

Access Denied: The Problem of Abused Men in Washington

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INTRODUCTION

The scenario would rival any made-for-TV movie. A man is crouched on the floor struggling to make his VCR work when suddenly his wife comes at him with a baseball bat. She literally has to push their daughter out of the way in order to reach him. Although she does not strike him, his wife continues to threaten him with the bat until she finally drops it and runs out of the house. The husband calls the police, who arrive and take the bat as evidence. Eventually, the police arrest the wife.

This behavior is not a one-time occurrence. The wife has hurled fax machines, televisions, and other objects through the air at her husband. She has made threats of physical harm, including a death threat. All these behaviors emanate from the wife while the husband does his best to protect himself and the child. Over time, the situation does not improve. Eventually, they file for dissolution and a fight for custody ensues. The husband seeks to obtain a Domestic Violence Protection Order, but the commissioner refuses. Despite the husband's careful documentation of the continued threatening behavior of his wife, the commissioner orders mutual restraining orders. These orders have neither the protection nor the significance of a Domestic Violence Protection Order.¹

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The legal battle continues and the husband wins a victory. Even though he is not the child's natural father, the husband receives custody after a long and expensive legal dispute. However, at the final custody hearing, the judge steadfastly refuses to recognize that there was a history of domestic violence in the family. Although the husband was the only one who offered evidence as to abuse, and despite the fact an arrest was made and contained in the record (though not presented as evidence at trial), the judge denies the fact that an assault ever occurred based on the statutory definition. When the husband's counsel presses the issue, the judge threatens to analyze the husband's credibility. This leaves a huge hole in the case record as to why the mother was unfit to care for the child and could potentially cause problems later on. Because no history of domestic violence against the husband officially appears on the record, the husband is offered no protection.

Unfortunately, the above story is not a fictional portrayal but an actual Washington court case.² A gross inequality exists between men and women in the treatment of domestic violence situations. Finding justice is nearly impossible for abused men due to the current interpretation of domestic violence by the legal system.³ From the responding officers to the presiding judge, an abused man faces an uphill battle: Who is going to believe a big hulking man could be afraid of his petite wife?

In fact, "domestic violence" is so synonymous with the term "battered women" that male victims of abuse often find their female abusers labeled as the victim.⁴ While the societal focus on battered women serves to bring the issue of spousal abuse and domestic violence to the forefront, society's definition of a battered spouse must expand to include heterosexual men. Washington's domestic violence laws appear to take this into account with their facially gender-neutral language; nevertheless, in practice and as applied, courts and other state actors often engage in gender profiling, rendering illusory the protections allegedly afforded men as victims of intimate partner violence. Because Washington has failed to expressly include men

1. See WASH. REV. CODE § 26.50.030, Findings, 1992 ch. 111 (2000).

2. This case was a custody case at the trial level. The author worked for the attorney who represented the male victim and attended the trial. While the man in question was happy to have his story serve as the inspiration for this article, due to the personal nature of the case, he did not give permission for the author to use his name.

3. Lisa Scott, *Gender Bias No Cure for Domestic Violence*, THE SEATTLE TIMES, Oct. 24, 2001.

4. Lisa Scott, *Gender Profiling Prevalent in Domestic Violence*, EASTSIDE JOURNAL, Feb. 13, 2001, at A8, available at <http://www.tabs.org/article.htm> (last visited Apr. 25, 2004).

under domestic violence protection laws, men have few, if any, avenues for legal recourse. It is time for Washington to include men battered by their spouses or domestic partners as a cognizable group deserving protection under the law in the form of both social and legal services.

This Comment explains how the Washington legislature and court system have failed to provide abused men with much needed protection, despite a law that is facially gender neutral. Following this Introduction, Part II explores the wording of Washington's domestic violence statutes and analyzes the current implementing regulations. Part III demonstrates that the problem of abused men is legitimate by examining increasing social awareness and the results of current studies. By examining the prevailing national viewpoint embodied in the Violence Against Women Act, Part IV discusses how such a viewpoint adversely affects the availability of resources for abused men. Part V looks at how the judiciary interprets domestic violence law. In conclusion, Part VI posits ideas on how Washington State can improve its treatment of abused men in order to conform to the gender-neutral language of its statute and remedy this important, though often secret, problem.

II. WASHINGTON DOMESTIC VIOLENCE LAW: THE HIDDEN BIAS

The main law in Washington relating to the problems of domestic violence is the Domestic Violence Protection Act, codified in the Revised Code of Washington (RCW) section 26.50, Domestic Violence Protection.⁵ As the terms of the statute are gender neutral, the assumption is that the law offers equal protection to both male and female victims of domestic violence.⁶ This part of the Comment examines the Washington domestic violence statute and its implementing regulations, along with other related statutes, detailing ways that their supposed gender neutrality is illusory in practice.

A. Washington's Domestic Violence Protection Act: Protection for Some

The gender-neutral term "spouse" appears throughout the Domestic Violence Protection Act, and all language is couched with the he/she/his/her pronouns.⁷ The definition of domestic violence is also gender neutral, defining it in terms of sexual abuse, stalking, and "[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or

5. WASH. REV. CODE § 26.50 (2000).

6. *Id.*

7. *Id.*

household members.”⁸ The statute does not contain any standards or elements to satisfy in order to prove that domestic violence occurred. A petitioner who files a complaint for relief, such as a restraining order, must allege that domestic violence occurred and provide an affidavit that describes what happened.⁹ No specific requirements as to the evidence required or the credibility of such evidence exists, although the petitioner must swear to the affidavit.¹⁰ No weighing mechanism exists for determining if a specific incident equals the violence the statute intends to address.

Specificity as to what constitutes “infliction of fear” is lacking. The only guidance given is found under a separate statute, RCW section 10.99.20, which lists the crimes for which a police officer may make an arrest.¹¹ This is not guidance for judges; the Domestic Violence Protection Act does not require that the domestic violence alleged be an offense that would necessitate arrest, but allows anyone to allege domestic violence has occurred, even if the police are not called. This lack of detail and definition makes it evident that the judge has the discretion to determine whether the alleged act meets the above definition in the required hearing.¹² Such unchecked discretion is dangerous, since judges are only human and may share the prevailing societal bias that heterosexual men are not abused at the hands of their wives.¹³

While the Domestic Violence Prevention Act is gender neutral in theory, in practice the protections and resources it provides are for women only. Gender profiling is evident in the resources available for victims and the batterer’s treatment requirements.

The Domestic Violence Protection Act requires that the Washington State Department of Social and Health Services (DSHS) must provide standards for domestic violence perpetrator programs in accordance with the qualifications set out by the Act.¹⁴ These programs must be able to satisfy court orders.¹⁵ Washington Administrative Code (WAC) section 388.60 tells the DSHS how it must conduct the batterer’s treatment program as required by RCW

8. *Id.* § 26.50.010(1)(a).

9. *Id.* § 26.50.030(1).

10. *Id.*

11. *Id.* § 10.99.20(3).

12. *Id.* § 26.50.060.

13. See *ABC News: 20/20* (ABC television broadcast, Feb. 7, 2003), transcript available at 2003 WL 9192612 (Despite Preston Kincaid’s story of being abused by his wife and despite evidence and her admission that she abused him, the judge ordered him to attend anger management classes.).

14. WASH. REV. CODE § 26.50.150 (2000).

15. *Id.*

section 26.50.¹⁶ Although the regulation does not explicitly say that batterer treatment services are only for men and victim services are only for women, several references indicate the true intent of the regulation.

First, DSHS is required to provide a victim with a list of available services, including the name of an emergency shelter and specific outreach programs.¹⁷ Currently, no official state services exist for battered and abused men, confirming the institutionalized assumption that all victims are women. In practice, the state does not follow the requirements of its own code.

Second, while the code states it cannot discriminate for treatment based on gender, among other factors, it also requires that all treatment groups be of a single gender.¹⁸ Because men are viewed as the batterer in most instances, it is unlikely women will ever be referred to or treated as abusers, especially when it is a requirement that all treatment groups be of a single gender.¹⁹

Third, in explaining the requirements of the curriculum of a batterer's treatment program,²⁰ the Code's first requirement is an explanation of "belief systems which legitimize and sustain violence against women."²¹ No equivalent instruction exists regarding violence against men. Clearly, if women were also believed to be batterers, the wording would be gender neutral and discuss belief systems about violence against anyone—not just women—or explicitly make provisions for female batterers.

Fourth, in implementing a domestic violence education program, the legislature clearly intends it to be for the protection of women only. Although not part of the Domestic Violence Protection Act, in a separate part of the Washington Code the legislature directs the DSHS to establish a domestic violence education program for health care professionals.²² The first sentence of this directive reads, "The legislature finds that domestic violence is the leading cause of injury among women and is linked to numerous health problems"²³ The rest of the language in the section is gender neutral, but the directness of the above sentence highlights the legislative intent: women are the only victims of domestic violence. Despite the

16. *Id.* § 26.50.150; WASH. ADMIN. CODE § 388-60-0025 (2002).

17. WASH. ADMIN. CODE § 388-60-0065.

18. *Id.* §§ 388-60-0105, -0085.

19. *Id.* § 388-60-0085.

20. *Id.* § 388-60-0245.

21. *Id.*

22. WASH. REV. CODE § 43.70.610 (2000).

23. *Id.*

supposed gender neutrality of the Domestic Violence Protection Act and other state statutes, an examination of how the state plans to put its domestic violence treatment program into action reveals a clear expectation that men will always be the batterers and women will always be the victims.

B. Police Officer Bias

Police officers in Washington receive direction on handling domestic violence situations under RCW section 10.99, which requires them to attend a certain number of hours of training and instructs them on how to handle a domestic violence call.²⁴ Again, while all of the language regarding the victims and perpetrators is facially gender neutral,²⁵ in advising the victim on a call as to how to prevent future abuse, the written statement the officer is required to provide is explicit in listing battered women's shelters.²⁶ RCW 10.31.100(2)(c) requires the police to make an arrest if they believe an assault has occurred in a domestic violence situation.²⁷ The police are to arrest the person whom "the officer believes" to be the primary aggressor.²⁸ In determining who this person is, the police may consider the following factors: (1) the need to protect victims of domestic violence; (2) the comparative physical injuries; and (3) the history of domestic violence between the parties.²⁹ While this seems like sound criteria, it leaves a lot of room for interpretation because it revolves around the specific officer's beliefs. In practice, the police officers will likely expect the woman to be the victim and the man to be the abuser.³⁰ This preconceived notion colors the officers' perceptions when responding to a domestic violence call and means the male victim is at a disadvantage from the moment he picks up the phone to call the police for help.

24. *Id.* § 10.99.030(2), (5)–(8).

25. *Id.* § 10.99.020(1).

26. *Id.* § 10.99.030(7).

27. *Id.* § 10.31.100(2)(c).

28. *Id.*

29. *Id.*

30. David Crary, *Battered Men in the Gender Wars, Another Flashpoint*, THE SEATTLE TIMES, June 16, 2001, at A3, available at 2001 WL 3512365 (quoting Rita Smith, Executive Director of the National Coalition Against Domestic Violence, that it would be dangerous for police to ignore the fact that men chose violence more often than women).

C. Non-Availability of Shelters for Men

The final domestic violence-related statute, RCW section 70.123, discusses the shelters for victims of domestic violence.³¹ Again, all of the language is facially gender neutral, including a reference to making the batterer pay for his or her crimes.³² However, in reality, no shelter for men appears on the list of shelters in Washington.³³ To be fair, some of the shelters have gender-neutral names, so it is not clear whether men are welcome.³⁴ However, all listed services that are not gender neutral are female specific.³⁵ In addition, the brochures handed out identifying these shelters do not use gender-neutral language, indicating the intent that these services are for women only.³⁶ Encouragingly, some private shelters do seem to be trying to fill the gap for male victims of domestic violence, but their services are not state funded, not well advertised, and not always clear as to the services offered.³⁷ In practice, this law only appears to serve women victims of domestic violence and does not explicitly serve men, if it serves them at all.

D. Battered Women's Syndrome: Entrenched Gender Stereotypes

Although Washington has not codified the battered women's syndrome, it is admissible as a defense,³⁸ as will be discussed later in this Comment. Other states, such as Ohio, have chosen to codify battered women's syndrome.³⁹ An attempt was made to make the Ohio law gender neutral by changing the wording to include "battered husbands" and "battered person syndrome."⁴⁰ The Ohio Senate rejected that attempt, finding that battered spouse syndrome and battered person syndrome lack the backing of scientific evidence, as

31. WASH. REV. CODE § 70.123 (2000).

32. *Id.* § 70.123.140(2)(e).

33. The Sounding Board Counseling Center, *Domestic Violence Shelters: Washington State*, available at <http://www.sboard.org/SHELTERS/WA.HTM> (last visited April 22, 2004).

34. *Id.*

35. *Id.*

36. KING COUNTY COALITION AGAINST DOMESTIC VIOLENCE, *LOVE SHOULDN'T HURT* (2002) [hereinafter *LOVE SHOULDN'T HURT*].

37. See, e.g., MenWeb, *Help for Battered Men—Washington State Resources*, at <http://www.batteredmen.com/bathelpwa.htm> (last visited Apr. 25, 2004).

38. *State v. Riker*, 123 Wash. 2d 351, 359, 869 P.2d 43, 47 (1994).

39. Lauren Goldman, Note, *Nonconfrontational Killings and the Appropriate Use of Battered Child Syndrome Testimony: The Hazards of Subjective Self-Defense and the Merits of Partial Excuse*, 45 CASE W. RES. L. REV. 185, 195 n.40 (1994) (referring to OHIO REV. CODE § 2901.06).

40. *Id.*

opposed to battered women's syndrome.⁴¹ Clearly, strong resistance exists to enacting protections that would encompass all abused people. This resistance by lawmakers forces men to carry a larger burden in proving their right to protection and defenses.

III. BATTERED HETEROSEXUAL MEN AS A LEGITIMATE GROUP

A. Battered Men Compared to Battered Women

Treatment of the problem of battered women has come a long way since the 1970s. The women's movement brought the subject of domestic violence, specifically the plight of battered women, to the forefront.⁴² The message was clear: a woman is no longer merely the property of her husband, and she is not his to treat any way he pleases.⁴³ A focus on standards of decency and a belief in human rights created a demand for husbands who abused their wives to have a day of reckoning. The notion gained acceptance and legal reforms for battered women began to take shape.⁴⁴ In 1994, Congress passed the Violence Against Women Act (VAWA),⁴⁵ bringing significance and legitimacy to the plight of the battered woman at the national level.⁴⁶

For abused men, little has changed since the 1970s. In 1977, husband beating was "hidden under a cloak of secrecy."⁴⁷ Society has ignored the problem of husband beating due to scarce data, lack of attention from both researchers and the media, men's embarrassment to admit that women abuse them, and the differential in physical damage that either sex can inflict.⁴⁸ Very few studies on husband

41. *Id.* (citing Laura H. Martin, Note, *Ohio Joins the Majority and Allows Expert Testimony on the Battered Woman Syndrome*, 60 U. CIN. L. REV. 877, 889 n.85 (1992)).

42. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, NCJ 172837, PREVALENCE, INCIDENCE AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 1 (1998) [hereinafter VIOLENCE AGAINST WOMEN SURVEY].

43. Phyllis Goldfarb, *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence*, 64 GEO. WASH. L. REV. 582, 599 (1996).

44. *Id.*

45. J. Rebekka S. Bonner, Note, *Reconceptualizing VAWA's "Animus" for Rape in State's Emerging Post-VAWA Civil Rights Legislation*, 111 YALE L.J. 1417, 1417 (2002). President Clinton signed the VAWA on September 13, 1994. *Id.* The VAWA is codified as amended in various sections of chapters 8, 18, and 42 of the United States Code. *Id.* at 1417 n.3.

46. WASHINGTON STATE OFFICE OF CRIME VICTIMS ADVOCACY, VIOLENCE AGAINST WOMEN STOP GRANT (VAWA), available at <http://www.cted.wa.gov/DesktopDefault.aspx?tabid=114&tabindex=55> (last visited Apr. 25, 2004) [hereinafter STOP GRANT].

47. Suzanne Steinmetz, *Wifebeating, Husbandbeating—A Comparison of Physical Violence Between Spouses to Resolve Marital Fights*, in BATTERED WOMEN 63, 64 (M. Roy ed., 1977).

48. Suzanne Steinmetz, *Women and Violence: Victims and Perpetrators*, 34 AM. J. PSYCHOTHERAPY 334, 341 (1980).

beating are in existence and most of the evidence that does exist comes through examining divorce papers and reading the random newspaper article.⁴⁹ In 2004, the information sources are largely unchanged since the 1970s, and husband beating still appears to be secret, although a few brave men have been willing to come forward and speak out about their situations.⁵⁰ Examining the latest statistics and what these men have accomplished will show battered and abused men do indeed exist.⁵¹

B. Current Statistics Show Both Men and Women Suffer Spousal Abuse

Statistics from a Department of Justice study show that men in the United States suffer battering and even murder at the hands of their intimate partners.⁵² While the study indicates a decrease in intimate partner deaths for both men and women, men still suffer at the hands of their female partners.⁵³ In 1996, men constituted almost one-third of deaths caused by intimate partners.⁵⁴ While eight of every 1,000 women are victims of intimate partner violence, one of every 1,000 men is also a victim.⁵⁵

Although intimate partner violence tends to have a more specific focus, perhaps the numbers on domestic violence in general are more telling. Another Department of Justice study indicates men are victims of domestic violence thirty-nine percent of the time, or 834,732 men are victims each year.⁵⁶ Based on these national numbers, a battered men's group in Washington estimates that as many as 25,473 men in Washington suffer abuse each year.⁵⁷ These statistics show battered and abused men do exist and are a legitimate

49. Steinmetz, *supra* note 47, at 65.

50. See MenWeb, *Battered Men's Stories*, at <http://www.batteredmen.com/index.htm> (last visited Apr. 25, 2004); PHILIP W. COOK, *ABUSED MEN: THE HIDDEN SIDE OF DOMESTIC VIOLENCE* (1997).

51. The purpose of focusing on battered and abused heterosexual men is to bring attention to merely one of the marginalized groups in the area of domestic violence. Battered gay men and battered lesbian women also exist, as do battered children and elderly people. While detailed discussion of these groups is generally beyond the scope of this Comment, the author believes that anyone who is a victim of domestic abuse should be able to benefit under domestic violence laws.

52. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 167237, *VIOLENCE BY INTIMATES, ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS*, at v-vi (1998).

53. *Id.*

54. *Id.* at v.

55. *Id.* at 3.

56. VIOLENCE AGAINST WOMEN SURVEY, *supra* note 42, at 7.

57. 1 BERT HOFF, *BATTERED MEN IN WASHINGTON SILENT FOR TOO LONG 1* (Men's Voices ed., 1998).

group, even if they are not in the majority.⁵⁸ It also directly contradicts the popular statistic quoted in the Washington State Domestic Violence Judge's Manual that ninety-five percent of victims of domestic violence are women.⁵⁹ Even if men do not represent the majority of domestic violence victims, those who suffer abuse are still in need of protection. Denying the fact that heterosexual men are in need of protection results in a blatant disregard for a large number of abused people.⁶⁰

Even more frightening is the estimate that as many as ninety percent of abused men do not report domestic violence waged against them by women partners.⁶¹ Shame is the primary reason as men are embarrassed to tell coworkers, family, and friends how they got their black eye or bloody nose.⁶² In fact, male victims of abuse are more likely to say that the injuries occurred on the job or in a contact sport, which are socially acceptable.⁶³ Saying one was beat up by his wife is emasculating. Preston Kincaid, a victim of spousal abuse, told the ABC news program 20/20 that he was afraid to tell people for fear of them laughing at him.⁶⁴ He did not report his abuse because of societal pressure to "take it like a man."⁶⁵ Fear of losing custody of his children is another reason a man will not report the abuse.⁶⁶ In a society where gender roles still prevail and the stereotypical male is the strong, dominant partner in a relationship, it can be social suicide for a man to come forward and admit his wife abuses him.⁶⁷ In fact, the man may not call for help at all.⁶⁸ Ironically, if the man does call for help, he is often the one arrested.⁶⁹ It is a no-win situation.

58. *Contra* Goldfarb, *supra* note 43, at 631 n.126.

59. WASHINGTON STATE GENDER AND JUSTICE COMMISSION, DOMESTIC VIOLENCE MANUAL FOR JUDGES 2001, 2-4 (May 31, 2002).

60. *Contra* Hope Toffel, Note, *Crazy Women, Unharmed Men, and Evil Children: Confronting the Myths About Battered People Who Kill Their Abusers, and the Argument for Extending Battering Syndrome Self-Defense to All Victims of Domestic Violence*, 70 S. CAL. L. REV. 337, 356 (1996) (arguing that heterosexual men are not in need of protection since they are more often than not the abusers but that homosexual men should be protected).

61. Armstrong Williams, *Notes on Husband Abuse*, THE WASHINGTON TIMES, Mar. 22, 2002, available at <http://www.washtimes.com/commentary/20020322-1425600.htm> (last visited April 25, 2004).

62. Alexander Detschelt, Note, *Recognizing Domestic Violence Directed Towards Men: Overcoming Societal Perceptions, Conducting Accurate Studies, and Enacting Responsible Legislation*, 12 KAN. J.L. & PUB. POL'Y 249, 252 (2003).

63. *Id.*

64. ABC News: 20/20, *supra* note 13.

65. *Id.*

66. *Id.*

67. Steinmetz, *supra* note 47, at 64.

68. *Id.* at 65 (reporting that in the only two cases of husband abuse reported to the police at the time, the neighbors were the one who called the police and not the abused man).

69. Interview with Lisa Scott, Attorney at Law, in Bellevue, Wash. (Mar. 9, 2003).

C. Homosexual Violence

Gender roles pervade and are evident in the fact that when recognizing battered and abused men as a cognizable group, it is quite often gay men who are the focus and not heterosexual men. One reason is the stereotypical myth that gay men act more like women when they are in relationships.⁷⁰ It seems easier to accept the fact that men will beat on each other given the belief that men are the aggressor in most heterosexual relationships.⁷¹ While battered and abused homosexual men still face an uphill battle in getting domestic violence protection, they receive more recognition as a cognizable victimized group than do heterosexual men.

Statistics on violence in lesbian relationships are also scarce, but estimates are that somewhere between twenty-five to thirty-three percent of gay, lesbian, transgender, and bisexual people suffer abuse at the hands of their intimate partners.⁷² However, the fact that abuse does exist in lesbian relationships gives credibility to the fact that some women have the propensity to be violent in intimate relationships, because in a lesbian relationship, no men are present.⁷³ Peter Cook, author of *Abused Men: The Hidden Side of Domestic Violence*, states, "If women can be violent without men present, it doesn't take much to think they could be violent with men around."⁷⁴ While not everyone might support this assumption, it is clear that some women have the potential to be violent.

D. Violent Women: Women as the Aggressors

While traditional gender roles still exist, women have made large strides toward upward mobility and equality in society. Women's groups have fought for rights and women have many more rights and opportunities than they did just a few decades ago.⁷⁵ With rights, however, come responsibilities. In teaching women to be aggressive and assertive, society must also teach them where to draw the line. "We teach boys that it is not ok to hit girls, but we don't teach this to

70. Toffel, *supra* note 60, at 357.

71. *Id.* at 356.

72. NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, ANNUAL REPORT ON LESBIAN, GAY, BISEXUAL, TRANSGENDER DOMESTIC VIOLENCE 12 (1998), available at <http://www.vaw.unm.edu/documents/glbtdv/glbtdv.html> (last visited May 21, 2004).

73. Patricia Pearson, *Women Behaving Badly*, SATURDAY NIGHT MAGAZINE, Sept. 1997, at 93.

74. Vicki Smith, *How Many Men Are True Abuse Victims?*, CHARLESTON (S.C.) GAZETTE, Nov. 21, 2000, at P4C, available at 2000 WL 2637412 (quoting Phillip Cook).

75. Crary, *supra* note 30 (noting the huge strides taken in the last 25 years).

girls.”⁷⁶ Researchers argue that many women who abuse their spouses do not do so because they want to hurt their spouse, but because they feel they must do so for protection.⁷⁷ Yet, the research conducted is often from the viewpoint of battered women.⁷⁸ By asking battered women whether they used violence in self-defense, the research is skewed because the assumption is that the man acted violently first. A more objective survey would be of battered women compared to women who do not assert such a claim. A biased survey gives very little credibility to the notion that women only use violence in self-defense.

The idea of women as violent is not foreign. The comic image of the past is the woman chasing after her man with a rolling pin.⁷⁹ What made this funny to some was that people saw it as a fictional event. When a woman really comes after a man with a rolling pin, there is nothing funny about it at all.

Another indicator that women are capable of being a batterer is their propensity for violence toward others in their lives.⁸⁰ Women are more likely to abuse or even kill their children.⁸¹ Women are not the delicate flowers of yesteryear who bat their eyelashes and stand in the corner waiting for the man's lead.⁸² Women have moved past that image into a powerful force in society. If women's groups want to acknowledge the progress women have made, then they also must advocate taking responsibility for one's actions rather than denying that women abuse men and hiding behind the image they are trying so hard to obliterate.⁸³

The main difference between male and female batterers is the amount of damage inflicted, although this does not mean that abuse does not take place.⁸⁴ While both men and women have the same violent tendencies, men can usually cause more physical damage based on their size alone.⁸⁵ However, this is not to say that women cannot

76. Julie Merrill-Quinn, *Men Suffer Domestic Violence, Too*, WISCONSIN STATE JOURNAL, Nov. 13, 2000, at A6, available at 2000 WL 24295224.

77. Daniel G. Sanders, *Wife Abuse, Husband Abuse, or Mutual Combat? A Feminist Perspective on the Empirical Findings*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 90, 101–10 (Kersti Yllo & Michele Bograd eds., 1988).

78. *Id.* at 110.

79. Smith, *supra* note 74 (quoting Phillip Cook).

80. Steinmetz, *supra* note 47, at 68–69.

81. *Id.*

82. Williams, *supra* note 61.

83. *Id.*

84. *Contra* Katharine K. Baker, *Dialectics and Domestic Abuse*, 110 YALE L.J. 1459, 1473 (2001) (book review) (arguing that women do not severely abuse men and as such the law cannot be forced to treat men and women equally).

85. Steinmetz, *supra* note 47, at 69.

also cause damage. Women often abuse men by wielding objects.⁸⁶ The recent highly publicized cases of the murders of actor Phil Hartman and football player Fred Lane, both of which were perpetrated by their wives, exemplify this and have become battle cries for the battered men's movement.⁸⁷ A more recent example is Clara Harris, the woman in Texas who ran over her husband with her car.⁸⁸ These instances show that women are capable of severe violence against their husbands. However, while the nation mourned these deaths, they did not spark action to address the problem of battered and abused men. In fact, the question most often turns to what drove the woman to commit such a crime.⁸⁹

Besides being newsworthy for their shock value, instances of battered and abused men still seem to provide entertainment for Americans. Indeed, the nation still appears to find comic relief in the suffering of men. When actress Tawny Kitaen beat her husband, professional baseball player Chuck Finley, with her high-heeled shoes, the story made entertainment news.⁹⁰ The media characterized the episode with comic references to Kitaen's days of wearing high-heeled shoes in White Snake videos versus her latest use for them.⁹¹ It is clear that while the story was newsworthy, it was not taken seriously. The popular view of violence against men, even famous men, is as a comedic drama.

IV. VIOLENCE AGAINST WOMEN ACT: CODIFIED GENDER PROFILING

The U.S. Congress initially enacted the VAWA in 1994 and recently reenacted a newer version of the law in 2000.⁹² The very title of the act gives credence to the myth that women are on the receiving end of all domestic violence. Women's groups argue the focus must be on women in order to get help to those who need it most.⁹³ In order to further this purpose, the VAWA creates a separate division of the

86. Smith, *supra* note 74 (quoting Phillip Cook).

87. Merrill-Quinn, *supra* note 76.

88. Art Harris, *During Penalty Phase, Teen Describes Horror of Father's Murder Scene*, CNN.com (Feb. 13, 2003), at <http://www.cnn.com/2003/LAW/02/13/harris.trail/index.html>

89. *Id.*

90. Joel Ryan, "Bachelor Party" Babe Kitaen Busted, E! ONLINE NEWS (Apr. 2, 2002), at <http://www.eonline.com/News/Items/0,1,9762,00.htm>.

91. *Id.*

92. Pub. L. No. 103-322, tit. IV, 108, Stat. 1902; see also U.S. Department of Justice, Violence Against Women Act of 2000 Summary (Apr. 3, 2001), at http://www.ojp.usdoj.gov/vawo/laws/vawa_summary2.htm.

93. Smith, *supra* note 74.

U.S. Department of Justice, the Violence Against Women Office,⁹⁴ to handle both state and local domestic violence efforts.⁹⁵ The VAWA provides funding to local law enforcement as well as to victim's services to help support local actions taken against domestic violence.⁹⁶ The funding, known as "STOP" (Services-Training-Officers-Prosecutors) money, is earmarked for stopping violence against women according to the formula grant in the VAWA.⁹⁷ Washington is one of the states that has received STOP money.⁹⁸ A separate provision exists for funding domestic violence shelters, however, rather than label the shelters as being for victims of domestic violence the shelters bear the label of being specifically for battered women and children.⁹⁹

The VAWA also authorizes funding for studies about violence against women.¹⁰⁰ These studies are to be conducted with the specific focus of searching for laws and other places of discrimination against women.¹⁰¹ Because these studies look only toward finding problems of discrimination against women, it is unlikely any mention of violence against men or discrimination of men who are victims of domestic violence will appear. As a result, supporting the notion women are the only ones who deserve domestic violence protection becomes easy when the statistics are stacked in favor of this idea from the start.

The gender-specific provisions of the VAWA make shelters and emergency services difficult to come by or non-existent for men. While funding for battered women's shelters is in short supply and high demand, the VAWA effectively prohibits any funding for battered men's shelters.¹⁰² Existing battered women's shelters are afraid of losing their funding and as a result have little or no choice but to turn men away.¹⁰³ Admitting that men are a victimized group would gravely endanger their funding.¹⁰⁴ Men who do call domestic violence hotlines or try to obtain information may not receive fair

94. Pub. L. No. 107-273, § 401, 116 Stat. 1789 (2002).

95. Julie Gannon Shoop, *Breaking the Cycle of Violence*, 34 TRIAL 72, 72 (1998).

96. U.S. Department of Justice, *supra* note 92.

97. *Id.*

98. STOP GRANT, *supra* note 46.

99. U.S. Department of Justice, *supra* note 92.

100. *Id.*

101. *Id.*

102. *Id.* The effect of providing money to agencies with the tag of helping stop violence against women precludes it from being used for men. There is neither equivalent provision nor an equivalent office in the United States government to address or fund services for male victims of domestic violence.

103. Scott, *supra* note 4.

104. Scott, *supra* note 69.

treatment or be able to obtain services at all.¹⁰⁵ In Washington, no official battered men's shelters are currently in place.¹⁰⁶ Indeed, if there were any doubt for whom the services in Washington state were intended, the King County Coalition Against Domestic Violence provides the warning that thousands of women are battered a year and the men who batter them go to jail and lose everything.¹⁰⁷ It goes on to say that boys who watch their fathers beat their mothers are much more likely to abuse their partners.¹⁰⁸ These are hardly comforting or welcoming words for a man who is trying to seek help. The concept of shelters as refuges for women is ingrained in society's collective mindset. Some shelters will not even allow large male children to seek refuge at a shelter because they may frighten the other female victims or for fear that they may have picked up some of their fathers' aggressive tendencies.¹⁰⁹ The doors to battering services remain closed to almost all men of all ages.

Domestic violence hotlines also have to confront the problem of battered and abused men. Sadly, though, they often have nowhere to send male victims and no money to grant them leeway to help even if they could.¹¹⁰ A positive correlation to this is the founding of a battered men's helpline in 2002.¹¹¹ Founded in Maine by Mark Rosenthal, a man who states he is the son of a battered husband, it is the first of its kind in the nation.¹¹² The hotline received twenty-five calls per month in its first six months, combating a common criticism that if resources for battered and abused men did exist, men would not utilize them.¹¹³ This is only one service, but it is a step in the right direction for the men who suffer abuse and have nowhere to turn. In Washington, two websites are devoted to ending discrimination in

105. Liza N. Burby, *Battered Men: Facing the Fear-and Shame-of Being Physically and Psychologically Abused by a Female Partner*, *NEWSDAY*, Aug. 22, 2000, at B13, available at 2000 WL 10029569.

106. LOVE SHOULDN'T HURT, *supra* note 36; see also KING COUNTY COALITION AGAINST DOMESTIC VIOLENCE, YOU CAN TAKE ACTION AGAINST DOMESTIC VIOLENCE (2002).

107. LOVE SHOULDN'T HURT, *supra* note 36.

108. *Id.*

109. Natalie Loder Clark, *Crime Begins at Home: Let's Stop Punishing Victims and Perpetuating Violence*, 28 WM. & MARY L. REV. 263, 265 n.7 (1987).

110. Glenn Sacks, *Male Victims of Domestic Abuse Slighted*, *LOS ANGELES DAILY NEWS*, Aug. 21, 2001, at N11, available at 2001 WL 6064666; see also Kimberly O'Brien, *Men, Too, Can Suffer from Domestic Abuse*, *ROANOKE TIMES & WORLD NEWS*, May 22, 2000, at A5, available at 2000 WL 5267405.

111. Farah Stockman, *A Search of Equality Domestic Abuse Groups Dispute Status of Claims Made by Men*, *THE BOSTON GLOBE*, Oct. 28, 2002, at B1, available at 2002 WL 101980442.

112. *Id.*

113. Ruth-Ellen Cohen, *Event to Help Battered Males—Seminar Hopes to Break Silence*, *BANGOR DAILY NEWS*, May 12, 2001, at 6, available at 2001 WL 26456632.

domestic violence protection.¹¹⁴ A group on Vashon Island, Washington, is also working to provide services for battered and abused men.¹¹⁵ However, the men's advocate who was trying to set up the services was told that he could not use VAWA money to fund his project.¹¹⁶ The services for male victims of abuse are seriously lacking.

Services for battered and abused men are kept scarce because of a systemic denial that the group exists combined with a national acknowledgement, supported by the federal government, that only women suffer battering. The former director of the Violence Against Women Office, Bonnie Campbell, does not apologize for the lack of services for men. Instead, she believes the reason no resources for men exist is that very few battered and abused men exist.¹¹⁷ She believes if men were really battered and abused in as high a numbers as the statistics show, then battered men's shelters would simply spring up all over the country.¹¹⁸ This was said immediately after she acknowledged how long it took battered women's shelters to emerge and receive funding.¹¹⁹ The statement shows an ignorance of the gender bias that is inherent any time a man reports his abuse. The fears of criticism, arrest, or even having their children taken away are reasons men choose to keep their abuse hidden.¹²⁰ An obvious reluctance by those who are committed to stopping domestic violence against women to see beyond gender lines continues. This is true even though battered men's groups acknowledge the legitimacy of battered women.¹²¹ Given the host of sociological factors involved in battered and abused men speaking out about their abuse, it seems perfectly rational that many men do not come forward and when they do, society fails to offer to help them.¹²² Such a flippant statement exemplifies the attitude of denial that many in society and in the legal field have about the issue of battered and abused men.

V. JUDICIAL INTERPRETATION OF DOMESTIC VIOLENCE

A statute that is gender neutral, at least in theory, opens the door to protection for both sexes. However, the Domestic Violence

114. These two sites are MenWeb, at <http://www.vix.com/menmag/battered.htm> (last visited Apr. 25, 2004), and Taking Action Against Bias in the System, at <http://www.tabs.org> (last visited Apr. 25, 2004).

115. Telephone interview with Lisa Scott, Attorney at Law (Nov. 22, 2002).

116. Scott, *supra* note 69.

117. Shoop, *supra* note 95, at 75.

118. *Id.*

119. *Id.*

120. Scott, *supra* note 69.

121. Crary, *supra* note 30.

122. Clark, *supra* note 109, at 264 n.5; see also O'Brien, *supra* note 110.

Protection Act's lack of specificity means judicial interpretation and action become even more necessary.¹²³ If the statute is vague as to whom it protects, then those in the judicial system can make their own decisions and interpretations, unrestrained by statutory guidance.

A. Gender Stereotypes Color Police Action

Police officers are often the first step in the judicial process for the processing of a domestic violence claim. Domestic violence situations are difficult for police officers to handle, but when a woman is the one who is out of control, the police officers are more likely to not take any action at all.¹²⁴ In fact, in an example from Detroit, even when the male victim was hurt so badly that he required medical attention, police officers still refused to remove the woman batterer from the situation, let alone arrest her.¹²⁵ In another example, a woman, Michelle Chapman, told police she was going to kill her husband.¹²⁶ Despite her history of violence, the police did not check on Chapman's spouse nor did they arrest either party.¹²⁷ After the police left, Chapman beat her husband to death.¹²⁸

Both these examples occurred in the early 1990s; however, controversy continues as to how police handle domestic violence situations. A National Family Violence Survey indicates that police are more likely to respond aggressively when women call the police for help and are more likely to order the man from the house.¹²⁹ The same survey reports that no women were ever ordered to leave the house.¹³⁰ A legislative transcript from Minnesota relates the statement of a police officer who "never in all his years has . . . seen a case of a

123. See *Spence v. Kaminski*, 103 Wash. App. 325, 333–34, 12 P.3d 1030, 1034–35 (2000). This court stated that the Domestic Violence Protection Act is not ambiguous because it requires an allegation that the victim has been a victim of domestic violence. *Id.* However, the court also states that the fact that the woman feared future abuse combined with a history of abuse was what persuaded the court that the woman felt she was in immediate danger. *Id.* at 333, 12 P.3d at 1034. Since the statute is devoid of a measure of what constitutes immediate danger or standards to meet this definition, this is a clear example of judicial interpretation.

124. EVE SCHLESINGER BUZAWA & CARL G. BUZAWA, *DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE* 56 (1996).

125. *Id.* at 57 (noting that the police officers would only call an ambulance to help the man who had been stabbed in the chest by his female batterer).

126. John Johnson, *A New Side to Domestic Violence*, L.A. TIMES, Apr. 27, 1996, at A1, available at 1996 WL 5263963.

127. *Id.*

128. *Id.*

129. Linda Kelly, *Disabusing the Definition of Domestic Abuse: How Women Batter Men and the Role of the Feminist State*, 30 FLA. ST. U. L. REV. 791, 831 (2003).

130. *Id.*

battered man."¹³¹ Police are the first and immediate source of contact for victims of abuse. A bad experience at this level makes it unlikely that the victim will pursue further recourse or call the police in the future.

Despite these long-standing stereotypes, the latest statistics on domestic violence arrest rates, while steeped in controversy, show arrests of women are on the rise.¹³² These numbers mean different things to different groups. To battered and abused men, these statistics signify that their plight is serious. A realization is beginning that women can be the perpetrators as well as the victims.¹³³ To battered women's groups, these numbers are an example of how the system will backlash against women who are truly the victims.¹³⁴ Either way, police are not always arresting the man in domestic violence situations. This, in itself, is a small step of progress.

B. The Lack of Judicial Instruction

To its credit, the State of Washington has made efforts to educate its judges as to how to handle domestic violence situations. Washington has established a Gender and Justice Commission, which provides all judges, commissioners, and magistrates in the state with a copy of the Domestic Violence Manual for Judges.¹³⁵ While the Manual attempts to follow the majority of domestic violence law with gender-neutral language, it falls short of this goal. For example, a footnote in the manual explains that while the authors recognize that men suffer battering, for the purposes of the manual, batterers may be referred to as male and victims as female at times throughout the manual.¹³⁶ This same language is echoed in a 1999 King County, Washington, publication, which is proclaimed as an information and research handbook.¹³⁷ The handbook justifies the language by citing

131. Shannon M. Garrett, *Battered by Equality: Could Minnesota's Domestic Violence Statutes Survive A "Father's Rights" Assault?*, 21 LAW & INEQ. 341, 353 (2003).

132. Johnson, *supra* note 126 (noting that in Los Angeles alone, women constituted 14.3% of domestic violence arrests).

133. *Id.*

134. *Id.*

135. WASHINGTON STATE GENDER & JUSTICE COMMISSION, *supra* note 59 (memo for distribution from Justice Barbara A. Madsen, Chair of Gender and Justice Commission, to the Superior Court Judges and Commissioner, District Court Justices and Commissioners, Municipal Court Judges, Commissioners and Magistrates, Washington State Law Libraries, and Interested Parties (May 31, 2002)).

136. *Id.* at 2-4 n.3.

137. METROPOLITAN KING COUNTY COUNCIL, DOMESTIC AND DATING VIOLENCE: AN INFORMATION AND RESOURCE HANDBOOK (Sept. 1991). The sentence reads, "For clarity and ease of reading this handbook, we refer to batterers as men and victims as women." *Id.* at i.

the questionable 1991 statistic that ninety-five percent of victims of domestic violence are women.¹³⁸

When state or county government officials and judges excuse away their use of non-gender-neutral language, it is difficult to trust that they have addressed the battered men problem.¹³⁹ Judges read the manual before deciding domestic violence cases, and by referring to men as batterers and women as victims, the manual could potentially prejudice judges against men who bring domestic-violence claims against women. The manual is full of gender-specific statistics and sources that show how women are abused, but fails to even mention the plight of male victims.¹⁴⁰ Although the manual claims to recognize battered and abused men do exist, its gender-specific references and lack of any mention of battered and abused men indicates that the statement of recognition is simply for show.

C. Battered Spouse Syndrome in General

The basic definition of the "battered woman's syndrome" includes a group of specific characteristics and effects of abuse on a battered woman.¹⁴¹ The definition was intended to take the focus off a mere reasonable person standard in cases of self-defense and instead focus the analysis on what a reasonable woman in the defendant's shoes would have done.¹⁴² In Washington, evidence of battered woman syndrome is allowable as a claim of self-defense.¹⁴³ However, a woman trying to admit the defense must also provide some evidence that she was in immediate danger.¹⁴⁴ Battered spouse syndrome is seen as being synonymous with battered woman syndrome.¹⁴⁵

Despite the laudable efforts on the part of Washington State to tackle the issue of domestic violence in general, once a man takes his case to the courtroom he has no choice but to fight for the legitimacy of his claim all over again, especially if the encounter ended in the death of the female.¹⁴⁶ In Washington, the battered spouse syndrome

138. WASHINGTON STATE GENDER & JUSTICE COMMISSION, *supra* note 59, at 2 n.3.

139. *Id.*

140. *Id.* at 2-8, 2-10 n.17, 7-1 to 7-4.

141. WASHINGTON STATE GENDER & JUSTICE COMMISSION, *supra* note 59, at 7-1.

142. Brett C. Trowbridge, Ph.D., J.D., *The Admissibility of Expert Testimony in Washington on Post Traumatic Stress Disorder and Related Trauma Syndromes: Avoiding the Battle of the Experts by Restoring the Use of Objective Psychological Testimony in the Courtroom*, 27 SEATTLE U. L. REV. 453, 513 (2003).

143. *State v. Allery*, 101 Wash. 2d 591, 597, 682 P.2d 312, 316 (1984).

144. WASHINGTON STATE GENDER & JUSTICE COMMISSION, *supra* note 59, at 7-1 (citing *State v. Walker*, 40 Wash. App. 658, 700 P.2d 1168 (1985)).

145. *Id.*

146. *State v. Riker*, 123 Wash. 2d 351, 360, 869 P.2d 43, 48 (1994).

defense is not codified but is asserted in case law.¹⁴⁷ In 1984, the Washington State Supreme Court recognized that expert testimony regarding battered women syndrome and the establishment of a defendant as a battered woman is admissible in murder trials.¹⁴⁸ Then, in *State v. Kelly*, the court gave battered women syndrome unchallenged protection by refusing to admit rebuttal evidence as to a defendant woman's prior aggressive acts toward her husband.¹⁴⁹ In that case, the woman shot her husband to death and then invoked the defense of battered women's syndrome to justify her actions.¹⁵⁰ The prosecution sought to admit testimony of the woman's prior violent acts, and the court found these to be inadmissible to combat the expert witness on battered women's syndrome, deciding that such evidence would be prejudicial.¹⁵¹ The dissent argued that the prior act of attacking her husband with a shovel along with several acts of violence and aggression toward neighbors should be proof that the woman was not in fear under the tenets of the battered women syndrome.¹⁵² However, the majority was not persuaded. This blind faith in the battered women's syndrome is potentially dangerous because women can assert the defense with little fear of challenge. It appears that the only burden of proof is to provide testimony from an expert witness.

D. Battered Spouse Syndrome Applied to Men

Washington State is a purported trendsetter in extending the battered women syndrome to men; however, that reputation is not supported by the case law.¹⁵³ The only evidence of such an extension is the court's use of the term "battered person syndrome" in *State v. Riker*, to describe what the court then explained as the "classic" battered women syndrome.¹⁵⁴ Neither this case nor any other Washington State Supreme Court or appellate case explicitly states that battering syndrome could apply to men as well as women. Thus, men are forced to assert the defense through analogy, which leaves the door open to interpretation by the individual judge.¹⁵⁵

147. Toffel, *supra* note 60, at 342-43.

148. *Allery*, 101 Wash. 2d at 597, 682 P.2d at 316.

149. 102 Wash. 2d 188, 201, 685 P.2d 564, 573 (1984).

150. *Id.* at 200, 685 P.2d at 572.

151. *Id.*

152. *Id.* at 206, 685 P.2d at 575.

153. Toffel, *supra* note 60, at 344.

154. 123 Wash. 2d at 360, 869 P.2d at 48.

155. Julia J. Chavez, Comment, *Battered Men and the California Law*, 22 SW. U. L. REV. 239, 243 (1992).

Washington is not alone in its reluctance to explicitly acknowledge men as battered spouses. Although the actual reported cases are of a severe nature and not always the best example of what constitutes a battered man, a look at a selection of cases from other states demonstrates a disinclination of those courts to view a man as battered.

First, the size differential between a man and a woman seems to be a large hurdle for courts to overcome when entertaining the existence of battered husbands.¹⁵⁶ Even this characterization is a stereotype; men are often the bigger party but this is not always true.

Second, in Washington and in other states, courts generally do not allow rebuttal testimony that the woman was the batterer.¹⁵⁷ For example, in a Nevada case in which a man killed his wife and then claimed she was the abuser, the majority dismissed as irrelevant evidence that the deceased man feared his wife.¹⁵⁸

Third, courts are swayed by the most popular and well-recited statistics, specifically those indicating that women are an overwhelming majority of domestic violence victims.¹⁵⁹ A Maryland court claims to not be slighting or negating the importance of male victims of domestic violence, but at the same time, the court rattled off a list of statistics about how women are the focus of domestic violence laws and the primary recipients of resources to combat domestic violence.¹⁶⁰

Fourth, courts do not acknowledge the fact that a woman can initiate violence. For example, in Ohio, a court denied a man's assertion of a battered husband defense to injuries sustained by his current wife because his ex-wife testified that he had abused her.¹⁶¹ Although the record indicates no corroboration of the ex-wife's testimony, the court admitted the testimony to show intent.¹⁶² In addition, the court did not give credence to the battered man defense but instead viewed all of the defendant's arguments in light of self-

156. See *Commonwealth v. Delaney*, 616 N.E.2d 111, 116 (Mass. Ct. App. 1993) (describing the alleged assaults and physical and mental differences between the large man, who was a combat veteran, and his small civilian wife); see also *Johnson v. State*, 354 S.E.2d 858, 859 (Ga. App. 1987) (describing the physical differences between the man and woman and addressing the woman's use of offensive tactics as an aside).

157. *State v. Kelly*, 102 Wash. 2d 188, 190-91, 685 P.2d 564, 567-68 (1984).

158. *Earl v. State*, 904 P.2d 1029, 1034 (Nev. 1995). However, a dissenting Nevada Supreme Court justice argued that plenty of statistics showing women can be violent exist. *Id.* at 1034 n.4.

159. *Coburn v. Coburn*, 674 A.2d 951, 955 (Md. 1996).

160. *Id.*

161. *State v. Grubb*, 675 N.E.2d 1353, 1354 (Ohio App. 3d 1996).

162. *Id.* at 1355-56.

defense, effectively not giving the man as much protection as the battered women's syndrome gives to women.¹⁶³

Fifth, courts deny the credibility of abused men despite physical proof.¹⁶⁴ In a Tennessee case, the defendant male showed police officers seventeen to thirty scars that he claimed were the result of previous beatings by the now-deceased woman, but the court found the scars unpersuasive.¹⁶⁵

Finally, because it is difficult for a woman to prove battering without physical evidence, it is almost impossible for a man to convince a court he has been the victim of battering without a physical injury.¹⁶⁶ Despite the fact that domestic violence includes assault, which is a threat of violence,¹⁶⁷ a California court denied a man's claim that his wife had battered him through emotional control and threats to take away the couple's children.¹⁶⁸ The case law on this subject is incomplete and sporadic. The courts are consistent in this area of law only when they fail to embrace the idea of battered and abused men.

Before a case reaches the point where a murder defense is necessary, men can try to seek protection under the Washington's Domestic Violence Prevention Act.¹⁶⁹ Because the very law is open to judicial interpretation, many men do not get the chance to enjoy the law's protections. As such, their cases are not heard or appealed, resulting in very little authority finding heterosexual men as victims of domestic violence. For example, in the case related in the Introduction to this Comment, the commissioner denied the husband domestic violence protection, and instead the husband was subjected to a protection order against him by a mutual restraining order. This result can help to stigmatize the victim as a batterer: the court is

163. *Id.* at 1354-55. The case record only discloses that the man claimed to be a battered husband. *Id.* at 1354. The court does not elaborate on this but instead goes on to talk about self-defense and does not address specific elements of any type of battering syndrome. *Id.* Instead, the court engages in a character analysis of the defendant. *Id.*

164. *State v. Nelson*, No. 03C01-9706-CR-00197, 1998 WL 694971, at *3 (Tenn. Crim. App. Sept. 9, 1998).

165. *Id.*

166. Scott, *supra* note 69.

167. BLACK'S LAW DICTIONARY 75 (6th ed. abridged 1991) (defining "assault" as "Any willful attempt or threat to inflict injury upon the person of another An assault may be committed without actually touching, or striking or doing bodily harm, to the person of another.").

168. *Walker v. Kernan*, No. C-95-0101SI, 1997 WL 168557, at *7 (N.D. Cal. Mar. 27, 1997).

169. WASH. REV. CODE § 26.50 (2000).

saying both parties need protection from each other.¹⁷⁰ This indicates a presumption that the man cannot be completely blameless.

The lawyers who see these clients, however, know the stories are true. A Washington attorney, Lisa Scott, has handled many cases where the man is the victim of abuse at the hands of a female partner.¹⁷¹ Nevertheless, in analyzing the ability of such men to seek protection, Scott states, "The system won't let women say they are not victims."¹⁷² In the case described in the Introduction, the man was denied a protection order because the judge rejected the evidence of the police documentation of a baseball bat assault. Furthermore, the wife failed to produce evidence of any violent acts on the part of husband. Nonetheless, the judge held that the plaintiff had failed to prove domestic violence under RCW section 26.50.¹⁷³ When men claim to be the victim in domestic violence situations, the burden of proof falls on the male. The system is set up so that, in Scott's view, "There's no excuse for domestic violence unless the woman does it."¹⁷⁴

The way Washington judges treat domestic violence situations is hard to discover because many domestic violence disputes are heard at the family court level and are not appealed. For example, in *In re Marriage of Lewis*,¹⁷⁵ the mother falsely alleged that the father physically and sexually abused their child when the mother herself had committed at least two acts of domestic violence against the father.¹⁷⁶ The court awarded primary custody to the mother.¹⁷⁷ The court found these incidents of domestic violence by the woman to be "de minimus" and reasoned that they would have little impact on the child.¹⁷⁸ The court also refused to see the false allegations of abuse as an attempt to interfere with the father's time with his son or harass the father.¹⁷⁹ The court used its discretion in interpreting the statute to give the woman the large benefit of the doubt even though the man in the case was undoubtedly the victim. Despite an attempt at gender

170. *Id.* § 26.50.030, Findings, 1992 ch. 111. The notes from the Washington State legislature in this section of the statute indicate that mutual protection orders serve the purpose of stigmatizing both parties as violent. Both are found to be at fault rather than one being the victim. This gives credence to the batterer that their actions were provoked and is equivalent to a blaming the victim strategy.

171. Scott, *supra* note 69.

172. Scott, *supra* note 115.

173. WASH. REV. CODE § 26.50.030, Findings, 1992 ch. 111 (2000).

174. Scott, *supra* note 69.

175. *In re Marriage of Lewis*, No. 24019-0-II, 2000 WL 1228714, at *1 (Wash. App. Div. II July 28, 2000).

176. *Id.*

177. *Id.*

178. *Id.* at *2.

179. *Id.* at *3.

neutrality, Washington State's domestic violence law leaves a lot of room for individual judges to assert their own biases and standards of credibility in determining who should ultimately have protection and recognition under the law.

VI. SOLUTIONS: CHANGING SOCIETAL AND GOVERNMENTAL FOCUS

Because Washington's attempt at gender neutrality is not truly gender neutral, and therefore is not producing an all-encompassing result, Washington needs to adopt a new approach in combating the problem of domestic violence against men. Laws that explicitly protect women have served to help abused women seek protection, gain recognition as a legitimate group, and gain funding for resources. However, it should follow that by including men as a named beneficiary under the law, services and protection would flow their way as well. Even if the national law does not change, Washington is progressive in the area of domestic violence, and therefore, an inclusive domestic violence statute is plausible.¹⁸⁰

Next, agencies and task forces need to conduct studies without a gender-specific focus or with the intent to study both genders. The numbers on men as victims are incidental in the research conducted, especially by the Department of Justice.¹⁸¹ In order to establish validity for both battered and abused men and battered and abused women, statistics should reflect and highlight abuse that occurs in the home in general, rather than to only one sex. Examining only women's cases, or conversely men's cases, creates bias in the statistics. If a study sets out to find that women are the only victims of domestic violence or that they only hit men in self-defense, the results of the study are predictable, particularly when only women are interviewed.¹⁸² Washington still relies on studies reportedly done in the early 1990s, which proclaim men as batterers and women as victims in ninety to ninety-five percent of the cases.¹⁸³ In fact, the Washington State Domestic Violence Task Force has not issued a new report since 1991. Denying the existence of a group of people does not make them disappear.

In addition to better studies and survey mechanisms, the state must improve the resources for all of those in need of victim's services.

180. WASHINGTON STATE DOMESTIC VIOLENCE TASK FORCE, FINAL REPORT 9 (1991).

181. VIOLENCE AGAINST WOMEN SURVEY, *supra* note 42.

182. See Sanders, *supra* note 77.

183. WASHINGTON STATE DOMESTIC VIOLENCE TASK FORCE, *supra* note 180, at 3; see also WASHINGTON STATE GENDER AND JUSTICE COMMISSION, *supra* note 59, at 2-4 n.3.

Research indicates that men suffer abuse at a slightly lower rate than women.¹⁸⁴ However, research also shows men who suffer abuse and battering do exist and to deny that fact is to deny the validity of the same statistics that show women are battered.¹⁸⁵ With outdated statistics, those who deal with victims of domestic violence lack information as to the changing pace of society and as such, no available services exist for men who are victims of domestic violence. The Domestic Violence Task Force recommended that shelters should be community based and should be for battered women and their children.¹⁸⁶ Even though at least one shelter for battered women exists in each county, the task force also recommended that Washington State increase its shelter services for women.¹⁸⁷ Certainly, shelters for women are necessary; however, it is worth noting that not a single state-supported battered men's service exists.¹⁸⁸ Therefore, while women in Washington may have to drive for help, men have nowhere to go for help at all. A concern is that men, especially heterosexual men, will not take advantage of a shelter's services due to the gender stereotypes discussed earlier in this Comment, and as such, funds that are desperately needed for battered women's shelters will be diverted to empty battered men's shelters.¹⁸⁹ However, given that battered and abused men are a smaller group than battered women are, the proposal here is not for an equal number of shelters. A single abused men's shelter would be a huge first step.

One suggestion is to make battered victims' shelters open to anyone who suffers family violence. However, given the ways domestic violence affects men and women differently, it is most likely necessary for the state to find some way to set up at least some separate battered men's shelters.¹⁹⁰ At the very least, as money and demand will likely be a concern, a statewide abused-men's hotline, similar to the one discussed above, might be the very first step in a system of protection for abused men. Even a support group for abused men would be a large improvement. The point is that right

184. VIOLENCE AGAINST WOMEN SURVEY, *supra* note 42, at 2.

185. *Id.*

186. WASHINGTON STATE DOMESTIC VIOLENCE TASK FORCE, *supra* note 180, at 52.

187. *Id.*

188. The author did place a call to the Statewide Domestic Violence Hotline on April 12, 2004. The operator told the author that no men's services existed. The operator assumed that some of the shelters would talk to men, but she told the author none could provide men shelter. She said that the shelters might be able to provide a hotel voucher for a man, but it would require contacting each shelter individually.

189. Claire Ansberry, *Calling Sexes Equal in Domestic Violence*, THE WALL STREET JOURNAL, May 5, 1988, available at 1988 WL-WSJ 461501.

190. *Contra* Detschelt, *supra* note 62.

now abused men really have no place to turn for help and guidance, and any innovations in this area would be a great step forward.

Another area needing attention is that of domestic violence advocates for abused men. When a man is a victim of domestic violence, an advocate who will truly fight for his rights must be available. It is not likely a battered woman's advocate will be comforting to the male victim or that the advocate will be educationally equipped or desire to deal with a male victim of a female abuser. Battered woman's groups often train these advocates so that their information is not gender neutral.¹⁹¹ If the intent of Washington's Domestic Violence law is for either sex to be able to bring a claim, then there must also be a place for all victims, regardless of sex, to seek refuge and gain advocacy services.

Finally, batterer's treatment programs must be set up for both genders. There must be some recognition that it is wrong for anyone, regardless of sex, to abuse anyone else. The concern by many women's groups is that by announcing to the world that women can be batterers, women will cease to be victims, and the blame will shift for the violence wielded against them.¹⁹² However, not treating women batterers does not solve the problem. Realizing there may be different motivations to batter and different means employed to batter based on sex, different programs are necessary. In keeping with Washington's state law, the batterers' treatment groups should be of single gender.¹⁹³ However, programs must exist for both sexes, and there must be a curriculum that reflects that abuse is wrong in itself, no matter which sex is conducting the abuse.

The bottom line is that domestic violence against both men and women is wrong and as the current law stands both in Washington state and the nation, not all who suffer will be able to get help, whether as a victim or a batterer. "Domestic violence is a people problem, not just a gender-polarized "women" and "men" problem. It hurts the children, and hurts us all, regardless of the gender of the person doing the battering."¹⁹⁴ The change must come from education and awareness in society. This is neither a feminist issue nor a man's issue: this is a societal issue. By addressing the fact that both sexes are capable of abuse and both sexes suffer abuse, domestic violence programs can be much more effective.

191. Scott, *supra* note 69.

192. Ansberry, *supra* note 189.

193. WASH. ADMIN. CODE § 388-60-0085 (2002).

194. 1 HOFF, *supra* note 57, at 6.

VII. CONCLUSION

For abused men, finding social and legal acceptance is difficult. Despite the fact that Washington's domestic violence law is predominately gender neutral, traditional stereotypes and timeworn, dubious statistics serve to negate the language of gender neutrality. Indeed, on a national level the VAWA serves to effectively prevent the recognition of battered and abused men as a legitimate group and limits or excludes the availability of resources for men.

Without an explicit statute specifically encompassing men under Washington law and in the face of a national trend toward solely protecting battered women, judges in Washington have the opportunity and resources to interpret the law in light of societal pressures. As such, men in Washington have to fight harder for protection and many men lose this fight. An explicit inclusion of all victims of domestic violence and specialized treatment for all types of batterers is necessary. As society and the power differential between men and women changes, so must the law and the legal approach.