

**DOMESTIC VIOLENCE: PREVENTION AND SERVICES**

**HEARINGS**  
BEFORE THE  
**SUBCOMMITTEE ON SELECT EDUCATION**  
OF THE  
**COMMITTEE ON EDUCATION AND LABOR**  
**HOUSE OF REPRESENTATIVES**  
**NINETY-SIXTH CONGRESS**  
**FIRST SESSION**

HEARINGS HELD IN WASHINGTON, D.C., ON JULY 10, 11, 1979

Printed for the use of the Committee on Education and Labor



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PREPARED STATEMENT OF RUTH NORDENBROOK, CHAIRMAN, COMMITTEE OF WOMEN AND CRIMINAL JUSTICE ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman, members of the Subcommittee, we appreciate this opportunity to present the views of the American Bar Association on H.R. 2977. I am Ruth Nordenbrook, a member of the Section of Criminal Justice of the ABA and the chairperson of that section's Committee of Women and Criminal Justice.

The ABA Criminal Justice Section's 9,700 members represent all of the various aspects of the criminal justice system -- federal and local, bench and bar, law professors and students, law enforcement, and correctional officers. The 250,000 plus members of the Association as a whole are equally, if not more, diverse in terms of their representation of the various aspects of the legal community in America.

As for myself, I am currently an Assistant United States Attorney in the Eastern District of New York. Previous to my migration to New York last summer, I spent five years as a deputy prosecuting attorney in King County, Washington; two years as a staff attorney with Seattle Legal Services; a year as a Reginald Heber Smith Poverty Law Fellow with the Cook County Legal Assistance Foundation in Chicago and one year as a VISTA volunteer in Yakima, Washington.

In the course of those years I have had occasion to represent the victims of domestic violence directly. I have also known the difficulties of representing the state in its law

enforcement efforts against the perpetrators of domestic assaults. In the latter capacity I have known the frustrations which cause prosecutors and police to abandon hope and, sometimes, to abdicate their responsibility to enforce the law in this area.

We welcome this opportunity to express concerns about domestic violence and to comment on H.R.2977 in the light of established Association policy. Certainly, the problem of domestic violence is not unfamiliar to most lawyers who practice in a number of areas -- in the criminal courts, in the family and divorce courts, and in the juvenile courts -- and the Association consequently has had occasion to give serious attention to the phenomenon of domestic mayhem for a considerable period of time.

Both the Section of Criminal Justice and the Section of Individual Rights and Responsibilities have produced reports and recommendations which were ultimately adopted by the ABA's House of Delegates. At the Association's 1978 mid-winter meeting, the House passed a resolution which formally expressed the group's support for federal, state, and local efforts to combat the incidence, causes, and effects of family violence and for programs to protect the victims of family violence. See Appendix "A" for a copy of this resolution. At the annual meeting in August, 1978, the House considered and adopted a more detailed resolution which had its genesis in the Committee of

Women and Criminal Justice and which urged several concrete initiatives aimed at exposing the magnitude of the problem, understanding its true nature, and creating an integrated response which recognizes that intra-family assaults have both a criminal and a domestic aspect and that violence in the home results in maiming and death as certainly as violence in the street. The resolution, however, also recognizes that the fact that the locus of the event is the home of necessity calls for a modification in the nature of the adjustment which the criminal justice system makes. See Appendix "B" for a copy of this resolution.

In most violent encounters it seems sufficient to separate the contenders and, if necessary, to isolate and lock away the aggressor for a time. In domestic assaults, however -- although there is no possible question about the need to separate and protect -- the complicated chemistry of habit, need, social conditioning, and human and financial dependency preclude any facile solution predicated upon locking up the offender, and, if need be, throwing away the key. The limited data available indicates that although women may push or shove their mates, the perpetrator of a serious domestic assault, short of homicide, is usually a husband, father or other male intimate of the female victim. In addition, if the pattern or cycle is left to run to what appears statistically to be its common conclusion, the aggressor, in the end, may become the victim of

the irrevocable violent act, a murder. Where communities have managed to keep statistics which distinguish reports of assaults in the home from other assaults and similarly, which separately note homicides among spouses, the statistics are shocking and should give responsible law enforcement authorities serious pause to question whether the response which society has traditionally made is adequate.

There are a number of areas where the provisions of the H.R.2977 presently coincide with recommendations adopted by the American Bar Association. First, a common priority shared by this legislation and the ABA's policy is support for the concept of community based shelters to provide refuge for the victims of domestic violence and their children. The bill recognizes, implicitly, that total isolation of the victim from her abusive spouse may be necessary to insure her safety and provides for the keeping of the address of the "safe" house a secret if such a measure is requested by the victim. The ABA has not addressed this particular aspect of the shelter concept but it seems to me to be a reasonable provision given the highly volatile nature of domestic altercations.

Second, H.R.2977 authorizes, in Section 3(b)(1), grants to local public agencies and private nonprofit organizations for projects designed to prevent incidents of domestic violence and to assist victims and the dependents of victims of domestic violence.

Although intra-family violence is a problem across the nation, it is one whose remedy -- if there is one -- must of necessity be rooted in the local community unit. Thus the legislation which you are considering, which provides for the distribution of funds to community agencies, because of their location, can address the problem. Certainly funds generated by this bill could be channelled to agencies whose function it would be to provide counselling programs and supplemental services to the victims of domestic violence. The funds could also be used to train counsellors and other critical personnel to deal with the peculiar problems posed by the domestic violence situation. Although shelters are a pressing and immediate need, a safe harbor, they are not enough, by themselves, to help families break life long patterns of abuse and victimization. The prevention of domestic violence is a matter of retraining people about alternative means of dealing with their frustration and anger. Often such retraining will mean helping them to unlearn responses which they have carried with them from childhood (there is some evidence that both the beaten and the batterer were probably abused children and that the acceptance of violence as a normal part of life is deeply embedded in the emotional fabric of troubled families).

The Association's recommendations, however, go beyond counselling and shelters because of the recognition that there is another aspect of this tragic problem. The ABA's

recommendations recognize that assaults in the home are also a severe criminal problem and that, to some degree, the society as a whole must be retrained and instilled with an awareness of this reality.

For instance, among the local public agencies which currently confront the horrors of domestic violence on a daily basis are the police departments and prosecutor's offices of every community. Traditionally, it appears, these agencies have avoided active enforcement of the criminal law against the perpetrators of assaults in the home because they believe that, despite the serious and often maiming nature of the injuries inflicted by one spouse upon the other, the fact that the beating takes place in the home renders the assault a civil problem to be resolved by lawyers, the family and divorce courts and/or restraining orders, rather than by the exercise of the power to arrest and detain. The decision to charge has been governed more by the relationship between the parties than by the nature of the act.

Also the law enforcement officer's remembrance of past experiences with victims who have vacillated and reneged on their promise to cooperate in an action against their spouse conditions the officer's response to each new victim's complaint. The Association's policy with regard to the role of police and prosecutors in responding to domestic violence is an attempt to increase the awareness of law enforcement personnel about the

true nature of the problem and to insure responsible but still somewhat elastic decisions about whether arrest and prosecution are appropriate given the nature of the crime. Consequently the Association recommends that, after the safety of the victim has been assured, the police investigate the crime and make a decision regarding arrest and referral on the basis of its investigation, stating articulate reasons for a decision not to proceed. Similarly prosecutors, in considering complaints of assaults within the home should be able, at a minimum, to state a reason for a decision not to prosecute, other than the fact that the parties are man and wife. The question of whether a criminal assault has taken place depends on such factors as whether there is an injury or serious threat of injury, how serious the injury was, how much force was threatened or used and whether there was a weapon involved. Only when it has been affirmed that an assault has taken place should the state recall that the assault was perpetrated by one spouse upon the other and seek to find a resolution or penalty. Such measures are also prophylactic against the otherwise inevitable repetition of the violent act.

Although the legislation which you are considering does not directly address the issue of official indifference to domestic violence as a criminal problem, there is little question but that the funds generated by the bill could be used to reinforce

and encourage the development of sensitive, responsive procedures and programs within the law enforcement and criminal justice systems.

One of the alternatives for police and prosecutors, acting together as law enforcement authorities and keepers of the public peace, is the creation of diversion programs for perpetrators of acts of domestic violence, at least for those perpetrators who do not have a long history of violent abusive acts. This is an alternative which the Association supports and which, ostensibly, could be subsidized with funds allocated under the pending bill. Diversion could be predicated upon participation and completion of counselling, which, with the agreement of the victim, could include other members of the family. A few cities, (for example, San Francisco) have already tried diversion as a means of dealing with perpetrators of violent assaults within the home. The experience of these pioneering communities suggests that diversion is a promising approach as long as the state is consistent in enacting a penalty when the beneficiary of the diversionary alternative, i.e., the batterer, does not perform as required under the diversion agreement.

Again, I want to emphasize that the Association does not view its recommendations as alternatives to one another but, rather, stresses that domestic violence, from what we know of it, appears to have no one single cure.

Not all of the recommendations proposed by the Association are encompassed within or cognizable under the present proposed legislation and, indeed, some of them are probably not a matter for federal action. For instance, the recommendation concerning the enactment of legislation which would make criminal the knowing violation of a civil restraining order is something purely within the province of state law-making bodies.

I believe that the pending legislation is sufficiently flexible to allow funding not only of the more conventional social work-oriented domestic violence programs like shelters and counselling centers but also to allow the funding of special training programs for police, prosecutors and the bench. When I speak of programs for police in this area I do not speak of programs which teach police officers so-called "crisis intervention" techniques to enable them to ignore their law enforcement duties in the domestic violence context. Rather, I mean training programs which re-educate and sensitize law enforcement personnel about the assault aspect of the phrase "domestic assault" and which teach officers methods which encourage and support the victims of these assaults both in their efforts to find help and in their efforts to follow through in the prosecution of the perpetrators. In addition, I believe this bill would support the creation of innovative parole, probation, and diversion programs specifically directed at batterers.



The ABA is pleased to see the Congress again address itself to the appalling and widespread nationwide problem. Domestic assault is not limited to the homes of the poor or uneducated but, rather, cuts across the lines of race, class, education and wealth.

Once again, on behalf of the Association, I thank the Chairman and the Subcommittee for permitting us to present these views.

EXHIBIT "A"

RESOLUTION OF THE HOUSE OF DELEGATES  
OF THE  
AMERICAN BAR ASSOCIATION

ADOPTED FEBRUARY, 1978

BE IT RESOLVED, that the American Bar Association supports federal, state and local efforts to combat the incidence, causes and effects of family violence and supports the implementation of programs to protect the victims of family violence.

EXHIBIT "B"

RESOLUTION OF THE HOUSE OF DELEGATES  
OF THE  
AMERICAN BAR ASSOCIATION

ADOPTED AUGUST, 1978

*Be It Resolved*, That the American Bar Association, in implementation of the policy adopted in February, 1978, supporting efforts to combat family violence, recommends the following:

(1) That shelters or other secure temporary residential facilities, together with counselling and other support services, be established for the victims of domestic violence.

(2) That law enforcement officers who respond to domestic violence calls, after insuring that the victims of domestic assaults and their dependents have been removed to safe places as provided in #1, investigate the incidents, prepare written reports, and, in the event they conclude no criminal charges are appropriate, file written statements of the reasons for the decisions.

(3) That prosecutors who decline to file criminal charges in domestic assault cases referred to them by the police, state in writing the reasons for their decision not to prosecute, and provide the complainant with information as to alternative procedures.

(4) That specific data related to the frequency, seriousness, and other characteristics of spousal assault, including disposition of complaints and the stated reasons for the particular disposition, as well as data on existing programs designed to respond to such assaults, be collected and analyzed by appropriate government agencies.

(5) That the courts, in the determination of pretrial release, sentencing or imposition or revocation of probation or parole, not treat the relationship between the parties as the primary factor.

(6) That the state create a mechanism for responding to intrafamilial violence by establishing diversion programs and by providing counselling and other support services.

(7) That statutes providing for arrest for violation of protective orders (civil or criminal restraining orders) be enacted and enforced without regard to the relationship between the parties.

(8) That the victims of domestic violence not be excluded from coverage under victim compensation legislation where they demonstrate the requisite quantum of injury and where they actually live separate and apart from assaulting spouses.

The Section's second recommendation was approved by voice vote, with an amendment recommended by the Board of Governors and agreed to by the Section. As amended, it reads:

PREPARED STATEMENT OF LARRY L. SIMONS, NATIONAL VICE PRESIDENT,  
INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

The International Brotherhood of Police Officers (IBPO) is very concerned about the continuing and extreme problem of domestic violence. As the representative of 40,000 law enforcement officers across the country, we are well aware of the severity of the situation and supportive of efforts to prevent and alleviate the problem.

A call to assist a victim of domestic violence is the most hazardous type of call a law enforcement officer must respond to. Intervention in violent family crises is the single largest cause of police injuries and deaths accounting for 40 percent of injuries and 20 percent of fatalities.

These calls are also some of the most frustrating. Unfortunately, the terrible results of violence do not necessarily prevent the recurrence of such incidents. Again and again officers are called back to the same homes. These repeated calls are not only a drain on police time and resources, but they are also an indication that the problems leading to violence are not being solved.

A total assessment of the impact of domestic violence is impossible to assess. How many other violent crimes are caused at least in part by the fact that children who witness violence in their homes come to believe that violence is acceptable behavior? This ripple effect is frightening to contemplate.

The legislation before your Subcommittee, in particular the Domestic Violence Prevention and Services Act, is designed to contribute toward solutions to these disturbing problems. By providing

seed money to local programs, funds to begin long term State plans, and a sum for coordinating and assisting Federal and State efforts, H. R. 2977 would encourage and support the activities of concerned citizens who are trying to ease this awful violence.

The IBPO thinks that the sums being asked for in this legislation are extremely modest and absolutely justifiable. We also believe that these monies would contribute toward savings in other areas. It is impossible to calculate the amount each state and municipality spends on disability retirements and death benefits for officers and families of officers who were injured or killed when intervening in violent domestic situations, but we are sure that the sum is considerable. Consequently, it is important that those people considering this legislation balance, along with the potential saving of lives, the potential saving of money when considering the cost of this bill.

During the two previous Congresses, the Senate has demonstrated its willingness to act on the problem of domestic violence by passing legislation similar to that pending before this Subcommittee. Last year the House of Representatives almost had a chance to join the Senate by passing a House bill. However, as you know, the Domestic Violence Assistance Act of 1978 was lost in the crush of legislation before adjournment. The IBPO fervently hopes that the Domestic Violence Prevention and Services Act will be enacted by the 96th Congress. This legislation is too significant in its potential for saving lives and preventing the terrifying and debilitating consequences of domestic violence to be delayed any longer.

**END**