they do not believe should have been dropped on their desks in the first place. If deputy district attorneys do not believe there is sufficient evidence to prosecute a spouse beating as a felony, they must either reject the case or send it to the city attorney's office, where it can be prosecuted as a misdemeanor or dismissed.

"Look at this, a scratch on the stomach," said a prosecutor, who asked to remain anonymous, of the evidence in a case he was given. "What am I doing with this? They [police] know better."

Not Many Prosecuted

For example, of the 94 felony domestic violence arrests turned over to the district attorney's branch office in Van Nuys so far this month, six resulted in felony prosecutions. Fifty-three were rejected and 35 were referred to the city attorney's office.

The reduction of many felony arrests to misdemeanors is not unusual, noted Deputy City Atty. Alan Dahle. He said that about 85% of felony arrests for all crimes are eventually prosecuted as misdemeanors.

Police also charge that the new policy is detrimental to the victims and their families.

West Valley detectives cite as an example a married couple who got into an argument two weeks ago and began flailing at each other. When officers arrived at their Canoga Park home, the wife had a small cut on her knee and the husband had a scratch on his face.

Neither wanted the other arrested, police said. But they were handcuffed, arrested for felony spouse abuse and spent the night in the West Valley Division Jail.

"These aredecent people," said Lt. Bill Gaid. "Both are in their mid-30s, both have jobs and no prior arrests. They do some drinking and get into a fight, a shoving match, really.

"We arrest both of them. We take it to the D.A. and he rejects it. The city attorney also rejects it. No charges are filed. But they've got a felony arrest record."

Attorney Weinroth said the problem is not with the new guidelines or the change in the Penal Code, but rather in the way they are being interpreted by police.

"The discretion is not, *not*, removed 100% from the police officer," she said. "It is not true to say that the Thomas case mandates police to arrest under 273.5 when somebody has a teensy-weensy scratch. They must behave in cases of domestic violence, batteries and assaults as they do in all batteries and assaults, and that's it.

"The plaintiffs' concern was with cases in which the police did nothing at all or so little that it was ridiculous. In the LAPD, it was a matter of the highest policy and practice to do nothing."

Weinroth said she is not greatly concerned that cases of domestic violence are rarely prosecuted because of a husband or wife's unwillingness to testify. She said a recent Minneapolis study of domestic violence showed that "the single most meaningful deterrent was the arrest, not the prosecution."

Police may be overreacting because they resented the settlement, she added. "Perhaps they're going just a little bit overboard because nobody likes to be told what to do," Weinroth said.

But Dahle, the deputy city attorney, speculated that police handling domestic violence cases worry about their responsibility under the terms of the settlement.

"They're just trying to cover themselves," Dahle said. "The officer doesn't want to make the decision so he leaves it up to the sergeant. The sergeant doesn't want to make it, so he leaves it up to the lieutenant and the lieutenant says, 'To heck with it. Let's dump it in the D.A.'s lap.' "

LAPD Operations Cmdr. Keith Allen said the department this month will review the handling of domestic violence arrests and consider whether the current policy should be changed.

LATIMES, 8/5/86 - Metro p. 1

7% Rise in L.A. Crime Blamed Mostly on New Domestic Violence Reporting

By JACK JONES,
Times Staff Writer

Crime appears to be growing again in Los Angeles, Police Department figures for the first six months of the year indicated Monday, but officials attributed much of the increase in numbers to a new state law requiring officers to report all incidents of domestic violence and to make arrests.

If the domestic violence cases were subtracted, the current 7.1% increase in reported crimes would be only 2.8%, said Lt. Dan Cooke, department spokesman.

The effect of the new state law has been to sharply boost the number of aggravated assaults reported, particularly in some South Bureau divisions. In 77th Street Division, for example, the number of aggravated assaults reported for the first six months of this year totaled 1,902, compared to 1,110 for the same period last year. There were similar sharp increases in aggravated assault reports for Southwest and Southeast divisions.

Where many officers previously tried to settle domestic quarrels without taking official action, Cooke pointed out, "We are required by the new law to take reports and make arrests. It doesn't leave us much alternative."

The change was largely prompted by concerns over physical harm to women by husbands or boyfriends who frequently had drawn no more than police warnings, despite a pattern of violence and threatening behavior.

Deputy Chief Jesse Brewer, commander of the South Bureau, said he was unable to estimate how much of the increase in aggravated assault reports was a result of the new law.

"The only thing I can say," he said, "is that detectives handling crimes against persons did have a dramatic increase in their workload during the first six months. How much of that was domestic violence, I don't know. Certainly, gang violence is still going on."

Even a 2.8% increase suggested that Los Angeles may not be able to buck the national upward trend in reported crimes, as it did in 1985. At the mid-point a year ago, a total of 146,551 crimes had been reported citywide—only a dozen more than had been reported by June 30, 1984.

Los Angeles actually registered a 6.9% decrease in overall crimes for all of 1985, while the nation as a whole had a 4.6% increase.

As of this June 30, 156,958 crimes had been reported in all Los Angeles Police Department divisions. The figure includes the aggravated assault cases that were not always reported.

The significance of a 2.8% increase for the first six months is not yet clear, Cooke noted, because "almost all crime peaks in March and April, then tails off during the summer." Weather, economic fluctuations and other factors, he said, could affect the rise or fall in the numbers of crimes and arrests.

"Who knows what causes crime to go up?" he said. "Invariably, I'm asked whether it's caused by Santa Ana winds or whether the full moon affects crime."

Much of the local decrease for 1985, Cooke said, was because of emphasis on the breakup of street gangs, the arrest of gang leaders and sting operations, such as those by the West Side Major Crimes Task Force that put a crimp in the operations of theft rings.

LOS ANGELES CRIME REPORTS

These Los Angeles Police Department statistics compare reported crime for the first six months of 1986 (shown in bold type) with statistics from 1985. The figures are listed by police division.

Crime	Total	Central Bureau					South Bureau				West Bureau				Valley Bureau				
		Cent.	Hollenb.	Newton	N.E.	Ramp.	Harbor	S.W.	77th	S.E.	Holly.	Pacific	W.L.A.	Wilshire	Devon.	Foothill	N.Holly.	V.Nuys	W.Val.
Homicide	**384**	**39**	**15**	**38**	**15**	**34**	**13**	**24**	**50**	**47**	**20**	**12**	**4**	**30**	**1**	**13**	**13**	**9**	**7**
1/85-6/85	367	27	14	29	5	46	16	35	48	39	18	12	4	26	5	16	9	7	11
Rape	**1,174**	**65**	**57**	**76**	**35**	**88**	**36**	**95**	**123**	**110**	**84**	**51**	**36**	**73**	**24**	**61**	**40**	**69**	**51**
1/85-6/85	1,119	50	50	69	39	82	38	85	122	110	83	61	38	64	22	50	56	53	47
Robbery	**14,074**	**1,691**	**453**	**895**	**355**	**1,085**	**381**	**1,256**	**1,548**	**962**	**916**	**658**	**471**	**1,469**	**218**	**443**	**335**	**582**	**374**
1/85-6/85	13,987	1,276	478	854	377	1,159	320	1,429	1,361	937	1,016	663	572	1,632	202	401	384	549	377
Assault	**16,095**	**910**	**561**	**1,302**	**517**	**1,503**	**590**	**1,150**	**1,902**	**1,385**	**837**	**584**	**336**	**1,130**	**351**	**891**	**651**	**867**	**619**
1/85-6/85	9,882	720	454	813	351	927	405	795	1,110	798	531	398	199	531	216	530	370	483	351
Burglary	**32,658**	**1,330**	**1,204**	**1,427**	**1,674**	**2,391**	**1,707**	**1,603**	**2,114**	**1,377**	**1,983**	**2,085**	**1,616**	**2,060**	**1,335**	**1,726**	**1,842**	**2611**	**2573**
1/85-6/85	32,054	1,150	1,214	1,758	1,992	2,250	1,287	1,783	1,941	1,309	1,923	1,909	1,619	2,333	1,455	1,785	1,747	2,364	2,325

Los Angeles Times

7-8-86 L.A. Times

Murders: History of Family Violence

By JANICE MALL

A new USC study of women accused of murder has found that most such crimes represent a perpetuation of family violence.

Nancy Kaser-Boyd, a USC clinical assistant professor of psychiatry and director of psychology at Ingleside Hospital in Rosemead, conducted a study of 35 female murder suspects who had been referred by judges for pretrial psychological examination. These represented about half of the female homicide suspects referred by Los Angeles Superior Court for evaluation between 1978 and 1984.

All but one of the suspects had a childhood history of family violence or neglect; 70% of the murders were acts of family violence, committed against family members or intimates.

Rarely Occurs

"Murder by women is not common. It rarely occurs outside a certain set of circumstances," Kaser-Boyd said. "The pattern that emerged among our study subjects was a history of victimization, plus some combination of factors like drug or alcohol abuse that reduces coping ability. At some point, something snaps and they act to protect themselves or their self-esteem."

The findings suggest that there would be very few homicides committed by women if family violence were reduced. The greatest number of women suspects—36%—were accused of killing their husbands or boyfriends, and three-quarters of these women said their mates had repeatedly battered and threatened them. Another 30% were accused of killing their children, 30% of killing strangers or casual acquaintances, 6% siblings and 6% parents.

Very few had previous records of violent offenses. In none of the cases was profit a motive.

Those who were accused of killing their children or their parents were the most seriously disturbed, Kaser-Boyd said, pointing out that psychotic disorders and child abuse are common among people (men as well as women) who were themselves abused as children.

Killers of Strangers

Those who killed strangers or acquaintances exhibited no pattern. One, for example, involved a mentally ill woman who killed a victim by setting fire to a house; another shot someone who intruded in her yard. Drug or alcohol abuse was a problem for more than half the women in the study. Most also were undercut in their abilities to cope with their lives by below-average IQs, fewer than 10 years of education and the lack of stable jobs.

In a follow-up to the study, it was found that most of the women had committed the crimes of which they were accused. Only 5% were acquitted. Forty percent pleaded guilty to lesser charges such as manslaughter, and of these, two-thirds received probation rather than prison sentences. About 30% were found not competent to stand trial or not guilty by reason of insanity.

While less than one-fifth of the homicides nationally are committed by women, these represent a substantial number—there are some 15,000 to 18,000 homicides a year. The numbers would be reduced if family violence, particularly child abuse, were eliminated, Kaiser-Boyd said. She recommended measures including a tougher stand on family violence by police and courts and increased funding for social services to protect children.

"I see how overstressed the department of social services and the courts are," Kaser-Boyd said, and also that despite California's good law allocating funds for battered women's shelters, there still isn't enough space to meet the need.

However, she said, "If we think about reducing violence in our society, we will have to reduce violence in the home. People aren't born violent unless they have some brain disorder. People learn violence."

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High School in Sepulveda, Wu plans a career in diplomacy, or international relations. She has a good start as an internationalist. She has studied five languages—Italian, Spanish, Mandarin Chinese, Russian and French—lived and studied in France and Italy and won her internship for an essay she wrote on the United States' role in South Africa as well as for her academic achievement, which includes election to Phi Beta Kappa, and interest in international affairs.

"Peace is the issue that can encompass all levels of interaction among countries, including arms control, trade and foreign policy," Wu said.

Wu is also a fencer, served as president and team captain for UC Berkeley's Fencing Club and recently qualified for the Pacific Coast championships in women's foil and women's epee.

State of California — Department of Justice

Memorandum

To : RANDY ROSSI
Acting Director
Crime Prevention Center

Date : June 3, 1986

File No.:

Telephone: ATSS ( )
( )

From : MICHAEL JETT, Senior Field Deputy — CYNTHIA KATZ, Field Deputy
Office of the Attorney General—Sacramento

Subject: FAMILY VIOLENCE PREVENTION PROGRAM PLANS - FISCAL YEAR 1987-1988
(INCLUDES: CHILD ABUSE - SPOUSAL ABUSE - ELDER ABUSE)

Need Statement

The mission of the Attorney General's Crime Prevention Center is to initiate and promote policies and programs to improve the quality of life in California through the prevention or reduction of crime. Preventing or reducing crime in California involves efforts to help citizens avoid becoming victims of crime or assisting those who have already been victimized. Efforts can be targeted at preventing crimes against their property or crimes against their persons, i.e., crimes of violence.

The most common and devastating form of violent crimes are those committed by one family member upon another. These crimes - child abuse, spousal abuse and elder abuse - perpetuate the cycle of violence in the family and in our society. The cost is immeasuable in terms of the criminal justice system and health and economic consequences.

In California, 60,627 cases of child abuse were investigated in 1985, according to Department of Justice (DOJ) statistics. There were 8,627 reports of elder abuse in California in 1984, according to the Department of Social Services, and elder abuse reporting statutes and public awareness of this problem are recent. The Select Committee on Aging of the United States House of Representatives found that one in every 25 older Americans is likely to become a victim of some form of abuse and neglect.

A 1985 national study on the incidence of family violence by Dr. Murray A. Straus of the University of New Hamshire and Dr. Richard J. Gelles of the University of Rhode Island, reports a rate of violence against children (age 3-18) of 620 per thousand and a rate of child abuse (age 3-18) of 19 per thousand. The study also reports a rate of violence in couples of 158 per thousand (113 per thousand against wives), and the rate of severe violence in couples of 58 per thousand (30 per thousand against wives). (1670) 2 couples

To combat this serious incidence of violence against family members, we are proposing a comprehensive Family Violence Prevention Program as a component of a broader CPC Youth and Family Crime Prevention Program which also includes the Youth Drug and Alcohol Abuse Prevention Program and the Safe Schools Program.

The components of this comprehensive Family Violence Prevention Program include a major statewide roundtable on "Why Are Families Violent?", a Family Violence Survey, a Family Violence Task Force, and family violence PSAs and publications, as detailed below in the goals and objectives.

Goals and Objectives

The goals of the Family Violence Prevention Program for 1986-1987 are:

- to influence public policy concerning family violence, including child abuse, spousal abuse and elder abuse;
- to promote effective criminal justice and community response to family violence prevention;
- to encourage the child abuse, spousal abuse and elder abuse constituencies to undertake joint efforts to address common problems; and
- to increase public awareness of the problem of family violence.

These goals will be achieved through attainment of the following objectives:

A. Training and Education

- Objective 1

  Sponsor a state roundtable or symposium on family violence entitled "Why Are Families Violent?"

  (1) Implementation

  It is proposed that the Attorney General sponsor a two-day state roundtable on family violence patterned after the "Why Is Crime Down?" Conference sponsored by the Department of Justice (DOJ).

  The purpose of the conference would be to attempt to define the problem of family violence in California. The conference would attempt to answer the following five questions:

  - What are the causes of family violence?
  - What is the incidence of family violence?
  - What factors are common to all forms of family violence?
  - Which interventions have shown the most promise?
  - How can the separate constituencies work together?

  The conference would be an invitational conference and the speakers would be state and nationally renowned academicians, policy makers and practitioners.

(2) Evaluation

Report on the findings of the conference and participant evaluation of the conference.

(3) Budget

It is estimated that the two-day conference will cost approximately $32,000. It is proposed that corporate donations and cosponsorship be actively pursued.

B. Research/Survey

. Objective 1

Conduct a research survey on the incidence of family violence in California.

(1) Implementation

It is proposed that the Attorney General authorize a research survey on the incidence of family violence in California. Two options are proposed:

Option 1:

In 1985, Dr. Murray A. Straus of the University of New Hampshire and Dr. Richard J. Gelles of the University of Rhode Island conducted a national research project entitled "Societal Change and Change in Family Violence from 1975 to 1985 as Revealed by Two National Surveys." Dr. Straus indicates that the California sample is statistically significant and could be analyzed to determine the incidence of family violence, i.e., child abuse and couple violence, in California.

Option 2:

Contract to design and conduct an original research project on the incidence of all forms of family violence in California.

(2) Evaluation

Not applicable.

(3) Budget

Option 1: Approximately $10,000.

Option 2: Approximately $47,000.

C. Task Force

. Objective 1

Establish a California Family Violence Prevention Task Force.

(1) Implementation

Having defined the problem of family violence through the "Why Are Families Violent?" Roundtable and the incidence through the Family Violence Survey, a Family Violence Prevention Task Force could be established to develop practical solutions to address the threefold problem of child abuse, spousal abuse and elder abuse in California.

(2) Evaluation

Report on the results of the Family Violence Prevention Task Force efforts.

(3) Budget

The task force budget is estimated at $10,000.

D. Legislation and Regulations

. Objective 1

Produce public service announcements (PSAs) on family violence prevention specially for elder abuse and spousal abuse.

(1) Implementation

CPC has previously produced a very successful child abuse prevention PSA entitled "Tell Someone," starring Ricky Schroder of "Silver Spoons."

Similar PSAs should be developed for elder abuse and spousal abuse.

(2) Evaluation

Descriptive evaluation of free play time for each PSA.

(3) Budget

It is estimated that $65,000 will be needed for each PSA, for a total of $130,000.

- Objective 2

  Produce and distribute a family violence prevention package of publications.

  (1) Implementation

  It is proposed that CPC produce publications to support the Family Violence Prevention Program. Two options are proposed:

  Option 1:

  Develop an *Elder Abuse Prevention Handbook*, a *Domestic Violence Prevention Handbook*, and update the *Child Abuse Prevention Handbook* and distribute separately or as a package.

  Option 2:

  Develop a comprehensive *Family Violence Prevention Handbook*.

  (2) Evaluation

  Descriptive evaluation of use.

  (3) Budget

  Option 1: $70,000 total for 50,000 copies of each of the three handbooks. ($30,000 each for the *Elder Abuse Prevention Handbook* and *Domestic Violence Prevention Handbook*, and $10,000 for updating the *Child Abuse Prevention Handbook*.)

  Option 2: $30,000 for 50,000 copies of the comprehensive *Family Violence Prevention Handbook*.

MICHAEL JETT
Senior Field Deputy

CYNTHIA KATZ
Field Deputy
Crime Prevention Center

MJ:ims