PROGRESSIVE REFORM WITHIN THE CRIMINAL JUSTICE SYSTEM? AN EXAMINATION OF MANITOBA'S FAMILY VIOLENCE COURT.

A Thesis

Presented to the Faculty of Graduate Studies,
University of Manitoba

in fulfilment of the

Thesis Requirement for the Degree of

Master of Arts

in the Department of Sociology

Winnipeg, Manitoba
August, 1994

Sharon-Lynn Jeannette Cartmill

ISBN 0-315-99033-3

PROGRESSIVE REFORM WITHIN THE CRIMINAL JUSTICE SYSTEM? AN EXAMINATION OF MANITOBA'S FAMILY VIOLENCE COURT

BY

SHARON-LYNN JEANNETTE CARTMILL

A Thesis submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

ABSTRACT

After years of work by the Battered Women's Movement, wife abuse and violence within the home have been identified as a profound social problem. Although feminists agree that wife abuse and domestic violence is a problem that must be addressed, there is much dissention within the feminist academic community with regard to how effective change can be made to protect victims. At issue is whether or not the criminal justice system can provide progressive reform for the women who are abused.

This thesis addresses the above theoretical debate by examining if the Manitoba Family Violence Court can provide a more accessible, victim-sensitive approach to the adminstration of justice. A comparison is made regarding the treatment of domestic violence cases processed within the Family Violence Court with domestic cases that were processed within the General Court, both before and after the specialized Family Violence Court was established. Specifically, the comparison is made on the basis of laying charges, enforcing restraining orders, case processing (stay and attrition rates), types of sentences and the degree of secondary victimization within the court process.

Overall, it was found that progressive change over time has occurred within the criminal justice system. However, it is through specialization of the Family Violence Court that we find the most profound, progressive response to the needs of wife abuse victims.

ACKNOWLEDGEMENTS

I would like to first thank my thesis committee, Gregg Olsen, Karen Busby and Elizabeth Comack for all of their time and support throughout this long process. I would especially like to thank my advisor, Jane Ursel for giving me the opportunity to work within the Family Violence Court, but most importantly, for always being the voice of reason the many times I was "on the verge".

Special thanks to the support staff of the Sociology department, Kathe Olafson and Sandy Froese for being so supportive the many times I ran into the department befuddled and exhausted. Dianne Bulback deserves a special thanks too for taking the time out from her weekend to help me organize this beast.

Thank you to Patty Caine and Del Halliday for their computer skills, but mostly for their patience and friendship. Without Del, I would never have made it to my proposal, and without Patty, I would never have arrived here, at my defense.

I must also thank Matthew Onyschak for helping out at the "bitter end", as well as for his constant concern and advice throughout this long education of mine.

I would like to thank my new friends at the Canadian Disability Rights Council, Priti Shah and Sue Williams. Their understanding and accommodation of my need to finish my research this summer is deeply appreciated.

Finally, I would like to thank the person to whom this thesis is dedicated, Marlene Rekus. Marlene, your unconditional love and understanding, your encouragement and generosity will always be remembered. Mere words can not express the depth of my gratitude.

It is my hope that this thesis will one day have no relevance or social significance, but instead, remain an artifact of a time long since passed - a time when society allowed men the privilege to beat women. In the present, however, I hope that this research can in some small way, contribute to a safer future for the women who live in fear each day.

Sharon Cartmill

TABLE OF CONTENTS

CHAPTER THREE

CHAPTER FOUR

LIST OF TABLES

LIST OF CHARTS

INTRODUCTION

Everyday and everywhere, women are victims of violence. Estimates suggest that more than one million Canadian women are abused by their male partners everyday (MacLeod, 1987). In fact, "forms of violence such as wife battering...occur so often that it would be hard to find a group or an institution in North American society in which violence is more prevalent than it is within the family" (Chimbos, 1989:275).

Indeed, this is a social phenomenon that has existed cross-culturally throughout time. Davidson (1977) points out that in order to find a time in history when wife batterers did not enjoy having custom and law on their side it is necessary to go back to preBiblical times. It is with the appearance of the Bible, perhaps the most influential book ever written, that the patriarchal conditions for wife abuse and the secondary status of women are laid out. It is Genesis 3:16 in which God blames women for the fall from grace, and it is in the New Testament where it states: "for the man is not of the woman; but the woman of the man. Neither was the man created for the woman but the woman for the man" (Corinthians, 11:8, as cited in Morgan, 1982:4). Similarly, the Hindu code clearly states that "a woman must never be free of subjugation" (Morgan, 1982:4).

In recent years, wife abuse[1] has received increasing attention and scrutiny. The realization of the pervasiveness of the violence

women encounter in their own homes can be attributed largely to the efforts of grass-roots feminists within our communities who organized the "battered women's movement."

The hard work and advocacy of these women have raised questions politically and ultimately initiated direct academic attention to the area. In fact, "since Pizzey's ground-breaking book in 1974 - Scream Quietly or the Neighbours Will Hear...there has been a virtual explosion of academic work in all aspects of domestic assault" (Currie, 1990:86).

Hence, feminists within academia have joined forces with community advocates to expose the extent of the violence. Feminist research, in combination with the work of women in the community, has transformed the previously hidden crime of wife abuse into an issue of public concern. The process of social change has begun. Let us consider the history of how wife abuse gained validation first within the grass-roots feminist community and later within the academic community.

THE HISTORY OF THE BATTERED WOMEN'S MOVEMENT

Arising from the Civil Rights Movement of the 1950s, the 1960s marked the birth of new social and political concerns. Topics such as racism, authority and the status quo came to be concerns for many. In fact, these areas were more than concerns, they became the centre for social movements. In an environment where prescribed social roles, hierarchy and class were being questioned, women saw others define the solutions to their life problems as political,

thus they were inspired to act - a women's movement was founded.

It was in this environment, a setting in which women were organizing on their own behalf, that other, new movements could be mobilized with more specific concerns than women's general oppression and emancipation. More specifically, "by claiming that what happened in the privacy of their home was deeply political, the women's liberation movement set the stage for the Battered Women's Movement" (Schechter, 1982:31).

The "Battered Women's Movement" is a term used in the literature to describe that segment of the women's movement which has been focused on the goals of providing support for and advocating changes which would better address the needs of women in abusive relationships. More specifically, the movement's goal has been to "name the hidden and private violence in women's lives, declare it public and provide safe havens and support" (Schechter, 1982:11).

Like the women's movement generally, the battered women's movement is politically and geographically diverse, incorporating differences among women in class, race, ethnicity, ideology, education, skill and knowledge level, and sexual preference (Schechter, 1982:258). Applying feminist principles developed from the women's liberation movement[2], women within the battered women's movement created hundreds of autonomous services and organizing projects from emergency shelters to crisis lines[3].

The movement developed momentum with the creation of the first emergency shelters. As shelters received more funding (through

lobby groups and community contributions) more extensive programs were developed. With that came the beginning of coalitions which eventually grew into national organizations.

Although the various projects developed in the 1970s articulated a multiplicity of philosophies, there was a common belief among advocates for battered women - that women faced brutality from their partners which was further perpetuated by indifferent patriarchal institutions. If there was dissension within the movement, it was with regard to the mistrust of the state, that is, feminists could not agree whether the state held potential for reform on feminist issues. This may stem from the historical division within the battered women's movement as to what the actual purpose of the movement should be.

While some feminists have emphasized the provision of services to abused women, others feel that the movement's main purpose should be to act within the political arena to overcome women's socioeconomic oppression. This issue has created much discourse among feminists both within the community and on an academic level.

WIFE ABUSE WITHIN ACADEMIC RESEARCH

Until the last twenty years, our academic institutions were as guilty as other institutions of the perpetuation of violence against women. In failing to address women's issues as a subject of study, wife battering became a phenomenon that was overlooked and, thus, implicitly condoned. In fact, "sociology ignored the existence of violence against women until 1971 when journal

articles and conferences devoted to the topic of domestic violence began to appear" (Ferraro, 1979:278).

The failure of academics to even acknowledge the existence of wife abuse is well-documented:

> ...prior to 1971, violent family members were among the missing persons in family research. No articles whose titles contained the word 'violence' had appeared in the *Journal of Marriage and the Family* before the special issue on violence in November, 1971. (Gelles, 1978:1)

In those articles that did appear prior to 1971, any reference to "dysfunctions" within the family unit were usually identified as the wife's fault. This tendency to blame women for family "problems" was pervasive and did not only pertain to violence within the home. Literature dealing with wives of alcoholics frequently described the women as having "disturbed personalties" and thus responsible for choosing an abusive male (Paolino, 1977:13), while other articles would actually attribute the alcoholic's drinking to his wife (Jacob, 1978).

Although 1971 marked a progressive change within academic circles on the topic of wife abuse, the experience of being battered remained poorly understood. Thus, despite the fact that "writings on battered women had become less overtly hostile, they were still permeated with sexism" (Schechter, 1982:22). The result was that articles focused on the woman's participation in her own victimization. The structural basis of wife abuse and, ultimately, women's subordinate status were overlooked.

Today, however, we find a strong group of feminists (Schechter, 1982; Walker, 1990; Comack, 1993, Snider, 1991, and

Ursel, 1991) who have devoted much attention to further our understanding of the basis of violence against women. These writers have contributed to the defining of wife abuse in terms of women's overall subordinate socioeconomic status instead of defining wife abuse within women's own psychoses.

While these writers have similar ideas about why wife abuse exists, not all agree on how to respond to, or work to end, this violence and overall subjugation. The result is that a debate has developed within the feminist literature regarding strategies for change which involve engaging the state.

The aim of this thesis is to examine the issue of the feminist engagement with the state, more specifically, the battered women's movement with the criminal justice system on both a theoretical and an empirical level. In evaluating the potential of the criminal justice system to respond to the feminist demand for reforms to aid abused women, the focus will be on an empirical assessment of the Family Violence Court in Manitoba.

ENDNOTES

1.A variety of terms have come to be used to describe the violence women encounter at the hands of their male partners, for example, "wife abuse", "wife battering", "spouse abuse", and "family violence". As such, it is important to clarify the language which will be used within this research. Feminists have pointed out that the term "wife abuse" privileges the marital relation, thus, discounting common-law, boyfriend/girlfriend, relationships. Within this paper the term wife abuse will be used to encompass any "domestic" relationship that is based on "a relationship of trust, dependency and/or kinship". This is the definition employed by the Manitoba Family Violence Court.

The term "abuse" is based on the definition adopted by the Canadian Advisory Council on the Status of Women - "wife battering is violence, physical and/or psychological expressed by a husband or live in male or lesbian lover to which the 'wife' does not consent" (MacLeod, 1987:39). In the discussion which follows, wife abuse and wife battering will be used interchangeably.

It should be noted, that the writer acknowledges that abuse within a domestic relationship may include violence against male victims by female perpetrators. However, because the overwhelming majority of spousal abuse incidents involve female victims, due in part to the unequal dynamic between women and men in the greater society, the focus of this research will be on wife abuse.

The writer would also like to qualify the exclusion of women with disabilities and gay and lesbians from the focus of this study. With regard to women with disabilities, it should be noted that although the instrument or schedule used in data collection allowed for the recording of disability of victim and suspect, only 2% of the entire data set were identified as having a disability. This is in part due to methodological problems - police records rarely included any information regarding a suspect with a disability and even rarer, a victim who had a disability. Court observation was not much more effective if it was not physically apparent that an individual was a person with a disability.

Without a doubt, a fundamental reason for the exclusion of female victims with a disability within this study is the fact that these victims rarely report their abuse - Sobsey (1988:2) estimates that only 20% of cases involving people with disabilities are ever reported. The fact that these victims are part of a doublely marginalized group, facing deep systemic discrimination only exacerbates the fear of reporting. This is also true of gays and lesbians who are abused. The fear of being revictimized by the police and court system or having their accounts minimized, keep many gay and lesbians victims from reporting abuse. Without a doubt, more research is necessary in the area of gay and lesbian abuse, particularly in terms of what are the similarities and differences between abuse within the gay/lesbian community and heterosexual community. For a discussion of this point see: "And Justice For All? The Social Context of Legal responses to Abuse in Lesbian Relationships", a paper written by Janice Ristock, Ph.D.,

Women's Studies Program, University of Manitoba.

2.According to Schechter, "the women's liberation movement not only helped create an atmosphere where women could understand and speak regarding battering, it also influenced the organization of work in the battered women's movement. Because male domination often inhibited women from talking and taught them to doubt their abilities, the women's liberation movement emphasized egalitarian and participatory organizational models" (1982:33).

3.Out of the many projects organized by the women's movement, one of these projects developed into its own important movement - this was the rape centre and anti-rape movement. This "merits special attention...as an illustration of the large scale feminist organizing that preceded the battered women's movement and as a path-breaking model for that movement...[in fact] the battered women's movement maintains a striking and obvious resemblance to the anti-rape movement and owes it several debts" (Schechter, 1982:34).

CHAPTER ONE

THEORETICAL FRAMEWORK

Although feminists have been working together to bring attention to the empowerment of abused women, there has been considerable disagreement among them regarding feminist engagement with the state. The use of strategies which rely on the state to promote feminist concerns has been particularly important in the discussion of the battered women's movement and the criminal justice system. More specifically, for the past few years feminists have been assessing whether the efforts of the battered women's movement to engage with the state to end male violence has been a "success" or "failure" (see for example: Currie, 1990; Hilton, 1989; Walker, 1990; Snider, 1991; and Ursel, 1991). The result is that "many movement workers see themselves caught somewhere in between these two positions" (Schechter, 1982:177) and it is this dilemma within feminism today that forms the centre of this study's theoretical framework.

Each writer within this discourse has brought unique insight into the issue. All have taken a strong stand on the issue. In fact, several of the writers have declared the battered women's movement to be a "failure."

Zoe Hilton for example, has argued that:

> despite partial success in terms of public policy, the movement has failed. Although 'battered women' achieved prominence on the public agenda, the very issues which necessitated the recognition of wife abuse as a social problem has been redefined and even reversed through government cooptation of the problem. (Hilton, 1989:314)

Hilton (1989:327) illustrates how this issue has been redefined by the state by pointing to what has become an off-cited statistic: 1 in 10 Canadian women are abused. It is her position that the state did indeed make efforts to bring wife abuse into the public arena. However, in promoting this issue, the state has presented wife abuse in terms of numbers and jargon rather than addressing the real economic and social causes of wife abuse. Hilton suggests, therefore, that the state has failed to address the relations of domination and control which contribute to and perpetuate the cycle of violence for many women. Schechter (1982:177) further agrees, as she points out that "legal solutions have not provided battered women with the economic and social resources - jobs, child care, housing, and safe communities that they need to free themselves from depending on violent men."

In a more detailed analysis, Gillian Walker (1990) documents how the battered women's movement, in its efforts to make public the oppressive conditions that women experience in the private sphere, adopted ideological constructs which were compatible with the 'social problems apparatus' of the state. In essence, wife abuse became linked with 'family violence' to mesh with existing social policies and service agencies. It is Walker's position that,

in aligning with the state and its agencies, the understanding of women's experiences and oppression within the broader structure of social relations was blurred by discourses which were more compatible with the agenda of the ruling class. Thus, Walker (1990:206) believes that when feminists do try to work within the state "the process that advances our cause also incorporates it into the very institutions against which we struggle."

While the above mentioned writers have focused on the battered women's movement and its attempt to engage with the state in general, other writers, such as Laureen Snider (1991, 1992), have specifically examined the relationship between this movement and the criminal justice system. In fact, Snider has perhaps been the strongest critic of strategies which rely on the criminal justice system to promote feminist concerns.

According to Snider (1991:239), "a strategy relying on the criminal justice system is practically, theoretically and morally wrong." Snider believes the very structure of the system poses a barrier to meaningful reform. For example, she points out that the use of discretion - a large part of the dynamics within our criminal justice system - "remain[s] in the hands of faceless individuals...passing criminal laws is a public process full of sound and fury, but enforcing them is a complex and largely invisible one" (Snider, 1992:10). Snider (1992:10) also points out that the criminal justice system is based on the rhetoric of protection, "which is itself a patriarchal notion [and] incongruent with feminist aims."

Moreover, the criminal justice system's language and meaning have been socially created by men, "judges [who] interpret laws meant to bestow rights on women will look to the meaning and purpose of that particular law and make decisions in light of their own norms and those of the legal profession" (Snider, 1992:21). In the process, the real needs of battered women are not truly understood or addressed.

Overall, Snider views the state as an institution which perpetuates the gender and class biases of our society. She is sceptical of reform efforts made to date and questions if the gains made by the battered women's movement (composed mostly of white, educated, middle class women) have been at the expense of the working class, native or coloured women in our society. She believes that the criminal justice system may work only for "some" women - those who are least likely to need it. She points out, "the higher the social class, power and 'respectability' of the victim...the more seriously his or her injuries will be taken" (1992:10).

Jane Ursel (1991) is less sceptical regarding the potential of the criminal justice system for realizing meaningful reform. For example, she points out that "the concept of an overly deterministic state which can coopt all social movements is simply not a concept verified by history" (Ursel, 1991:265). Ursel suggests that positive reforms - such as the decriminalization of abortion - have been realized by feminists in their engagement with the state (1992:10). However, Ursel agrees that the state has also

contributed to the oppression of women at other times. As such, the state must be viewed as having a contradictory influence over women's lives.

Ursel explains this contradictory nature of the state as resulting from the competing forces of the productive and reproductive spheres in society. More specifically, "the dynamic of the wage labour system to maximize the extraction of surplus requires the unrelenting commodification of labour which ignores the long term needs of the social system to maintain and reproduce the population" (Ursel, 1986:157). The result is that "patriarchy and capitalism often cut across and undermine each other creating difficulty of potential management and legitimation in the state" (Franzway et al., 1989:24).

As this contradiction has intensified throughout history, the state's involvement in the lives of women has changed. Today the role the state plays in women's lives is much more direct than in the past. Ursel explains this as indicative of the transition from familial to social patriarchy.[1] In its attempt to preserve the social system as a whole and to mediate between the demands of production and reproduction, "social patriarchy [has]emerge[d] as a new regulatory role for the state" (Ursel, 1986:157).

Hence, as the state mediates between production and reproduction it exerts a contradictory effect on women's lives - sometimes supportive, sometimes oppressive. Following Ursel's analysis, recognition of this contradiction suggests that, at certain times and concerning particular issues, there is potential

for progressive reform. Ursel contends that one example of this is the issue of wife abuse.

Violence has in the past been a medium which the individual patriarch used over his wife within the family. Historically, the use of force was legitimated by the state. There has been, throughout history, various acts of legislation that demonstrate this former position.[2] Even, in more recent times, the statutes of criminal law continued to discriminate against women as victims of male violence. Thus, a female rape victim's testimony was not adequate evidence at trial, instead, corroborative evidence was required. However, it was not only the laws in and of themselves which perpetuated male violence against women. The failure to enforce laws which would protect women was also a contributing force to wife abuse. As McCann (1985:73) points out, "theoretically, criminal law was able to protect women against their husbands' violence but this was being circumvented by certain enforcement practices."

The criminal justice system maintained the oppression of and violence against women by refusing to employ an active and meaningful policy against wife abuse. In this way, the law articulated a nonresponsive societal attitude "which has been institutionalized by the nonresponsiveness of the courts, district attorneys, the police...the whole continuum of the criminal justice system" (Paterson, 1979:80). Furthermore, by failing to prosecute wife abuse, the state contributed to the violence against women.

Today, however, wife abuse has become too costly for a social

patriarchal state.[3] The costs of wife abuse have come to affect all Canadians and, as such, now outweigh any benefit to the individual patriarch. Some of these 'costs' may include "social disorganization, lack of trust, fear of others and a general societal loss over social order" (MacLeod, 1987:34). While financial costs do not truly indicate the ultimate costs of wife abuse, they do put the magnitude of this violence into perspective and, perhaps, help explain the state's interest in ending this violence.

MacLeod points out that while all estimates can only be rough ones and likely underestimate the true price of violence, "Canadian taxpayers and their governments could have paid at least $32 million for police intervention in wife battering calls" (1987:35). This does not include money paid to other essential services such as shelters, counselling services, etc.

The costs of wife abuse have not only been felt within the criminal justice system but also in the greater capitalist economy. While it is a painfully blunt point, it must be acknowledged that battered women ultimately are impaired workers. Millions of dollars are lost by companies every year because of employees' lost hours, poor work performance or sickness - all due to domestic violence. This is not including the cost of future generations raised in violent homes who often perpetuate the abuse as adults and, thus, continue the cycle into the work environment.

The costs, combined with the efforts of feminists to initiate action within the criminal justice system, have resulted in state

commitment to changed policies regarding the prosecution of wife abusers. As a society, "we have come to the conclusion that we can not afford to ignore the problem and incur the devastating social costs which would result for the long term future" (MacLeod, 1987:36).

The response here in Manitoba by the criminal justice system has been to develop a "Zero-Tolerance" policy on wife abuse. In announcing a "Zero-Tolerance" policy, the Manitoba government has formally declared that domestic violence is not acceptable and will not be tolerated. This was in part the result of the recommendations contained in the Women's Initiative Report (March 1989) which expressed the philosophy that abuse is a crime and must be stopped.

The province has adopted this philosophy and, as such, developed a dynamic response which includes: a new charging directive; the specialized court and dramatic systemic changes in social service departments; a public awareness campaign that wife abuse is a crime and will be prosecuted as such; increased funding for wife abuse programs; and an increase in community-based wife abuse services - all of which translate into options and aid for abused women which were not available even ten years ago. Further more, "by making violence a crime, the [battered women's] movement offers psychological, symbolic and actual relief to women in their search to free themselves from abuse and self-blame. Women's attempts to win justice through the courts is one important assertion of their dignity and control over their lives"

(Schechter, 1982:176).

In terms of the controversy over which strategies will be most effective in the feminist engagement with the state, these changes are important because, as Ursel (1991:274) notes, they "were not secured against state opposition; indeed feminists employed in provincial and federal bureaucracies supported the principle of community-based programs - run by women outside the state, even when it meant sacrificing their own department and their own jobs."

It becomes clear, after examining the contributions made by feminists such as Ursel and Snider, that the issue of the feminist engagement with the state, particularly the battered women's movement and the criminal justice system, is at the very least a complex one. What is most important to acknowledge regarding this issue is, as Comack points out:

> [the tendency]...to divide participants into different camps, with those proclaiming the failure of reform on the one side and those arguing for its success on the other. The difficulty with [this], however, is that it invariably oversimplifies what are very complex issues. Moreover, points of agreement are glossed over in the endeavour to highlight the differences among the participants. (Comack, 1993:3)

In my view, and as Comack also points out in her analysis, each of these feminists have important, valid contributions to make to this discussion. Therefore, it cannot be simply a matter of siding with one camp or another. Each contribution must be carefully considered in relation to the others. As such, it is the purpose of my thesis to examine many of the issues that concern feminists about engaging with the state and, in doing so, to contribute my own voice to this discourse.

It is my position that feminist strategies which engage the state, especially the criminal justice system, must not be abandoned. There are a number of reasons for not giving up on the state. For one, as Ursel (1992:10) points out, feminists have already engaged the state and the state has responded. For another, the state has profound influence on other societal institutions. Hence, we can not abandon the law and simply hope that other institutions will change. The law must play a key role in change as it retains a crucial influence in shaping and rationalizing those other institutions such as the family and education.

As well, to not confront the state or the criminal justice system only lets the state off the hook. In this regard, one could argue that the state has a responsibility (moral and otherwise) to respond to wife abuse. Working toward reform is further necessary to the movement itself. Reform work, as Schechter points out,

> helps to keep a movement united and angry. Without targets for possible change, frustration and defeat overwhelm individuals...when changes occur in the police departments or courts, results are visible and concrete; women feel collectively strengthened while the issue gains further legitimation. (Schechter, 1982:180)

But, most importantly, we must be mindful that wife abuse is a life and death matter. Indeed, feminists must work for the long-term goal of empowerment and structural change, but they must also work to keep women alive in order to accomplish this (Comack and Brickey, 1991:313). This means using the state to fund immediate and necessary services such as shelters and assistance programs. In addition, there is a potential ideological benefit to the state's

condemnation of wife abuse. The criminal justice system has the important role of reflecting and promoting emerging values - "it symbolizes what we as a society will tolerate and what is beyond tolerance" (MacLeod, 1987:78). To this extent, even ostensibly symbolic or superficial reforms may help create more basic cultural changes which transitively might lead to further reforms in the legal system (Blair, 1979:102).

Hence, the aim of this thesis is to add to our understanding of the often uneasy relationship between the battered women's movement and the state. To do this will require special attention to the dynamics involved. In other words, it will be necessary to clarify the nature and role of the state within patriarchal capitalist societies and the specific criteria by which reforms of that system are to be evaluated. Like many of the writers who have addressed the issue of the feminist engagement with the state (Currie, 1990; Snider, 1991; and Ursel, 1991), I will work within a socialist feminist framework.

WHAT IS SOCIALIST FEMINISM?

In order to understand what constitutes a particular framework of theoretical understanding, it is often most useful to compare that approach with others. It is when we examine socialist feminist theory in contrast to liberal and radical feminist approaches that the value of this framework becomes most obvious.

Liberal feminism is based on the premise that the very institutions or structures of society are not in and of themselves

oppressive. Liberal feminists believe that "most discrimination against women is not mandated by [institutions such as] the legal system but is rather informal or based on custom" (Jaggar, 1983:176). Education or consciousness-raising is the key vehicle for increasing women's opportunities within society. Thus, "the aim of [liberal feminism] is to give women a greater share of the pie, without calling the nature of the pie [patriarchy and capitalism] into question" (Comack & Brickey, 1991:29).

This approach fails to recognize the ineffective aspects of the present bureaucratic system. Most importantly, while it does recognize women's oppression - albeit only in an underdeveloped, critical only of certain aspects, failing to address the issue of women as a class. Women's structured economic inequality seems to be unacknowledged. In fact, liberal feminists fail to address the overall class bias within our institutions in general.

Most importantly, liberal feminists fail to account for the on-going commitment of the state to repressive policies. In fact, this approach takes a one-dimensional view of the state, perceiving its structure and dynamic as completely compatible with the principle of equality. Liberal feminists fail to acknowledge that "women because of the duties ascribed to them as a class would necessarily start the race at a disadvantage" (Donovan, 1988:27).

Radical feminists have an equally one-dimensional view of society. Firestone, for example, defines social reality as "a total system of male-domination whose institutions form an almost impenetrable grid" (cited in Jaggar:167). The result of this

approach is to deny women any agency of their own. For example, Catharine MacKinnon advocates change through feminist consciousness-raising, yet she states that women are totally determined by male-domination in which submission is eroticized and desire is linked to violence. If this is the case, MacKinnon

> has left no room for an alternative feminist consciousness rooted in a separate, woman-defined identity. Moreover, she posits no resistance on the part of women, and ultimately, with the exception of those engaged in consciousness-raising, does not see women as active agents in their own lives. (Acker, 1984:177)

Consciousness-raising is only part of a prescribed revolution that radical feminists advocate. Yet, radical feminists fail to address what women are to do while waiting for this revolution. Waiting for the revolution simply is not a realistic option and many radical feminists have contradicted themselves by advocating revolution while engaging the state anyways. For example, MacKinnon has strongly criticized the state, yet personally engages with its apparatus[4].

Perhaps the greatest shortcoming of radical feminism is its failure to address the family and women's roles within a historical context. Specifically, radical feminism fails to explain how "sex (a biological fact) becomes gender (a social phenomenon)" (Donovan, 1988:151). Hence, it does not acknowledge that patriarchy is historically specific, and the form it takes presently is influenced by the present economic relations of capitalism. Thus,

> ...as long as they [radical feminists] don't try to explain *why* men are rapists, slavers and murderers, women are likely to jump to [the] conclusion...that rape, slavery and murder...offer such obvious benefits to their

> perpetrators...that women would be just as likely as men to rape, enslave and murder if only they had the chance. (Jaggar, 1983:288)

It is, thus, a socialist feminist approach that offers the most comprehensive framework as it "seeks to retain all of the insights and richness of the radical feminist perspective, while at the same time incorporating the strengths of an historical materialist perspective" (Ursel, 1992:17). Further, socialist feminism "does not privilege either class or gender but understands class, race and sexual orientation in a complex and contradictory relation to one another" (Adamson et al., 1988:98).

Socialist feminism attempts to delineate a political economy of oppression of women based heavily on the method of traditional Marxism. Yet, instead in seeking only to abolish the class system, it seeks to eliminate the gender system as well. Hence, some socialist feminist writings locate women's oppression within the dual systems of capitalism and patriarchy.

Theoretical works by Eisenstein (1977) and Ursel (1992) are examples of the dual systems approach within socialist feminism. Both theorists define and explain social relations in terms of the dual, interdependent systems of production and reproduction. While there are points in time when both systems require the exploitation of women's unpaid labour for incompatible reasons, the majority of the time both systems benefit and reinforce each other, making women's secondary status within society almost unbreakable.

The system of patriarchy has benefitted by women's unpaid labour in relation to capitalism because paid labour (which has

been men's work) has a greater status. With paid labour comes power and privilege. Traditionally, women who have worked in the home and have not been paid for their essential labour have thus not had equal power, resources and privilege. The result has been the reinforcement of male domination. Thus, we see how capitalism has served to reinforce patriarchy.

Capitalism has in turn been advanced by patriarchy. Capitalists, who have traditionally been men, have been able to exploit women within the workforce to the greatest degree. While socialists, Marxists and other critics of capitalism have pointed to the exploitation and alienation of the worker/employer relation, this powerlessness of employees is exacerbated when the worker is a woman and the employer a man.

While workers are economically dependent on their employer, women are also taught to be socially dependent on men. This has allowed capitalists to take further advantage of females, resulting in lower wages, less benefits and less opportunity of advancement. This is particularly true of female-dominated trades like the garment industry (Armstrong, 1978).

Of course, capitalism has benefitted most not from women actually working within the public sphere, but from women's unpaid work within the private sphere or the home. As Schechter (1982:225) points out, "women nurture each generation of workers and the capitalist class and individual men reap the benefits of their free labour."

By no means do dual systems theorists suggest that if women's

labour within the home was paid then their oppression would end. Keeping women in the home and, thus, essentially powerless within the public sphere has been effective partly because of the moral basis to this arrangement. The gender division of labour within our society has not only allocated the responsibility of domestic life to women, but it has created a moral obligation along with it. As such, women have been burdened with the task of keeping the family "together" at all costs, even at the expense of her own emotional and physical health. The private, nuclear family has benefitted both capitalism and patriarchy and has ultimately maintained the subordination - and frequently the abuse of women.

SOCIALIST FEMINIST VIEW OF THE STATE

It is clear that the strength of the socialist feminist framework is its ability to explain the contradictory role of the state in women's lives. History strongly documents that the state has served to both relieve and maintain women's oppression. Radical and liberal feminist approaches fail to explain why this is so.

It is the dual systems approach within socialist feminist theory that most adequately explains this contradiction and it is this specific branch of socialist feminist theory which I will utilize in this study. It is simply the most appropriate explanation of the criminal justice system's historical response to women.

By locating women's oppression in the two interdependent systems of capitalism and patriarchy and by defining these two

systems as interdependent, dual systems theory has defined the state as a mediator between the two. Thus, in viewing the state in such a way, dual systems theorists such as Ursel and Eisenstein can explain the contradictory role of the state in creating both oppressive and progressive reform for women. As the state mediates between the needs of the productive sphere (capitalism) and the reproductive sphere (patriarchy), women are often simultaneously subject to progressive and regressive policies.

In simplest terms, liberal feminists view the state as having unlimited potential to aid women. They explain women's oppression to date not as the result of a biased state apparatus, but due to discrimination through male control over the state. Hence, the structure and organization of the state is acceptable, women only need to gain greater control over it.

Liberal feminists believe that this can be achieved through education and changing attitudes and then "the state can be properly neutral toward men and women" (Franzway et al., 1989:15). Of course, merely educating men that discriminating against women is "wrong" is not likely to result in the equal sharing of power. Thus, this approach does not look at the structural causes that have allowed men to control the power of institutions in the first place.

Further, liberal feminism fails to look at the state and women's role in an historical context, "gender inequality is viewed more or less as an historical accident" (Comack & Brickey, 1991:28). Patriarchy is not addressed as a structural cause of

women's oppression, instead it is viewed as "an imperfection that needs to be ironed out" (Franzway et al., 1989:15).

While liberal feminists' view of the state is such that they can not explain why the state has contributed to passing policies that have ultimately oppressed women (such as inadequate welfare laws), radical feminists who define the state as inherently patriarchal can not explain why the state has passed progressive reforms that have aided women (for example, the decriminalization of birth control and affirmative action programs).

Based on their one-dimensional view of the state, radical feminists believe that there must be a revolution in which the state and other institutions are completely reconstructed by and for women. MacKinnon (1983:664), for example, defines the state as "coercively and authoritatively constitut[ing] the social order in the interest of men as a gender through its legitimizing norms, relation to society and substantive policies." She points specifically to the law as maintaining women's oppression and suggests that "the law will most reinforce existing distributions of power when it most closely adheres to its own highest ideal of fairness" (Mackinnon, 1983:644). Therefore, even when the law appears to be acting on behalf of women, it is only serving its own interests of maintaining male privilege. Any attempts by feminists to work for reform with the state most certainly result in cooptation.

Socialist feminists, however, view the state as a complex mesh of sometimes simultaneously oppressive and progressive responses to

women. Thus, this approach, unlike the others, fails to reduce the state and its relation to women to simple either/or terms. Rather, the dual systems approach to understanding women's oppression is based on locating women within both capitalism and patriarchy. The state is viewed as a mediating source between the often competing interests of capitalism and patriarchy.

SOCIALIST FEMINIST UNDERSTANDING OF WIFE ABUSE

Based on a socialist feminist framework, wife abuse must be located within the oppression of women which results from patriarchy and capitalism. It is because BOTH the productive sphere of society (which is premised on social relations of capitalism) and the reproductive sphere (which is based on patriarchal privilege) relegate women to a secondary status of power that wife abuse has existed historically and profoundly within our society.

Clearly, wife abuse is not a simple "dysfunction" of certain families. It is a phenomenon that finds reinforcement by the very structure or institutions of our society. Women's oppression that has resulted from their unpaid labour as well as their overall devaluation within society has resulted in putting women in a degraded position in our society which has made them an easy target for male rage. As Schechter points out,

> ...the problem is not the family per se, but the power relations within it. The family is not randomly violent...people are not indiscriminately learning victim and aggressor roles; they are learning about their proper place and the correct way to behave within a male-dominated family and culture in which violence is institutionalized. (Schechter, 1982:225)

Wife abuse defined as Schechter understands it, then, is not a deviant act, but a behaviour which is approved and sanctioned by our culture. It is not even something of which men are necessarily consciously aware. Men do not always consciously attempt to dominate women, "rather, they are socialized to feel uncomfortable when not in control, and they turn to violence as a response to their discomfort" (Schechter, 1982:219). When societal institutions, such as the criminal justice system, fail to condemn male domination through the use of violence, the acceptance of wife abuse becomes even more insidious and, thus, more difficult to address and stop.

The value of a socialist feminist perspective on wife abuse is that it examines both the class and gender biases of our institutions and, clearly, both exist. Ferraro (1989:176) found in her study that wife abuse among lower socioeconomic couples is not taken as seriously by the criminal justice system as battery in middle class homes. Schechter also points out that a battered women's injuries are perceived as more serious if she is of a middle class economic background (1982:220).

The gender bias of our institutions, particularly our criminal justice system, is perhaps even more profound than the class bias. It is most disturbing that so many laws can be documented as examples of the outright degradation and mistrust of women. For example, prior to 1983 all rape cases required corroborative evidence - something rarely available given that many rapes frequently take place in the privacy of women's own homes (Gunn and

Minch, 1988). The need for such supportive evidence is based on the rape myths and the implicit assertion that women lie[5] and must therefore have back-up by subsequent proof (Comack, 1992; Morris, 1987). The final result of such biases is that women become a truly powerless group within our society - a result of being devalued by their gender, and transitively, because of the class position that their gender relegates them to.

Socialist feminism not only describes women roles within the oppression of women by virtue of class and gender relations, it points out that this oppression is very useful. Both capitalism and patriarchy have benefitted from women's subordinate position in society. As such, until the structures of our society are so changed that they will no longer benefit from this arrangement, the oppression of women will continue.

A FEMINIST CRITERIA FOR REFORM WITHIN THE CRIMINAL JUSTICE SYSTEM

Using the above discussed definitions of both the state and wife abuse, we can established a criteria for reform based on a socialist feminist framework.

According to Snider (1991), feminist strategies for reform should be ones which aim to empower the women whom they are designed to benefit. Specifically, she points to certain key questions that must be addressed when evaluating reform:

1. How are social relations of domination by sex, class, race challenged or reinforced by this reform?
2. Which women of which class or race benefit or are harmed

from the reform?
3. How does this reform affect the male right to beat?
4. Does it(the reform) help build structures for further change? (Snider, 1992:5)

Snider (1991:191) further specifies criteria for successful long-term reform: it must involve uniting different class fractions; it must be visible, thus holding people accountable if slippage occurs; it must have the potential to be translated into rights, therefore gaining ideological legitimacy; and, finally, it must be institutionalized and therefore have a bureaucratic investment, so that there are more groups than the working or underprivileged classes interested in working for the reform.

Overall, what Snider is looking for is "substantive justice" which rests on the premise that "the legal system is inequitable, structurally biased against the poor and the powerless [such as battered women]. Legal reform is seen as necessary to challenge the discriminatory laws which maintain these conditions" (Snider, 1991:171).

Snider, as a socialist feminist, points to the structural basis of women's discrimination and oppression. She points to how the law has perpetuated the secondary status of women and subsequent violence against women. She thus recommends a change within the structures of this system; change that will lead to the above prescribed measures of progress and empowerment. At the simplest level, Snider (1991:172) defines reform as "the amelioration of everyday deprivation...the improvement of lifestyle and life chances."

In accepting Snider's criteria, I will consider the extent to which the Family Violence Court in Manitoba represents structural change within the criminal justice system and evaluate whether or not this change has resulted in progressive, potentially long-term reform.

In a similar fashion, Ursel (1991) argues that "success" should be measured - not in terms of the impact of the state on the battered women's movement - but in terms of the impact of changes for women in abusive relationships. In other words, do changes represent a significant improvement in terms of providing "more support and more options to battered women or women at risk to escape such violence?" (Ursel, 1991:268). In assessing the Family Violence Court, therefore, I will ask the question: Have women become empowered by the new options which the state has implemented?

Schechter (1982:1813) also offers an interesting criterion for evaluating reform. She suggests that reform be examined in terms of whether or not it has brought women together to participate democratically and struggle together. Similarly, Snider (1991:171) has suggested that when looking at potential reform we must question if "the fight helps to build the movement and organize women." Schechter points out that when women gain new skills and a sense of power by working together on behalf of all women, then the new strength and energy is brought to the movement. The movement gains further momentum which can then lead to further reform.

While the data to be utilized within this study cannot directly address the impact of the Family Violence Court on the battered women's movement, I can examine how women's concerns as well as women themselves from the movement have been incorporated as part of the very implementation of the court.

Currie has been one of the critics who has considered the engagement with the state to aid battered women as a failure. She states that

> ...wife battery as a social issue has been transformed into a policing issue. Within this discourse, issues concerning legal rights, police protection and criminal justice technical issues can be safely met within the current system - without any meaningful redistribution of power. (Currie, 1992:270)

Thus, another interesting and important point to consider is whether or not the Family Violence Court can be seen as representing a redistribution of power to the battered women and their advocates. This will be addressed within Chapter Five's discussion of secondary victimization.

Overall, we must be mindful when assessing reforms which are very new and which are based on a quest for larger reform within the criminal justice system. "Reforms related to wife abuse, accordingly, must be seen as experimental. We do not know the effectiveness or consequences of many of the changes" (MacLeod, 1987:90). This is certainly true of the Manitoba Family Violence Court which, at the time of this research, had been operating only two and a half years.

In the following chapter I will examine the more specific criticisms that feminists have made regarding the feminist

engagement with the criminal justice system in the area of wife abuse. These criticisms will provide the operational criteria for evaluating the Family Violence Court's response to wife abuse in Manitoba. It is not enough however, to determine if this court has been 'successful' based on whether it has responded to the specifically outlined weaknesses that I will discuss. Any response by the criminal justice system to the criticisms must be further evaluated in terms of the more general feminist concerns of support, empowerment, and future reform. Hence, this study will not only address whether the outlined changes have occurred, but what implications these changes have for women. This issue will be discussed in Chapters Five and Six.

ENDNOTES

1.Ursel defines "familial" patriarchy as "represent[ing] the experience of the past in which power and authority over women and children was largely exercised in the home" (1992:2). "Social" patriarchy is considered to be "typical of modern welfare states, in which support for and control over women and children increasingly resides in laws, institutions and the state" (1992:2).

2.There is a variety of legislation that clearly demonstrates this discrimination. For example, in the U.S., batterers were protected by the concept of "Immunity from Suit". This prevented a wife from suing her husband for assault. The rationale of the courts was that "allow[ing] the tort action would destroy the peace and harmony of the home and thus, would be contrary to the policy of law" (Straus, 1976:59).In Canada, a wife could not charge her husband with sexual assault prior to 1983 (MacLeod:82).
Perhaps that piece of legislation which is most indicative of the law's patriarchal bias is the infamous 18th century "Rule of Thumb" doctrine. This edict stated that a man could beat his wife as long as the stick that he used was no thicker than his thumb (Paterson, 1979:80). The bottom line was that "women were not equals and were unable to act as whole people in society. While this law no longer exists, its legacy remains. This law gave credence to the idea that women are allowed to be beaten" (Paterson:80). In short, women were not the accidental victims of violence, but the appropriate ones.

3.This position has been further reinforced in terms of exchange theory which suggests that marital abuse has existed because the "costs" of the abuse was not strong enough to counteract the "rewards".

4.See for example, 1988. Dworkin, A., MacKinnon, C., Pornography and Civil Rights: A New Day for Women's Equality, Minneapolis:Organization Against Pornography.

5.For example, Wigmore, a noted scholar whose work is still treated as authority in the Canadian legal system, has stated that women are inherently unreliable witnesses because they "do not reason or infer" and lack "objectivity" (Wigmore, 1913:314-317).

CHAPTER TWO

THE FEMINIST CRITIQUE OF THE CRIMINAL JUSTICE SYSTEM

As outlined in the previous chapter, feminists have a variety of general concerns regarding engaging the state on issues involving women. This is particularly true regarding wife abuse. The state has clearly failed to protect women in the past and in this chapter I outline five specific criticisms to demonstrate how the state has failed battered women. These criticisms have been documented by feminists both within the community (see: for example in the Pedlar report, 1991 and the Women's Initiative Community Report, 1989) as well as within academia. These criticisms can be examined within two broad categories - police activity, which includes the laying of charges and the enforcement of restraining orders; and court activity, which includes case attrition and prosecution, types of sentences and secondary victimization of witnesses.

It is these specific criticisms which will provide the operational basis for my evaluation of the Family Violence Court and its response to wife abuse victims. With reference to these criteria, my objective will be to demonstrate the state's movement from complacency to intervention. More specifically, I will argue that this intervention has resulted in a system which is better able to meet victims' needs in the form of a specialized court which offers a more sensitive and, thus, more effective response to family violence. Let us consider the past failures of the criminal

justice system to protect and aid victims of wife abuse, starting with an examination of police activity.

1. THE FAILURE OF POLICE TO LAY CHARGES

Perhaps one of the most profound inadequacies of the state's past response to wife abuse was the failure of peace officers to arrest offenders (Saunders 1986, Ferraro, 1989). MacLeod appropriately refers to this behaviour as "a common human retreat" (1980:37). Jaffe and Burris (1982) found that of 222 disturbance calls in London, Ontario police arrested offenders in only 3% of cases despite the fact that 17% of the victims required medical attention for their injuries.

Clearly, this inaction by the police gave society, the offender and the victim the message that wife abuse was not a crime; it was a private matter between a man and a woman. What is significant about this fact is that research indicates that these men go on to commit further acts of violence. In Kansas City, "police used only short-term solutions [thus] 90% of homicide victims or suspects and 85% of assault victims had one prior disturbance call...50% had 5 or more" (Dutton, 1984:283).

Because the police are the very first contact that a victim and offender have with the criminal justice system, it is critical that they establish the appropriate attitude and policy about this behaviour. If the police do not arrest batterers, not only are victims without protection, but justice cannot be served. There is no sanction by the court and, hence, the violence is then

legitimized. Most importantly, the victim is left believing there is no help, no hope.

It is important to note that it was not solely an issue of arresting an abuser - getting the police to even attend to a domestic call was problematic in and of itself. This is in part due to the fact that "[domestic calls] are the single most risky call for police officers - more police are killed and injured answering these calls than any other" (Paterson, 1979:85).

This reluctance to intervene at all is also due in part to the fact that the police have typically viewed wife abuse as a social problem and not a criminal conduct (Paterson, 1979:82). Because officers viewed this as a private or family matter (McCann, 1985:94), they would opt for mediating the situation rather than arresting the offender. This "dispute intervention model" required officers to "cool the parties down" rather than take sides and make arrests (Paterson, 1979:82). It is interesting to note that police manuals had in the past, instructed officers that "the power of arrest should be exercised as a last resort. The officer should never create a police problem when there is only a family problem existing" (McCann, 1985:89).

There are a variety of other reasons why the police failed to arrest wife abusers. Paterson (1979:85) suggests that "police may not respond [because] they have not been trained to handle emotions typically expressed by battered women, so they would rather ignore the obvious problem." McGillivray (1987:34) points out: "the dual role police are expected to fulfil further complicates

intervention...the emotional flip-flop, from being tough, aggressive, to sympathetic is really hard [for officers]."

Police tend to trivialize arresting batterers because it is not regarded as a particularly brave or exciting arrest warranting a medal or acclaim (Burris, 1983:310). Stopping a bank robbery is clearly much more newsworthy. Thus, it is apparent that "we must change this reward system to include arresting batterers...until [this is done] police officers will not be putting their energy into domestic violence cases" (Blair, 1979:107).

Police also explain their reluctance to press charges because of further inadequacies in the criminal justice system. More specifically, "police argue that [prosecutors] don't charge and the judges don't sentence batterers, so the police department should not waste its time making such arrests" (Paterson, 1979:84). Hence, not only were the police "unlikely to intervene...where they did intervene they would be unlikely to invoke the law" (McCann, 1985:73).

Without doubt, the excuses police used for not intervening and not charging offenders would be unacceptable in any other situation. It is because of the way that society as a whole viewed domestic violence that the inaction of the police was seen as valid. However, social attitudes have begun to change and the result has been a change in the criminal justice system. Paterson (1979:81) points out that, in July 1978, "class action lawsuits were brought against the police departments of Oakland and New York charging that the police had violated various rights of women [by

not charging their abusers when clearly they should have done so]." The police departments lost motions in court to dismiss the actions and agreed to make policy changes. Where individual women have not made personal pleas for change, feminist groups have. The result is that the criminal justice system has begun to respond to the changing attitudes about wife abuse and, at the same time, has begun to reinforce public disapproval of violence against women.

Since 1983, there has been an increase in charging rates. In that year, the Attorney General directed Manitoba police to lay charges in ALL reported cases of spouse abuse when there were reasonable and probable grounds that an assault had taken place. As the number of charges increased, it became necessary to develop a specialized court, which originally sat two days a week. With the increase in cases that were proceeded with, more charges were laid. In fact, the number of charges laid in 1983 was 629; by 1986 it was 957 and by 1991 it was 1,448 (Ursel, 1991:9).

The 1983 directive is important "because it had the effect of making wife abuse a publicly visible and calculable problem" (Ursel,1991:268). While the laying of charges cannot be considered a direct measure of the efficacy of the Family Violence Court, it does provide an important insight. Police officers, as stated above, have hesitated in the past to lay charges because these cases would not be pursued by the Crown's office. With a specialized court dedicated to wife abuse cases, there is potentially more incentive for the police to continue to lay charges.

2. ENFORCEMENT OF RESTRAINING ORDERS

Charging an offender, in and of itself, does not offer abused women sufficient protection. There must be subsequent conditions. As such, restraining orders play an important role in responding to domestic violence. Many abused women do not want to - or cannot - stay in a shelter. Because of structural constraints, shelters can offer women safety for a limited time - certainly not for the many months that the criminal justice system takes to process a case. It is not a realistic option for most women to move or to relocate to prevent further interaction with the offender.

Even when an abuser is charged, he usually receives judicial interim release or bail. In the past, advocates for abused women have pointed out that this release would often endanger the victim further because such a release did not include any conditions restraining the accused from communicating with or contacting the complainant. It is crucial that the legal system intervene in further interaction between a batterer and a victim because "in all cases of domestic violence there is strong likelihood of continuation or repetition of the offence" (Pedlar, 1991:68). Pedlar further points out that "not only do such breaches portend a renewal of risk to the victim, but also indicate that the offender has not been deterred by the court" (1991:73).

Perhaps one of the reasons that the legal system has failed to adequately respond to this issue is because Crown attorneys believed an active policy on breaches would clog the courts. Yet, as Pedlar (1991:71) points out, "this may occur in the short-term,

but with consistent enforcement of these types of offenses, the message to offenders would be undeniable. There must never be a quota on safety."

When such breaches were prosecuted, it was as a summary conviction, which carries the lightest sentencing that can be issued. Typically, offenders would receive a conditional discharge. Hence, the message to offenders was that this was not a serious offence and would result in little more than a slap on the wrist.

It is indeed frightening to accept the fact that, in the past, women in violent situations were refused the protection of a restraining order because "the court has supported the proprietary rights of the husband over and above the safety of the wife or cohabitee" (McCann, 1985:80). In Britain, if a woman did receive such an order it would be effective for only a short period of time, as the court did not believe in "keeping a man out of his home for more than a few days"(McCann, 1985:80). In California, a woman could only receive such an order if she was presently filing for divorce (Paterson, 1979:80).

Often, women were refused exclusion orders because of a husband's custody rights. If he was viewed by the court to be, in its opinion, truly violent then "relief was offered not on the basis of [the wife's] own need but rather the protection was mediated through her role as mother" (McCann, 1985:81).

This reluctance to have a violent male removed from the matrimonial home meant that women and children (the victims) were forced to find alternative accommodations to escape the husband's

violence. Frequently, such accommodations were not available. While shelters offer vital aid to these women, they are not the most pleasant accommodation. Hence, the victims are victimized again by the trauma of having to seek shelter in a safe house.

A further blockade for women receiving these orders was the fact that in Manitoba, as in the U.S. and Britain, these orders were issued through family law courts as opposed to criminal courts. In Manitoba, a woman would have to lay a restraining order through the Family Maintenance Act. This would then require the woman to hire a lawyer. Even with legal aid available for some women, hiring a lawyer could still be problematic and often meant a long wait to receive such legal aid.

If a woman could not afford to buy this protection, she would then have the option of entering into a peace bond. This, however, was equally problematic. Frequently, there would be a "delay in the hearing of the application as the defendant must be served with a summons...in Manitoba the hearing may be further delayed if the defendant did not agree to sign a peace bond at the outset" (Pedlar, 1991:74). This delay could take as long as 6 months and, in the meantime, the woman had no protection.

As with the problem of the police arresting abusers, the inadequacy of protection orders was not only due to the difficulty of having it laid, but in its enforcement. As Blair (1979:16) points out, "there is already a law against breaching a restraining order...yet police are less inclined to respond to calls against them."

Of course, the effect of these orders is questionable in and of itself. They are only effective to the extent that the individual is intimidated by the court's authority: "it is simply another law. If the man is not concerned about assault laws he probably will not care much about the temporary restraining order either" (Blair, 1979:117).

It must be noted, that the data which will be examined in terms of this criterion can only accurately measure the number of breaches of restraining orders rather than the number of orders issued themselves. As such, this will be discussed as a measure of police activity instead of a measure of the specific courts. However, it must also be pointed out, that the ability of the police to lay charges for breaching protection orders presumes that a restraining order or no contact condition was made in the first place. As such, an increase in the number of breach charges being laid, may indirectly reflect the behaviour of the courts over time.

3. STAY RATE - CROWN PROSECUTORS FAILURE TO PROCEED WITH CHARGES

The belief that wife abuse was a private affair between a man and a woman was endemic within the criminal justice system. Thus, Crown prosecutors, like police officers, felt there was no need to pursue these cases. In fact, it was common procedure in the past to direct an abused woman to file a private charge against her partner instead of the police laying a criminal charge. The result was that Crown attorneys "did not take private informations very seriously, believing the police would have laid the charge if it was

warranted" (Burris, 1983:310).

Because victims are intimately involved and economically dependent on the perpetrators, women often hesitate to testify. This is often described as "traumatic bonding" which is "equally characteristic of the relationship between hostage and hostage-taker...reconciliation between a remorseful offender and an injured, emotionally susceptible victim binds the victim firmly to the relationship" (McGillivray, 1987:22). The victim's hesitation to testify has in the past greatly affected the prosecutor's behaviour. Most specifically, it has resulted in Crown attorneys' own hesitation to proceed.

Crown attorneys' reluctance to continue with charges is partly due to the fact that they do not believe that they will get a conviction. This is because of the difficulty in getting evidence that meets the burden of proof - "in most cases there is no witness except the victim herself. Photographs and circumstantial evidence are not sufficient for a conviction" (McGillivray, 1987:35).

If Crown attorneys hesitate because they define a "victory" in the courtroom in terms of a conviction and the victim [because of the emotional dynamic of wife abuse] refuses to testify, the victim then becomes the object of the prosecutor's frustration. Thus, Crown attorneys would consider the reluctant witness as the single greatest problem within the case. Often the Crown would report feeling more hostility towards the victim than for the perpetrator. This often resulted in prosecutors dropping the case.

Because of the past definition of success, "domestics" were

considered the "grunt work" of the Crown's office, maybe just above traffic court. The result was that junior prosecutors with little experience often had to handle these complex cases which had no status among their peers. Hence, not only was there severe structural disincentive for attorneys to invest much effort in abuse cases, those who were involved with them often lacked the skills to get a conviction.

The inadequate action taken by the prosecutors was equally rooted in the ignorance of the wife abuse dynamic. McGillivray (1987:30), for example, suggests that "the relationship between victim and offender and the repetitive nature of abuse led to an assumption by prosecutors that the victim in at least some cases had consented to the act."

In the Domestic Violence Review (1991:32)[1], commissioned by the Minister of Justice, James McCrae, as he then was, and headed by Dorothy Pedlar, it was recommended that "a greater sensitivity to the issues [of wife abuse] will lead to an increase in the ability of the Crown to respond appropriately to both victims and offenders and facilitate the involvement of victims in the court process." Thus, the tendency for wife abuse cases to be stayed was in part the result of a lack of awareness and understanding of domestic violence by prosecutors. In short, "the work structure and definition of success in the prosecutor's office militated against vigorous prosecution or sensitivity to the victim in spousal abuse cases" (Ursel, 1992:17).

The legal system itself has also created barriers to victims'

participation in the court procedures. Because of the very organization of the criminal justice system, there is an extreme backlog of charges. Wife abuse cases - as all cases - would take as long as six to twelve months to come to trial. As time went on, it would be more likely for a victim to change her mind, reconcile with the accused, receive further threats from the offender, or grow disillusioned with the entire criminal justice system.

Another aspect of our legal system that can make the prosecution of domestic violence cases problematic is the opportunity for attorneys to use discretion. Ursel (1991:16) points out that, in the past, "discretion was often the mechanism for minimizing the seriousness of wife abuse and the means of keeping such cases out of court."

Crown prosecutors are agents of the court, of a legal system which theoretically exists to protect the public. When Crown attorneys fail to take abuse cases seriously, they convey a message that the court does not exist to protect women. By treating wife abuse cases "as public issues, pressure [is] taken off the victim who is often locked in a cycle of violence. Since the matter is no longer her personal action, she is better able to resist pressure or intimidation from the offender" (McGillivray, 1987:31).

Clearly, what was needed was a new definition or criteria for "success" in the Crown's office. What was needed was a definition based on tenacity, that is, taking the case as far as it can go while still being sensitive to the victim. This would potentially be achieved through specialization of a court and staff.

Within this research, the potential for progressive reform within the criminal justice system will be assessed partly on the frequency that cases are stayed. More specifically, the state's commitment to a Zero-Tolerance policy on wife abuse will be measured based on the stay rate or the Crown's commitment to proceed with domestic cases within the Family Violence and General Courts.

4. INAPPROPRIATE SENTENCING

There is a pervasive public opinion that wife abusers receive light or inappropriate sentences (Women's Directorate, 1989:26). Also in agreement are shelter workers and advocates for abused women within the social or legal services across Canada who maintain that "sentences handed down in wife battering cases are often arbitrary and inappropriate...appropriate sentences are certainly not sentences which seem to absolve the batterer or which blame the victim for her own victimization" (MacLeod, 1987:88).

Perhaps one of the most pervasive problems within the criminal justice system is the inconsistency with which sentences are given:

> it depends on the nature of the offence. If it's an isolated incident and the couple has reconciled, then the court is disproportionately lenient. If he has broken his brother's tooth, he could get a fine, but if it's his wife, he gets an absolute discharge. (McGillivray, 1987:36)

In MacLeod's (1987:84) collection of informal reports and interviews of abused women she found "that about 40% of the cases are dealt with by conditional discharge." MacLeod (1987:89) suggests that "the apparent leniency of these sentences can be made

more unfair if they are based on the judge's unfounded and stereotypical assumptions regarding the battered woman."

Often it is the court's position that "in dismissing the case for want of prosecution or in handing down lenient sentences, [it] is in effect returning discretionary power to the victim" (McGillivray 1987:37). It is of course questionable if in fact that is how the victim views the court's action or inaction. It is more likely that the victim feels abandoned and further isolated.

Sentencing was also influenced by whether or not the information of the offence was filed privately by the victim or laid by the police. When charges were laid by the police this seemed to indicate the matter was to be considered as serious. Burris (1983:315) found that 59% of private informations were dismissed while only 28% of police-laid charges were dismissed. Further, 26% of private informations resulted in a fine or jail, 45% of police-laid charges received such a sentence.

Writers such as Pedlar (1991) and MacLeod (1987) agree that probation may be an appropriate sentence because through probation an offender can be monitored. However, probation is not an adequate option without appropriate conditions attached - such as weapon prohibitions and conditions of no contact or communication with the complainant.[2]

Another criticism of issuing probation as a sentence was based on the fact that, when probation was issued as a sentence, it rarely involved any mandatory treatment for the batterer. When treatment programs have been mandated as a condition of probation,

the sentence is often not long enough to ensure that the treatment program will be completed.

Both Pedlar (1991) and the Manitoba Women's Directorate (1989) have pointed out that inappropriate sentences had not been appealed in the past, thus allowing inadequate precedents to remain. This also showed a lack of commitment by the criminal justice system to correct its position on wife abuse.

Ultimately, what is necessary are "sentences...which will protect battered women and their children, give the batterers the counselling they need, where appropriate and clearly convey the batterer's responsibility for his actions" (MacLeod, 1987:89). Yet, this had not been the case in the past.

5. SECONDARY VICTIMIZATION OF BATTERED WOMEN WITHIN THE CRIMINAL JUSTICE SYSTEM

The legal system is a social institution and, as such, it "can reflect some of the worst aspects of society: [for example] the distrust and disbelief of women" (Blair, 1979:101). The result is that many prosecutors treat wife abuse victims differently from other victims of crimes. Blair points out that in the U.S., these attorneys "are suspicious that a battered woman will later be reluctant to testify so they demand written statements and medical evidence of the crime before filing charges....This is different from the way other victims are treated. Other victims are not routinely asked to sign written statements before charges are filed" (Blair, 1979:111).

In general, the courts - like the police and society in general - have viewed wife abuse as a family matter that does not belong in the criminal justice system. This attitude has led to a profound ignorance of the dynamics involved in wife abuse and a general indifference, perhaps even unacceptance, of these victims.

The very nature of the legal system presents opportunity for further emotional stress and alienation of female victims. First of all, the majority of judges and lawyers are male and thus do not provide a base for identification for victims, but typically lack any sympathetic ability to interact with the women. Secondly, because the nature of court proceedings is one based on highly formalized rules of procedure and evidence, the victim becomes depersonalized and objectified as attorneys debate the intricacies of precedents and admissibility of evidence (Brickey,1986).

If an abuser is charged with an indictable offence in Canada, he can elect to be tried in a higher court, or at the Queen's Bench level of proceedings. This requires that a preliminary hearing be scheduled to determine if there is sufficient evidence to have the case proceed to trial within Queen's Bench. This also gives the Defense a chance to see what kind of case the Crown has against the defendant. It is interesting to note that the accused does not usually testify at the preliminary hearing (as the Defense does not usually present evidence at this point). However, the victim typically *does* testify during this proceeding and then once again at trial. Thus, the victim is required to sit through cross-examination twice (which is designed to attack her credibility and,

unfortunately, her character) and thus, she encounters twice the trauma. Having to appear in court even once may be difficult for women structurally as childcare and transportation are often unavailable. Hence, a second appearance may be impossible.

Judicial proceedings within our criminal justice system are based on an adversarial approach to proving an accused is guilty or not guilty. This approach is in part a result of, our legal system's obsession with an accused's rights. Legal procedure has been developed to provide the greatest fairness to the accused, often resulting in the greatest discomfort to the victim or witness. Because our legal system aims to protect the freedom of an accused to the fullest possible extent, the intrusive cross examination of witnesses, within an adversarial approach, seems to be rationalized as acceptable in order to protect the right of the accused to a fair hearing. This fair hearing can be at a tremendous emotional or mental cost to the victim.

Critics of such an approach suggest that this is particularly stressful to victims of wife abuse. Shaffer (1988:171) points out that the adversarial system exacerbates an already frayed relationship. Shaffer (1988:172) further points out also that "the exercise [of cross-examination] pits one litigant against the other, increasing rather than lessening hostility". This can be extremely dangerous if the accused is acquitted and therefore free to further harass or harm the complainant.

Certainly the nature of questioning witnesses can create great emotional stress. As attorneys ruthlessly fight out their

individual sides, their cross-examination of victims can be very demoralizing and painful. The personal background and emotions of victims are left to the questionable discretion of legal competitors. Overall, the victim becomes simply an observer in her own case, which may not be decided on the basis of whether or not the violence occurred, but on the traditional limits of evidence. The result is that the process "only reinforces [the victim's] powerlessness" (Gavigan, 1986:105) and the victim is left feeling like she is the one on trial, not the accused.

In the case of *R.v.O'Connor*[3], the Women's Legal Education and Action Fund (LEAF), acting as intervenors, submitted to the court that evidence which is presented in court should not build a prejudicial screen of myths and biases complimenting those already prevalent in society. In fact, in their factum LEAF stated, procedures or rules of evidence should promote the ability of witnesses "to give, and for fact finders to perceive, a full candid account of what happened...assessibility of relevant and probative value should rest on generalizations that reflect the experience of disadvantaged groups [as]all parties in the judicial process are to be treated with dignity and respect" (LEAF factum, 1991:14).

While the adversarial structure of the criminal justice system further victimizes abused women, so does the democratic ideal of having an open or public court system. The presence of the media or strangers in the courtroom can make the victim's testimony especially stressful for her. This is particularly true because the sensitive details of her life and the relationship between herself

and the accused may often be disclosed, particularly in the cross-examination. Because the courts were not sympathetic to these needs of victims, women would often be further traumatized.

Based on the treatment victims received, it is little wonder that so many women did not want to testify or proceed with charges. Compound this fear of an intimidating system with the dynamic emotional trauma of testifying against a loved one and the entire court experience becomes truly overwhelming.

Without support from the Crown's office or an advocacy program, the experience leaves abused women feeling once again victimized. MacLeod (1987:37) points out that "in one study...only 31% [of the abused women surveyed] were satisfied with the Crown attorney's intervention. The reasons they gave were that the Crown attorneys did not spend enough time explaining the situation and court proceedings - they offered no support or understanding." Pedlar (1991:37) also found in her consultations with women's groups that "women felt they did not receive enough information throughout the proceedings."

Perhaps the Crown attorneys who represent the State have in the past reacted poorly because abused women force us to confront this potential loss of control over our own lives. Hence, Schechter is correct that "acknowledging our discomfort with victims of battering can help us to understand why battered women remained hidden for so long" (1982:20). As we come to understand battered women by looking within our own selves, perhaps then we can offer sympathy instead of judgement as social workers,

attorneys and judges.[4]

Thus, it is with these 5 specific criticisms and the more general concerns within feminist theory (outlined in the previous chapter) that the Family Violence Court will be evaluated in terms of offering progressive reform on the topic of wife abuse. While the effect of specialization can not be fully documented, as the court had only been in operation for two years, it is hoped that this study can offer positive policy analysis, recommendations and strategy for future reforms within the criminal justice system.

While the above discussed criteria will be used to evaluate the Family Violence Court itself, in doing so, they will also contribute to the feminist discourse concerning effective strategies of reform. That is, by evaluating the effect of specialization we can examine the differential effect of structural modification versus attitudinal change within the criminal justice system.

To implement a strategy that is based only on changing attitudes and not the structure of the criminal justice system implies that the inadequacies of the past regarding domestic cases were due to individual discrimination or attitudinal factors, thus minimizing the importance of structure. Feminists have long maintained that we must address the systemic basis of violence against women if an adequate understanding, and ultimately, an adequate solution is to be reached.

Despite changes, men and women remain unequal within our society or our institutions. Hence, institutions such as the

criminal justice system must be adapted to give special consideration to the powerless position of the female victim. This then requires a change in the courts themselves. This is particularly relevant to those courts which hear and convict wife abuse cases, for it is within the dynamic of wife abuse that the imbalance of power between men and women is most profound.

Formal institutions such as the criminal justice system often intimidate those groups in society with less power. These institutions seem overwhelming and foreign. Most importantly, because these institutions were founded in a capitalist, patriarchal society, they uphold the many prejudices that go with a class and gender hierarchy of status and power. Indeed the law proposes that everyone is equal before its rules and regulations, but in practice that can be very untrue.

The law and its implicit ideals were designed by men. Until recently and, unfortunately, still to some extent, the law was practiced solely by men. As such, battered women involved in the criminal justice system have found little to identify with or relate to. Women's perspectives were not understood or validated.

It is clear that because of gender socialization, men and women experience social life in very different ways. Women have been traditionally raised to be submissive while being oppressed politically and economically. This has translated into a silence of women's needs and voices. As such, the legal system has failed to acknowledge and understand the needs of women as victims of male violence; it has failed to understand the complicated dynamic that

keeps victims in abusive relationships; it has failed to understand how women perceive the criminal justice system in relation to themselves as less powerful individuals within society; and it has failed to offer sensitivity to the victim as it perpetuates male-centred ideas about objectivity, evidence and the accused's rights.

The power differential between men and women in the wider society does not end outside the courtroom, rather it is perpetuated and, perhaps, magnified in the courts. Men who beat their partners are really abusing their power; their status. They are denying basic rights to these women. If the court's decorum is equally imposing, the court experience for victims of wife abuse can only be horrific. This leads ultimately to women being further intimidated and, thus, refusing to cooperate.

What is necessary is a court decorum that can empower women - a court that includes the victim in the process rather than one in which women are kept on the periphery, an observer in her own case. For all of these reasons, a specialized court is necessary if a truly victim-sensitive approach is to be developed and implemented.

Women have for centuries watched as men have dictated the direction of institutions within society. It is time that women now have a voice in change. As such, creating a specialized court in which women are heard - most importantly, creating a court where women's groups, advocates and battered women themselves can contribute to its implementation - is a move toward effective reform. This is what we must seek to understand in evaluating the Family Violence Court.

ENDNOTES

1.The Domestic Violence Review, headed by Pedlar was commissioned in late November, 1990 "to examine the justice system's response to domestic violence directed against women. The information base was one of extensive, province-wide meetings with direct service and advocacy groups for women, a range of justice personnel, health care personnel as well as survivors of domestic violence. The mandate of this review was to present recommendations to specifically address adequate protection and sensitive treatment of women by the justice system" (Pedlar, 1991:vi).

2.Pedlar further points out that probation services often receive insufficient information when required to make a pre-sentence report to the judge. Although these are ordered in only a small percentage of cases, they are often required in cases of a serious nature. If the report from this agency is incomplete, how then may a Crown attorney argue adequately for an appropriate sentence? (Pedlar, 1991:38)

3.(30 June 1993), No. CA016527 (BC.C.A.).

4.Because this variable can not be measured directly, it is my intention to spend time observing how "domestic" cases are actually treated within the general court i.e. are these cases treated in a rush, do prosecutors seem unsympathetic to victims, is the process less sensitive to victims' needs, etc. This will be compared with data collected about court proceedings within Family Violence Court monitoring schedules and based on my one year experience of observing the court dynamic in Family Violence Court.

CHAPTER THREE

THE FAMILY VIOLENCE COURT

On September 17, 1990 the Family Violence Court in Winnipeg began operation. This court is unique - nowhere else in Canada is there a court which specializes in hearing only domestic violence cases. Cases which are defined as "domestics" are those cases involving victims who are in a "trust, dependency or kinship relationship with their assailant" (Ursel, 1992:66). This definition does not privilege a marital or heterosexual relation and, as such, can include boyfriend-girlfriend, gay and lesbian relations, as well as relationships with elders and adult children.

As a provincial court, the Family Violence Court hears first appearances, remands, guilty pleas and trials. This court also hears preliminary hearings for cases in which the accused has elected to be tried in the higher court, the Court of Queen's Bench.[1]

At the end of the first year, the court was operating 52 hours a week, an increase from the 28 hours a week originally allotted. This increase was a response to the ever growing case load within the court.

Initially, the court consisted of a docket or intake court and a trial court. As the case load grew and more time was required, a third court activity, "screening court" was added. By the end of the first year there were three screening courts, which hear cases three afternoons a week.

Screening courts are essential to the Family Violence Court's mandate of disposing cases within a three month period. They provide a quick date for guilty pleas and also hear all remands, thus providing a mechanism to minimize unnecessary delays. These courts handle an enormous volume of cases, 50-75 cases in a half day on average. By providing accessible, short hearings, these courts help prevent backup in docket court and keep cases moving through the system.

Not only did the design of the court allow for greater efficiency, another advantage was that in working to dispose cases within a three month mandate, the court could offer earlier intervention. With earlier intervention comes the opportunity for greater assistance for victims, not to mention greater protection.

BACKGROUND

As discussed in a previous chapter, within the last fifteen years the women's movement, particularly the battered women's movement, has challenged the criminal justice system and social service system on their historic response (or lack of response) to wife abuse. The result was the growing recognition by societal institutions that wife abuse was indeed a major criminal and social problem.

The first reaction by the criminal justice system to the demand by advocates for battered women was the 1983 charging directive to police. This directive instructed police officers to lay charges in domestic assault cases when there were reasonable

and probable grounds that an assault had taken place. This directive "was an attempt to end the historic double standard: when an assault took place between strangers it was deemed a crime and a charge was laid, but when an assault took place between partners or family members it was deemed a private matter best resolved outside of the criminal justice system" (Ursel, 1992:2).

The 1983 directive received unprecedented public support.[2] However, the public did not have the same faith in the courts - the public held the position that the courts did not appropriately understand the victims of these crimes (Ursel, 1992). This combination of strong public belief that criminal justice intervention is a proper response to family violence, along with a strong suspicion that not all members of the justice system carry out their duties properly, put the criminal justice system under close public scrutiny.

Hence, the 1983 directive resulted in pressure on the criminal justice system in two ways. First, because it resulted in more and more cases coming to court, the existing court system was having difficulties accommodating the increasing docket. Second, since the directive helped to bring greater public attention to the issue of wife abuse there was a greater public demand for justice for victims of family violence.[3] This greater public interest and concern led to greater press coverage of the court processing of family violence cases and an increasing number of media exposés and editorials regarding questionable sentencing.[4]

The public pressure for change within the criminal justice system occurred throughout all jurisdictions within Canada. What is of importance is the way in which the state has responded to this demand. Specifically, there are two types of responses that have emerged in Canada: 1. The Manitoba Model, which combines mandatory arrest policies with a specialized criminal Family Violence Court; and 2. The Mainstream Model, which combines mandatory arrest, with "no drop" prosecutorial policies.[5]

What is relevant in assessing these two models is the degree to which they may be considered to represent "structural" modification. The criteria for effective change within the criminal justice system from a feminist perspective is based on the ability to aid and empower battered women. The prescribed means to such an end is modification within the existing court system. Hence, these two models must be considered within this framework in order to assess the criminal justice system's potential to meet the feminist mandate to aid and empower battered women.

What will be argued here is that it is the Manitoba Model, with its development of a specific court and staff, which represents the potential for change within the system and hence, for the empowerment of women. In contrast, the Mainstream Model essentially represents only a change in policy and, thus, is more limited in its potential for change.

THE FAMILY VIOLENCE COURT: A SUBSTANTIVE REFORM?

The mainstream model is premised on the liberal belief that all are equal before the law. As such, the structure of the criminal justice system, its procedures and techniques require no further development - they represent true and fair justice for all.

Despite the fact that the mainstream model does speak to the old double standard by directing its personnel to treat family assaults like any other assault and prosecute rigorously, it fails to address the unique problems which arise when the victim is highly bonded to, and dependent on, the assailant. Family violence cases do not involve the same dynamics that define general assault cases. As such, domestic cases must be treated with a special understanding of the complex relationship between victim and accused.

It is clear that the existing structure of the criminal justice system is not conducive to empowering victims. Instead, it often results in the secondary victimization of women - particularly because of the legal system's emphasis on the accused rights. However, the process of the Crown's career advancement has also influenced how wife abuse victims were treated within the court. When there is so much emphasis on Crown attorneys winning a conviction in order to be promoted, the "win" was often at any cost to the victim. The Manitoba Model is designed to respond to these very concerns as it is premised on the understanding that victims of family violence are particularly vulnerable and a **JUST** intervention must take this into consideration.

A potential source of contention among critics of the Family Violence Court may be its continued use of the adversarial system. Yet, we must be mindful that the adversarial system can offer certain advantages to groups such as women who have less power in society. Delgado (1985), for example, points out that we should not look at the use of lawyers on the behalf of private individuals as paternalistic. Because the legal system is based on formality, lawyers are necessary to ensure that victims are aware of their full legal position through the provision of legal advice. Furthermore, Delgado (1985), Shaffer (1988) and Bottomly (1984) all point out that this formality does not necessarily have negative implications. They demonstrate that formal procedure can actually serve to compensate for power imbalances of disadvantaged groups.

Delgado suggests that having professional advocates can reduce discrimination greatly. This is of particular importance to women who are clearly victims of gender discrimination within societal institutions. This may be especially relevant to abused women as Delgado suggests, because "when parties are of unequal status and the question litigated concerns a sensitive, intimate area, the risks of an outcome coloured by prejudice are especially great" (1985:1403).

Shaffer (1988:165) also agrees with the benefit in formal procedure as "informal procedures produce the opposite of what is promised of them...they serve to extend state control over the individual rather than to increase the individual's control over the resolution of the dispute.". Thus, she advocates formal

procedure to avoid such prejudice. Shaffer believes that prejudice is environmental, existing in settings that encourage and tolerate it. Within a courtroom, the formalities remind those present of higher values and avoid the unstructured interactions that can foster prejudice. In short,

> ...the human propensity to prejudge and make irrational categorizations is thus checked by procedural safeguards found in an adversarial system...[and] a formal adjudicative forum increases the minority members'sense of control and, therefore, may be seen as a fairer forum." (Shaffer, 1988:188)

If formality and the adversarial system can offer compensation for the power imbalances of disadvantaged groups, then perhaps the formal procedure and adversarial system within the Family Violence Court can serve to aid one of the most disadvantaged within our society - abused women.

While it is clear that many of the procedures of the criminal justice system remain within the Family Violence Court, the difference in the Family Violence Court is how these techniques are used. A specialized team of prosecutors, judges and support staff can recognize pressure points more rapidly and can utilize legal procedures to respond more precisely and appropriately. This specialization of individuals, combined with policy and commitment to prosecute domestic cases as crimes (not as "indiscretions" or "family disputes" as they were considered in the past), has resulted in the breaking down of several key historical barriers that have prevented victims of wife abuse from JUST intervention by the criminal justice system. Let us consider these issues:

Perhaps the foremost source of secondary victimization of witnesses was the focus on an accused's rights. To date, witnesses have been compelled to give details about themselves in order to secure that the accused receive a fair trial. This is in part due to the "assumption that the examination of the complainant's personal background, behaviour and character will help to determine her role in the assault"(LEAF et al., 1993:14). Implicit then is that the victim had a role in the assault in the first place, that is she may have contributed to the assault. Blaming the victim is a profoundly traumatic consequence for women who charge and then testify against their partners.

Another structural barrier to a more victim-sensitive decorum was the prevalent view of "conviction as success." Anything other than a conviction was considered a loss and, as such, any case that was not likely to result in a conviction is a case that most prosecutors would rather not pursue. Wife abuse cases, because of the complicated dynamic between the accused and victim, are perhaps the most difficult cases to prosecute as victims are often frightened or apprehensive about testifying. Because of the nature of criminal proceedings, testimony from the victim is essential to reach a conviction. The result is that victims have often been pressured by prosecutors to testify - often bullied as the attorneys feel pressure on themselves to secure a "win". In the past and "under the old criteria the Crown attorney would confront the reluctant victim as the single greatest problem with the case. Often Crowns would report feeling greater frustration and/or

hostility to the victim than they would feel toward the perpetrator" (Ursel, 1992:24).

Within the Family Violence Court, there has been a redefinition of "success" which has helped to change prosecutors' attitudes about wife abuse cases and, ultimately, has served to aid battered women. This new victim-sensitive approach has led to defining success as "those interventions which would protect and/or assist the victim, protect the public and increase the possibility of treatment for the perpetrator" (Ursel, 1992:24). The Crown attorneys within this court have been instructed not to push victims into testifying in order to secure a conviction. Instead success is measured in the tenacity to prosecute the case as far as possible while remaining true to a victim-sensitive approach.

The tenacity principle succeeds in producing a higher rate of cases proceeding to sentencing relative to General Court, however, it also results in a lower conviction rate at trial (Ursel, 1992). This apparent anomaly is the product of the intersection of a rigorous prosecution policy with policies that are victim sensitive.

It is important to understand that the behaviour and attitudes of the court personnel are not the only significant changes. We must also examine the structural modifications that have occurred at an administrative level. Ursel suggests that, from the very beginning of the development of the Family Violence Court,

> ...the Court Implementation Committee perceived itself as involved in a process of major systemic change. As such, its mandate was to ensure the smooth functioning of the specialized court. However, as change in one part of the

system puts pressure on and provokes change in other parts of the system, the committee undertook the following four responsibilities:

1. Implementation - To ensure the smooth operation of the specialized court;
2. Community Liaison - To ensure that the court is understood and accessible to the community at large and the specific community of service providers;
3. Interdepartmental Liaison - To monitor the impact of the court on other system components, as well as, to identify to the appropriate Ministries points of mounting pressure;
4. Interjurisdictional Liaison - To facilitate the adoption or adaptation of the Family Violence Court model to communities outside of Winnipeg and to other jurisdictions. (Ursel, 1992)

It is this interdisciplinary and interdepartmental composition of the Court Implementation Committee which marks a significant departure from prior court management, which was very much a "closed shop" phenomenon. By a "closed shop" phenomenon I am referring to the fact that it has been usual procedure that only justice personnel make decisions regarding the justice department. However, this is not the case within the Family Violence Court. Within the Court Implementation Committee we find individuals from not only outside the justice department but, in fact, from outside of the government. Here we find individuals from the wider community and as such, we can truly describe this as a democratization of justice. Not only does having individuals from within the community create a new accessibility to the criminal justice system, it also serves as a monitoring mechanism. By introducing an interdisciplinary and interdependent team to participate in the design and management of the court itself, the Family Violence Court can monitor its effectiveness in keeping to

its original mandate.

Furthermore, the court is unique in its commitment to remaining accessible to the community at large and the specific community of service providers and service consumers. The first steps taken to create a court responsive to the needs of the community was the consultation meeting with agencies prior to the opening of the court to get their input into the design of the court. The second activity undertaken by the committee was a Court Orientation day for family violence service providers. Finally, to ensure that the general public was informed about the progress of the specialized court, a press conference was held November 13, 1991. The Minister of Justice, the senior Crown attorney of Family Violence Court and the director of the Family Violence Court research project met with the media to discuss the results of the first year of operation of the Family Violence Court.

The effect of the tasks undertaken by the Court Implementation team has been the incorporation of victims' concerns into the justice process. Overall, what has occurred is a substantial move toward the democratization of justice. This court has provided a forum for victims, the community, service providers, judges, prosecutors and defense attorneys to all offer input and advocate for change.

The interdisciplinary contributions of this committee has created a greater understanding of the issue of domestic violence in relation to the criminal justice system. This, in turn, has allowed those working within the Family Violence Court to confront

issues of greater subtlety and complexity - issues that would not be acknowledged or understood without this resource of advocates and professionals in the Court Implementation Team. Those working with battered women within the criminal justice system now have a greater scope for creativity than possible in General Court and, with this, greater resources to improve the situation of battered women within the community.

This democratization has been integral to the legitimation of the Family Violence Court as an alternative to the older General Court model which was perceived as insensitive to the needs of victims. With such an integrated approach, there can be early detection of problems within the specialized court and, hence, there can be rapid and accurate response to any difficulties. It is this unique restructuring of the court that has better allowed the Family Violence Court to meet its goals despite dramatic and unanticipated growth in volume of cases. Hence, the creation of this specialized court with its specialized staff and policies has marked a significant departure from the mainstream justice system, and it is these structural modifications that have resulted in the potential for empowerment and more appropriate treatment for battered women. As Ursel states:

> Justice as it evolved in Family Violence Court is inclusive rather than exclusive and power in this context does not appear to operate on a zero sum basis. To empower the victim or the community of women/victims/children has not disempowered the court or its personnel. On the contrary Crown attorneys have greater discretion in handling domestic assaults in Family Violence Court than they have in most other jurisdictions, judges preside over complex and demanding cases and utilize broad discretion in sentencing, and defense are called upon to exercise considerable ingenuity in representing their client, all the while respecting the dignity of the victim and pursuing a resolution respectful of the needs and wishes of the family involved. (Ursel, 1992:38)

While we can not deny that the Family Violence Court has made unprecedented modifications we must remain mindful that like any formal institution, it has its faults. For example, because the case load is so great within this court, the volume places certain stresses on the court personnel. Heavy dockets reduce the amount of time that Crown attorneys can spend on each case and a backlog of cases may mean that individual trials will be postponed. All of this can translate into greater hardship for the victim.

However, through contact with the Women's Advocacy Program, victims remain informed of case status during delays rather than being alienated and forgotten. Victims in the General Court do not have the same support services available.

The Women's Advocacy Program (WAP) is one of the support programs that provides essential services to the Family Violence Court. It works almost exclusively on Family Violence Court cases, although it predates the specialized court by a number of years. WAP was established in 1986 in response to the growing number of wife abuse cases coming to court and the growing frustration of court personnel in dealing with the ambivalence and reluctance of

the victim/witness in these cases. At the time, it was felt that if women could have an advocate, the courts could be advised about her fears and concerns and she in turn could develop a better understanding of the mandate of the court.

The Women's Advocacy Program consists of a number of counsellors and a lawyer who provide information, support and referrals to women whose partners have been charged with abuse. In addition, WAP staff will attend court with the women, if requested, and will provide reports similar to victim impact statements to the court. These reports are frequently requested - in the first year of the Family Violence Court's operation, 34% of cases that proceeded to sentencing included requests for WAP reports. This is because WAP reports provide vital information about the pattern of the relationship between the victim and the accused, the victim's fears and concerns, and her wishes regarding treatment and/or sentencing (Ursel, 1992:21). WAP has provided an essential service as traditionally, court personnel did not have training to deal with the complicated emotional dynamic of wife abuse victims. While it is important for Crown attorneys to understand a victim's emotional and mental situation, it is also unrealistic, because of time and workload restraints, for them to take on a counselling role. However, WAP can offer support to victims and direct them to the support services that can provide the counselling they need.

The criminal justice system is a complicated collection of services and policies. As such, cases can become misdirected. This has occurred within the Family Violence Court. This explains the

103 domestic cases disposed in General Court which will be compared to cases disposed in the Family Violence Court. Unfortunately, this is inevitable within such an enormous system.

Yet, we must remember that the Family Violence Court, at the time of this study, had been in operation only two years and any evaluation of it and its staff must consider that it has not had time to respond to all of its difficulties. All of the above discussed advantages and disadvantages of the Family Violence Court need to be further examined. Within this chapter they have been merely described and identified. In the following chapters, I will evaluate these aspects and outline whether in fact this court can be considered a progressive reform for battered women. First, let us consider the methodology for this analysis.

ENDNOTES

1.The Court of Queens Bench is a specialized court, although not in the same sense as the Family Violence Court. It is distinct from provincial court as it only hears indictable cases and "because all cases are previously screened through preliminary hearings the type of cases heard, the case flow and the sentencing characteristics which emerge in Queen's Bench are very different from the patterns which emerge in provincial court...in the first year of the Family Violence Court only 8% or 142 of the 1,800 cases which began in the specialized court proceeded to trial in Court of Queen's Bench...of those 142 only 63 had been disposed within the first year" (Ursel, 1992:43).

2. A survey conducted by the Winnipeg Area Study of Winnipeg residents one year after the changing directive was issued indicated that 85% of the population agreed with the directive, 8% were undecided and 6% disagreed (Ursel, 1984).

As well, the research conducted by The Winnipeg Area Study in 1983, and later in 1991, clearly shows that regardless of class, individuals support the new directive on prosecuting batterers.

3. This 'public interest' was greatly the result of pressure from the battered women's movement.

4.Some examples of the press coverage of wife abuse cases in court are: "Days of Terror Net Suspended Term", Winnipeg Sun, December 18, 1987; "Woman's Abuser's Jail Sentence to be Appealed", Winnipeg Free Press, February 8, 1990; "Woman Terrorified of Husband--Out of Jail in 8 Weeks", Winnipeg Sun, February 7, 1990; "Justice--More or Less--Two cases Point Out Vast Gap in Sentencing", Winnipeg Sun, February 16, 1990; 87% of people surveyed agree with new charging directive - 1987 Winnipeg Area Study.

5.The mandatory arrest policy on domestic violence has put the responsibility of charging abusers within the jurisdiction of the police and Crown. That is, with this policy, the victim is no longer responsible for laying charges against the offender. In the past, a victim was expected to visit the Crown's office on her own, and have charges laid against her partner.

Obviously, many women did not do so as this formal process was often overwhelming and intimidating. Women often hesitated as they would become threatened by the abuser or feel guilty themselves. The result was many women continued to be battered. With this policy, charges are laid by the police and the Crown have been directed to prosecute these cases on behalf of the victim.

This policy was seen as "the first major step by the justice system to raise awareness not only among the police and legal communities, but the general public as well. The message was that domestic assault was not simply a family matter but was a criminal offence and was to be treated more seriously than in the past" (Pedlar, 1991:3).

CHAPTER FOUR

RESEARCH METHOD

INTRODUCTION

The purpose of this study is to assess the potential of the criminal justice system to create effective reform for women's issues, specifically the battered women's movement. Further it is the purpose of this study to make this evaluation from a feminist perspective. According to such a perspective, effective or "successful" change would result in the empowerment of women. Most importantly, it would result in an improvement in the condition of battered women's lives. The prescribed mechanism for such change would be based on creating changes within present societal institutions, such as the criminal justice system.

A research design for evaluating the effect of present reform within Manitoba's criminal justice system is outlined within this chapter. The operationalization of variables, the sampling of cases, reasons for the selection of data sets, and the specific hypotheses identified will be elaborated upon.

OPERATIONALIZATION OF VARIABLES

This study will attempt to show that progressive reforms have been made within the criminal justice system. The criteria for "successful" reform is outlined below. Further, by comparing three different courts and subsequent data sets, I can evaluate whether those reforms made through specialization of a specific court

versus changes made over time within the General Court have been more successful in providing progressive change. Finally, these reforms will be examined in terms of the greater feminist concern for improving the conditions for battered women as well as the issue of empowerment.

The criteria for evaluating reform within the criminal justice system has been outlined in Chapter Two. However, in order to understand the methodological basis for this study, I will reiterate the five variables used to measure the "success" of the criminal justice system's response to wife abuse.

First and perhaps foremost, we must evaluate change in terms of the first contact battered women have with the criminal justice system. Thus, we must ask if we can find progressive reform within the police response to wife abuse? Is there an increase in the frequency with which officers are laying charges against batterers? Women have criticized the police in the past for failing to arrest and charge batterers. Thus, an increase in the number of charges being laid would be indicative of a more appropriate police response to battered women's needs and, most importantly, it would suggest greater safety measures for these women and their children.

While an increase in the number of charges is a positive sign of change. We must also consider that police now have a new protocol in dealing with these cases. Laying charges in and of itself is not a sufficient response. Police must be aware of the special dynamics of domestic violence and, as such, be able to communicate effectively with victims. Police have been criticized

in the past for their lack of understanding of the emotional side of domestic violence which often alienated the victim further. A formal protocol by the police department to instruct officers of the complexity of domestic violence can offer a more victim-sensitive approach.

Second, the issuing and enforcement of restraining orders must be considered in order to evaluate any reform efforts by the criminal justice system. An increase in the number of such orders would not only be representative of greater protection available for battered women, but also represent the validation of wife abuse as a crime. In addition to issuing of these orders in and of themselves, it will be further necessary to examine the extent to which breaches result in charges. While issuing restraining orders is important, the enforcement of these orders is a matter of life and death.

A third criticism that feminists made is that when charges were laid too few cases proceeded to court or to sentencing, that is, Crown attorneys frequently entered a stay of proceedings. Cases were pursued only half way. As a result, within this research, the state's commitment to a Zero-Tolerance policy will be measured on the number of cases which proceed to sentencing. Progressive change will be defined as a greater commitment to pursuing wife abuse cases with a greater tenacity and understanding than has been the case in the past.

Fourth, inappropriate sentences have also been outlined

This research seeks to assess the extent to which sentencing practices have changed over time and to what extent sentencing in Family Violence Court responds to criticisms of advocates and feminists. Specifically, do sentences offer a general deterrent to society while also incorporating the needs and wishes of the victim? Does the sentence offer punitive and rehabilitative measures? Does it involve supervision to afford the victim greater protection? It is these questions that this study must address in order to understand the criminal justice system's potential for reform.

A final criteria for evaluating the efficacy of the criminal justice system's response is the degree to which victims' experience secondary victimization within the criminal justice system. In the past, the court experience has been particularly traumatic. This was due in part to attorneys, judges and social workers who were uneducated about the dynamics of wife abuse. Specifically-trained, empathetic court staff, as well as changes in prosecutorial policy would be indicative of successful reform by the criminal justice system.

It is with these five criteria that I address the major concepts of this study - the effect of change over time on the criminal justice systems' response to wife abuse and the effect of specialization. This evaluation will be based on comparing data sets that show progressive change both as the result of time and as a result of the structural change created through specialization.

The three data sets to be used in this study are identified as

the Before Court Specialization (BCS) data set, the Family Violence Court data set and the General Court data set. In comparing the BCS and General Court samples, we will be able to examine the effect of change over time. In comparing the Family Violence Court and General Court samples we can examine the effect of specialization.

The three data sets can be described as follows: 1. The Family Violence Court data set which consists of 1,286 adult/spouse abuse cases disposed in the first year of the court's operation. 2. The General Court data which consists of 103 domestic violence cases which should have been heard in the Family Violence Court but "slipped" through the system. The sample is therefore all cases fitting the criteria of domestic assault (that being "a relationship of trust, dependency or kinship"). 3. The BCS data set which consists of 1,625 wife abuse[1] cases which were disposed over a period of four years (1983-1987) prior to the introduction of the specialized court.

These data sets have been part of two separate studies and both the Family Violence Court data set and the General Court data set that are to be used in this study are subsets of larger data bases.

The BCS data was part of a study conducted between 1983-1987 under the direction of Jane Ursel and is used here in its entirety - no subset has been created. The BCS data set was collected as part of a study of wife abuse cases processed and disposed in the General Court before a specialized court was established (Ursel, 1992).

The Family Violence Court data set and the General Court data set both were collected as part of a court project implemented to study the Family Violence Court's first years of operation. The Family Violence Court data set has been modified to fit the needs of this study, that is, the data set used here is the full population of adult, spousal cases tracked and monitored within an 18 month period. The child and elder abuse populations that also make up the overall Family Violence Court data base have not been included. As such, the Family Violence Court data set consists of information concerning 1286 cases out of 1600 which were originally analyzed as part of the court research project.[2]

The General Court data is a sample of a larger data base as well. The sample utilized in this study consists of cases which fit the same definition of "domestics" as those in the Family Violence Court. They were, however, collected as part of a sample of 947 "non-domestic" or "general" crimes against persons which were disposed within the general provincial court. This larger sample was gathered as comparative data for the Family Violence Court research project. As such, it was collected using the same coding schedule as employed for the Family Violence Court sample.

The data which comprises the "General Court" sample has been labelled as such to specify that these are cases that were disposed in the General Court, like the BCS data, but were disposed after specialization and, in fact, should have been processed within the Family Violence Court.

Three data sets were chosen for this study for a variety of

reasons. First and foremost, all three were available and were conducive to an empirical analysis as they were comparable on most variables. Secondly, as I was mainly responsible for the collection of data within the General Court for the Family Violence Court research project, and because I also was employed in collecting data within the specialized court, I have a sound understanding of the courts, data collection procedure and information available.

I incorporated the results of the BCS study into this analysis because not only was it available and offered comparative data on a majority of measures (despite different instruments), it enabled me to compare the changed response to wife abuse within the criminal justice system over time rather than simply examining the effect of specialization. In fact, by comparing the BCS and General Court data sets as a measure of change over time, the effect of specialization should become more pronounced.

Without a doubt, one of the reasons that these data sets were chosen for my study is the fact that data such as this is rarely available. Because of time and resource constraints, longitudinal studies are rare. The opportunity to examine the criminal justice system's treatment of wife abuse cases from 1983 to 1991 was a great opportunity to examine the effect of time on the legal system. Studies which are based on following cases from docket court through to the final disposition are equally rare because they are time consuming and expensive. As such, the opportunity to utilize these data sets which are based on case analysis rather than charges could not be overlooked. When an analysis is conducted

based on charges rather than cases, the findings are often misconstrued. For example, because it is typical to find an accused enter the system with more than one charge, a sample based on charges may be very large when, in fact, only a small number of individuals or cases are actually involved. As well, it is also typical that an accused who enters the system with multiple charges, will receive multiple sentences which are served concurrently. A case analysis would be more sensitive to identifying the fact that this involved one individual.

DATA SETS

While all three data sets consist of cases that may be referred to as "domestics," in the BCS data set we find primarily wife abuse cases. It is further important to point out that the definition currently used within the Family Violence Court to identify "domestic" cases was not necessarily the operative definition during the collection of the BCS data set. That is, the Family Violence Court definition identifies domestic cases within a criteria that is neither gender-specific or necessarily heterosexual. Instead it defines a domestic case as one involving a relationship of kinship, dependency or trust. It is likely that prior to the Family Violence Court and its definition, few cases of domestic violence which deviated from the standard of a male/female, heterosexual relationship would be identified.

THE FAMILY VIOLENCE DATA SET

SAMPLING

This data set consists of 1,286 cases of spousal assault which were disposed in an 18 month period within the Family Violence Court. This data set is not a sample but instead consists of every spousal case disposed within the 18 month period and, as such, may be considered representative and appropriate for this study. The data were collected as part of a research project funded to monitor and evaluate the operation of the Family Violence Court.[3]

In the first year of operation, the Family Violence Court had a total intake of 1,800 cases. The goal of the research project was to track all cases processed in Family Violence Court and to selectively monitor wife abuse and child abuse cases. The tracking process involved coding case characteristics, including court processing and sentencing, from the files of the accused after disposition. The monitoring process involved attendance at the court to record not only the relevant case characteristics, but also the court procedure.

In the first year, the project collected data from the opening of the court on September 17, 1990 until March 31, 1992. The intake was the first 12 months, the follow up period was an additional 6 months. The 18 months of data collection permitted the researchers to include cases which entered the system within the first year but which were not disposed of until the second year. Allowing six months of data collection after completion of the first year permitted the project to capture most of the cases, however there

were 144 or 8% of all cases which were not disposed of at the 18 month cut off point.

MEASUREMENT

Two measurement techniques were utilized in the collection of this data: a tracking schedule and a monitoring schedule. Of the 1,600 cases which form the study population, 1,007 adult or spousal cases were tracked. This involved the use of a specifically designed schedule and code book (see Appendices A and B). This same schedule and code book was employed in the collection of the General Court data set.

The tracking schedule is based on 99 variables and was designed by the research project staff and advisor specifically for the study. Variables on this schedule pertain to information that deals with both the court process (for example, number of remands, conditions of release, final dispositions and sentence) as well as variables pertaining to the characteristics of the accused and victim (such as race, age, educational background, employment status, disabilities, etc.). While each variable offers important information, it is not necessary to examine all variables to address the questions raised in this study. Only those variables deemed most relevant to this study will be analyzed.

Also part of the 1,286 cases that made up the Family Violence Court data set are 279 cases which were monitored. Information regarding these cases was collected by staff observation within the court proceedings and involved the use of a separate schedule and

code book from the tracking code book and schedule (see Appendices C and D).

Like the tracking schedule, the monitoring schedule allowed researchers to collect information pertaining both to court process and case characteristics. However, as this schedule was used for information collected within the court room itself, it offers variables not on the tracking schedules. For example, the schedule allowed for the recording of comments made during the trial or guilty plea by the judge and attorneys. There is also a section in which to record the testimony of the victims themselves. This is a useful measure for it often contains information that is not available within the file or victim's police statement. Overall, the combination of both monitoring and tracking data gives a solid base for an understanding of the court process.

For the purposes of this specific study, only the adult or spousal cases have been taken from the overall Family Violence Court data base. This has reduced the number to from 1,600 cases that were tracked and monitored within the Family Violence Court research project to 1,286 cases.

THE GENERAL COURT DATA

SAMPLING

This sample consists of 103 cases which meet the definition of "domestic violence" that were heard in General Court. These cases were identified and collected from a sample of 947 "non-domestic" or "general" crimes against persons processed in general provincial court.

The General Court data was collected in two parts. Because of time constraints, two sampling techniques were used. An intake period of July 15, 1991 to December 15, 1991 was designed to track all crimes against persons which entered provincial court. However, because of slow processing time[4] in General Court, there was concern that not enough trial cases would be included in the initial sample. Therefore, an additional sampling procedure was initiated to collect trial cases only. The trial case sample intake began in January, 1991 and continued to October, 1991.

Because these cases clearly conform to the definition of a "domestic" relationship utilized within the Family Violence Court, they should have been disposed within the specialized court. There are a variety of reasons as to why these cases may have "slipped" through into the General Court:

One explanation may be based on the fact that individuals within the criminal justice system often are involved on a variety of charges. If an individual is being tried for one charge, he may also have any other charges dealt with simultaneously in order to speed things up. This is particularly true if an individual is

being held in custody. As such, it is possible that many of the accused offenders in the General Court sample had charges that were not domestic-related, but the attorneys involved chose to deal with all of them at once.

Without a doubt, the heavy case load within the Family Violence Court as well as the fact that it is a relatively new court (only operating two years) - have contributed to the "slippage" of these cases. This may be particularly true in the summer months of the court's operation when the court's regular Crowns take their holidays and cases are turned over to Crowns who are not as sensitive to what constitutes a "domestic" relationship.

Finally, many of these cases may have been misdirected because they involved individuals who were not directly related to the accused. Such a case might involve a present boyfriend being assaulted by a woman's former partner. It is unfortunate that any of these cases should have slipped through to a non-specialized court, because, as this analysis should indicate, it is within a specialized court that they are most appropriately handled. Although these cases do not conform to the definition of "domestic" relationship (i.e., a relationship of trust, dependency or kinship) it does involve a different dynamic than a situation between two complete strangers. It should also be noted that there may have been "slippage" in terms of gay and lesbian couples. While these couples are unlikely to report assaults to the police in the first place, it is possible that they were misdirected throughout the system in to the General Court and listed as simply

"acquaintances".

MEASUREMENT

As stated previously in this chapter, the data collection instrument utilized within this sample is the same tracking schedule employed within the Family Violence Court data set. There was no monitoring done within General Court as part of the Family Violence Court research project.

However, for the purposes of this study, I spent time observing trials and preliminary hearings within the General Court. The purpose was to gather my own observations for this study to compare with my court monitoring experience on the Family Violence Court research project. The information I collected was by choosing trials or preliminary hearings that involved a crime against a person. That is, I was seeking cases with charges of assault, for example, as opposed to property offenses like theft. These trials or preliminary hearings were selected based on what court rooms were allocated on the docket for General Court. Five trials and three preliminary hearings were observed over a two month period of time.

THE BEFORE COURT SPECIALIZATION (BCS) DATA SET

SAMPLING

This data set consists of data collected on wife abuse cases processed in the general criminal court prior to specialization. Over a span of 4 years, from 1983 to 1987, 1,625 cases were

recorded. These cases were not randomly sampled. In the first two years a graduate student was hired to collect and code as many cases as possible during a four month period of employment. The student was able to code all cases disposed in the first eight months of the year. In the next two years, staff in a new government program, the Women's Advocacy Program (WAP), collected wife abuse court data as part of their job.

Table 1 indicates the number of persons charged, the number of cases collected and coded and the sample of all cases in each of the four years. The data in this table demonstrate that although these cases were not randomly sampled, the relatively large sample size should be reasonably representative of the wife abuse cases heard over the four year period included in the study.

TABLE 1

THE BCS DATA SET

YEAR	TOTAL # OF CASES	SAMPLE SIZE	PERCENTAGE OF ALL CASES
1983	629	373	59%
1984	640	393	61%
1985	859	523	61%
1986	957	336	35%
TOTAL	3085	1625	53%

MEASUREMENT

The BCS data varies from the other data sets as the schedule used to collect data in the BCS sample was not the same schedule used in the Family Violence Court and General Court studies. The BCS data set concentrated on input (type of charge) and output

(type of sentence) and does not have the detail on court process that the other data sets contain. As a result, court process information that is available for the Family Violence Court and General Court data is not available for the BCS data. Despite this weakness, all three data sets are comparable on charge, sentencing and prior record variables in all cases.

The definition of a "domestic" utilized during the collection of the BCS data may vary from the definition which was the basis of the Family Violence Court and General Court data collection. More specifically, because the BCS data was compiled from 1983 to 1987, it is likely that only wife abuse cases were identified as "domestics." Today, however, we find within our criminal justice system a more "progressive" definition of "domestic" assault, one which does not specify sex or imply sexual preference. That is, by presently defining a domestic relationship as "a relationship of trust, dependency or kinship," gay and lesbian relationships, female batterers and general family member abuse may all be considered "domestics."

HYPOTHESES

Comparing and contrasting the BCS data set, the General Court data set and the Family Violence Court data set, it is hypothesized that a comparison will reveal the following patterns:

1.) in comparing the older or BCS general court vs. contemporary General Court samples, the General Court dispositions will reflect progressive change over time as measured by more appropriate sentencing (such as higher rates of incarceration, greater use of probation with an increase in court mandated programs, less frequent conditional discharges, less dismissals and fewer fines). This is in addition to lower stay rates and stronger enforcement of restraining orders;

2.) in comparing the data sets from Family Violence Court and General Court, it is expected that we will find within the Family Violence Court sample lower stay rates, stronger enforcement of restraining orders, and more appropriate sentences. Further, based on the analysis of the Family Violence Court's prosecutorial policy as well personal observation and monitoring, it is expected that we will find a reduction in secondary victimization within the court proceedings.

Examining these three data sets as outlined above allows us to understand 1.) the effect of change within the criminal justice system over time - specifically 1983 (when the new charging directive was issued) to the present; and 2.) the effect of specialization of court and personnel. What these findings would indicate, then, is that the state or the criminal justice system does have the potential for progressive reform on particular issues, in this case, family violence.

Further these findings will indicate what method of reform (policy change alone, specialization or a combination of both) can offer the most appropriate and pronounced change for battered women. What is necessary to determine is whether changing attitudes and policies is sufficient to create truly progressive reform. Must attitudes and policies be augmented by structural change in order to create a victim-sensitive approach? If so, will we find that those changes which have occurred over time will not be as profound as those resulting from specialization?

ENDNOTES

1.These cases also include partners and ex-partners such as girlfriends, common-law wives.

2.Due to the significant amount of child/elder abuse cases, any comparative analysis between the data sets would be inaccurate. Let us consider, for example, the comparison of charges within the data sets. Upon examining all data sets on the basis of charge, it becomes clear that the proportion of cases with sexual assault charges is much higher in Family Violence Court than in General Court (there is no available measure for the BEFORE data set). This high percentage can be attributed to the fact that the majority of child abuse cases that proceed to court involve sexual offenses. When we separate the adult abuse cases from the child abuse cases we find that sexual assault charges occur in 2% of the adult abuse cases.

3.Under the direction of Dr. Jane Ursel, a research project was assembled to collect a large amount of information about the characteristics of cases being processed in Family Violence Court. The project was assembled to assess the extent to which the court lived up to its primary objectives: 1. to increase victim/witness information and cooperation, in order to reduce case attrition 2. to achieve an average processing time from first appearance to disposition of 3 months 3. to provide more consistent and appropriate sentencing. The means of assessing these objectives and collecting case information in Family Violence Court is outlined below in the description of the Family Violence Court data set.

4.A year after the original intake date, only 742 of the original 947 cases had been disposed. This was due in part to the slower processing time of the saturated general courts, but due also to an unanticipated flaw in the intake procedure. A large number of cases had been disposed at the Public Safety Building while the accused was having other charges dealt with. As such, a large number of cases within the sample could not be accounted for.

CHAPTER FIVE

ANALYSIS OF DATA AND RESULTS

In this section, I will compare the case characteristics and court outcomes of the Family Violence Court (FVC), General Court and Before Court Specialization (BCS) data sets. These data sets will be compared in order to assess the impact of change through time versus the effect of change through specialization on the criminal justice systems's response to wife abuse. It is expected that the most profound and appropriate changes will be observed within the specialized Family Violence Court while, to a lesser degree, positive change will be observed within the present General Court in comparison with the General Court before specialization, which will be referred to as the Before Court Specialization (BCS) Data Set.[1]

CASE CHARACTERISTICS

Before examining the data sets in relation to this study's specific hypotheses, it is important to first demonstrate that I am measuring differences in the courts and not differences in the cases they handle. This is significant to the data analysis because it demonstrates not only the comparability of the data sets, but suggests that changes in police activity, such as laying of charges, enforcing restraining orders and court behaviour (i.e., stay rate, sentencing, and secondary victimization) can be attributed to the change within the criminal justice system rather

than to differences in cases involved in the three courts.

The measures that will be used to indicate the similarities among case characteristics are as follows: relationship between suspect and victim, suspect and victim characteristics (including sex, age, employment status and ethnicity); incidence and type of prior record, and type of charge. While we do not find a perfect match on all of these measures, we do find enough similarities, as will be discussed, to consider the samples comparable.

Our first measure of case comparability - perhaps the most important - is suspect/victim relationship. This measure is of particular significance because it is the relationship between the complainant and the accused that accounts for the creation of the Family Violence Court. When violence occurs within the context of an interpersonal relationship, as compared with strangers, the dynamic of the crime changes. As such, the way in which the offence is treated also must change.

Table 2 identifies the various relationship types found within the three data sets. Although the samples, once broken down, are not perfectly parallel, they are all characterized by an on-going interpersonal relationship. The types of cases found in all three data sets share this characteristic bond between assailant and victim providing the closest comparison available within the criminal justice system.

Upon examination of Table 2 it becomes clear that both the Family Violence Court and BCS samples consist primarily (96% and 97% respectively) of *spousal*, domestic relationships, that is,

individuals who are married, common-law, separated or divorced, ex-common-law, boyfriend and girlfriend or ex-boyfriend/girlfriend. In the General Court sample, such relationship types comprise 54%. As such, we find that within the General Court sample, 46% of the cases involve relationships between adult children and parent(s), siblings, and nieces and nephews. We also find in the General Court data a large percentage (25%) of relationships described as "acquaintances". This category encompasses a broad range of domestic relationships that were not specifically outlined within the research schedule. As a result, the category of "acquaintances" includes relationships ranging from cousins and former in-laws to old boyfriends. However, what is important about these relationship types, is the fact that they are interpersonal relationships which could also be found within the Family Violence Court.

TABLE 2

SUSPECT/VICTIM RELATIONSHIP BY DATA SET

RELATIONSHIP	B.C.S.* N =1625		F.V.C. N = 1286		GENERAL N = 103	
	N	%	N	%	N	%
MARRIED	1090	67%	283	22%	5	5%
COMMON-LAW	-	-	154	12%	11	11%
EX-SPOUSE	179	11%	386	30%	3	3%
EX-COMMON-LAW	-	-	154	12%	11	11%
BOY/GIRLFRIEND	309	19%	141	11%	12	12%
EX-BOY/GIRLFRIEND	-	-	116	9%	12	12%
CHILD/PARENT	16	1%	26	2%	4	4%
CHILD/GRANDPARENT	-	-	-	-	-	-
NIEC/NEPH/UNC/AUNT	-	-	-	-	4	4%
SIBLINGS	33	2%	-	-	16	16%
ACQUAINTANCES	-	-	26	2%	25	25%

* Due to differences in coding the data, the B.C.S. data set offers data regarding marital status only when the categories of "married and common-law" as well as "ex-spouse and ex-common-law" are collapsed. Thus, it would appear that far more individuals were married in the BCS data set as compared to the other data sets, this however is actually a measure of both married and common-law relationships.

Table 2 also demonstrates, as stated previously, that the most frequent relationship type found within the General Court, unlike in the Family Violence Court and BCS samples, is the category of "acquaintances". Relationships within this category were identified as domestic relationships because they involved an interpersonal, usually on-going relationship. When the relationship involved a woman's past and present partners, as it frequently did, the relationship should still be identified as domestic. As such, these cases should have been disposed of within the Family Violence Court in which the needs of the woman, though not a directly involved party, could have also been considered. Despite the variations

found in Table 2, the cases in each sample remain within the set parameters of domestic relationships as they involve people connected to one another through intimate relations.

Another measure of the similarity among cases within the data sets is the characteristics of both the suspect and victim. The sex, age, employment status, and ethnicity, of both the accused and victim may influence the treatment of a victim as well as the outcome of the case.

In Table 3 we find that the demographic and socioeconomic characteristics of the accused is similar in each data set. That is, in all data sets we find a substantially higher percentage of male suspects than female suspects; a high percentage of young persons as well as high rates of unemployed.

TABLE 3

CHARACTERISTICS OF SUSPECT BY DATA SET

CHARACTERISTIC	B.C.S.* N = 1625		F.V.C. N = 1286		GENERAL N = 103	
	N	%	N	%	N	%
SEX						
male	1560	96%	1196	93%	85	82%
female	65	4%	90	7%	18	18%
AGE CATEGORY						
less than 21	-	-	64	5%	8	8%
21-30	813	50%	527	41%	50	50%
31-40	488	30%	450	35%	32	32%
41-50	211	13%	205	16%	10	10%
51-59	130	8%	38	3%	-	-
60 and up	-	-	-	-	3	3%
EMPLOYMENT STATUS						
employed	861	53%	656	51%	27	26%
unemployed	715	44%	592	46%	66	64%
unknown	49	3%	38	3%	10	10%
ETHNIC STATUS						
majority	-	-	707	55%	46	45%
aboriginal**	-	-	412	32%	48	47%
other minority***	-	-	154	12%	8	8%
unknown	-	-	0	0%	13	1%

* B.C.S. data for age of suspect based on average age (1983-1986) for each category.

** Within the category *"aboriginal origin"* we include status and non status, as well as Metis.

*** Within the "other minority" category are a number of "new Canadians" for example Portuguese or Central American, whose status may be distinctive by virtue of culture or language, although not necessarily visible.

Upon closer examination, we find that one of the differences among the data sets is the higher incidence of female suspects in the General Court data set - 11 percentage points higher than the Family Violence Court data set and 14% percentage points higher than the BCS data set. This may be a reflection of the more diverse

domestic relationship types within the General Court sample. For example, women appeared frequently as suspects in relationships that involved other women such as a sister, cousin or present/past partner of the same male.

Although we found a higher percentage of women suspects within the General Court sample, the number of women remained substantially less than the number of male suspects. This holds true for all the data sets. The majority of suspects are male, and there were a large percentage of suspects who were young, unemployed and aboriginal.

Table 3 indicates that the General Court sample offers a slightly younger sample of suspects. On this measure we find 90% in the General Court sample involved suspects under the age of 40, as compared with 80% of the BCS are under 40 years old and 81% in the Family Violence Court sample.

In reviewing Table 3 it is also apparent that a large percentage of suspects from all data sets are unemployed. However, we find the greatest percentage of unemployed suspects (64%) in the General Court sample. This is 20 percentage points higher than the BCS sample and 18 percentage points higher than the Family Violence Court sample. This over-representation of unemployed individuals is not surprising, and unfortunately, typical of those involved in the criminal justice system. In fact, the over representation of youth in the sample within the General Court data set may explain in part this high incidence of unemployment rates as the two tend to be correlated.

Another measure in Table 3 that must be acknowledged is the higher rate of aboriginal suspects in the General Court sample, 15% higher than the Family Violence Court sample[2]. The over representation of aboriginal offenders may be interrelated with the high incidence of unemployment, unfortunately, perpetuating the stereotype of the poor, young Aboriginal male frequently associated within the criminal justice system. While this is an important point of consideration, it is beyond the scope of this particular study[3]. What is relevant for this study is that the data set demonstrates high numbers of young males with an over-representation of Aboriginals. Despite the variations that have been identified and discussed, there appears to be common, comparable features within the data set. For example, most suspects, in all data sets, were young, unemployed males in interpersonal relationships with their victims. Both the Family Violence Court and General Court samples illustrate an over-representation of Aboriginal persons. This is an image so pervasive, that neither change nor specialization seems to have altered it. Upon examination of the characteristics of the victims within the data sets we find a profile similar to the data on suspects. The majority of victims were young women. Like the suspects in the data sets, we also find an over representation of Aboriginal persons. As Table 4 indicates, this is true of the two data sets.

Unfortunately, Table 4 does not offer any information for the BCS data set as none was available. As well, we do not have a

measure for victims' employment status. This is because such information was rarely available in police reports or Crown files which were the main sources of data for the Family Violence Court and General Court data sets.

TABLE 4
CHARACTERISTICS OF VICTIM BY DATA SET

CHARACTERISTIC	FVC N = 1286		GENERAL* N = 103	
	N	%	N	%
SEX				
male	77	6%	21	20%
female	1209	94%	82	80%
AGE CATEGORY				
less than 21	154	12%	21	21%
21-30	579	45%	52	50%
31-40	399	31%	30	29%
41-50	129	10%	15	15%
51-59	26	2%	5	5%
60 and up	-	-		-
ETHNIC STATUS				
majority	746	58%	52	50%
aboriginal	412	32%	48	47%
other	103	8%	3	3%
UNKNOWN/ UNREPORTED	26	2%	-	-

* Totals in General Court sample do not add up to 103 because some cases involved multiple victims.

In examining both Tables 3 and 4, it is apparent that another common demographic feature of both suspects and victims in both data sets is the relative youth of those involved. Clearly the single largest age category is 21-30. In fact, all age categories indicate similarity in representation. The relative youth of individuals involved is important to acknowledge as it suggests that, in the absence of serious intervention, these individuals

will have a future of abusive relationships and further involvement with the criminal justice system.

Another difference between data sets that must be addressed is the higher percentage of male victims (20%) within the General Court data set when compared with the Family Violence Court. The greater number of male victims may be a result of a more diverse sample of relationship types, which also resulted in a higher percentage of female suspects in the General Court sample (see Table 3). Siblings, cousins and "old boyfriends" constitute a large number of male victims. Despite the difference, all of these cases constitute an interpersonal relationship with connections through intimacy, kinship or trust.

Criminal background or prior record can exert an influence on the process and outcome of a case. As such, it was necessary to examine the data sets for comparability of the suspects' criminal backgrounds. Not only do we find similar demographics among suspects in the respective data sets, the suspects are comparable in terms of prior records. Table 5 demonstrates that there is a high incidence of prior records among the accused in all three data sets.

Although all three samples indicate high percentages of prior records, the General Court sample had the highest. When compared with the BCS and Family Violence Court data sets, we find the General Court sample is 14% and 12% higher, respectively. This may be a function of the small sample size of this data set.

It is interesting to note that the sample with the highest rate of previous domestic offenses is found in the Family Violence Court, substantiating the theory that abusers tend to reoffend[4].

TABLE 5

INCIDENCE AND TYPE OF PRIOR RECORD BY DATA SET

CRIMINAL RECORD	BCS N = 1625		FVC N = 1286		GENERAL N = 103	
	N	%	N	%	N	%
PRIOR RECORD	1138	70%	926	72%	87	84%
TYPE OF PRIOR						
domestic	160	14%	213	23%	7	8%
general assault	114	10%	278	30%	47	54%
other*	193	17%	139	15%	30	35%
UNREPORTED	71	59%	296	32%	3	3%

* The "Other" category of prior record is very broad and includes a range of criminal offenses from "Break and Enter" to "Driving While Intoxicated".

Finally, another factor that could explain the difference in court outcomes is the type of charge. Hence, it is important to examine the three data sets on this measure. Table 6 presents the distribution of cases in charge categories by data set. Listed below are the most frequent charges that appear. This table indicates a high degree of similarity among the three data sets on this dimension.

TABLE 6

DISTRIBUTION OF CASES IN CHARGE CATEGORIES BY DATA SET

CHARGE CATEGORY	BCS N = 1625		FVC N = 1286		GENERAL N = 103	
	N	%	N	%	N	%
Common Assault	845	52%	836	65%	45	44%
ACBH*	634	39%	399	31%	24	23%
Assault with Weapon	114	7%	154	12%	25	24%
Sexual Assault	**	**	26	2%	3	3%
Aggravated Assault	65	4%	26	2%	9	9%
Utter Threats	81	5%	296	23%	27	26%
PWDPP*	0	0%	154	12%	28	27%
Breach	130	8%	193	15%	28	27%

*ACBH is the abbreviated form of "Assault Causing Bodily Harm" and PWDPP is the abbreviated form of "Possession of Weapon Dangerous to Public Peace" - there is no available data on PWDPP charges in BCS data set.

** Not specifically recorded in BCS data set-sexual assault charges would have been coded in the other charges category.

NOTE - The numbers and percentages add up to more than 100% because the accused typically enters the court with more than one charge.

In all three data sets, common assault is the most frequent charge with which the accused enters the court. As well, we find a higher incidence of "more serious" or indictable offenses in the General Court data set. In fact, 33% of all the charges within the General Court data set involved "Aggravated Assault" or "Assault with Weapon". These charges are frequently considered more serious than for example, "Common Assault" which is an included offence of the others and carries a lesser sentence.

Specifically, we find that "Assault with a Weapon" is 12 percentage points higher in the General Court sample than in the

Family Violence Court sample and 17 points greater than the BCS sample. There was a higher incidence of Aggravated Assault charges in the General Court sample, 7 percentage points higher than the percentage in Family Violence Court and 5 percentage points higher than the BCS data set[5].

It is possible to explain the variation in terms of police activity rather than suspect characteristics. The fact that there were fewer "less serious charges" and a greater frequency of indictable or "more serious charges" in the Family Violence Court sample, may be a result of a change in police policy. In the past, police hesitated to charge a suspect, and Crowns hesitated to prosecute, unless a case was "strong" or serious. With a greater commitment to criminalize wife abuse, as well as a greater understanding within the criminal justice system that wife abuse tends to be a reoccurring, ever-escalating cycle, we find a higher percentage of "Common Assault" cases which may, in fact, have been viewed as not serious by past standards.

In spite of these differences, the three data sets remain comparable on charges. We find approximately half of the total charges fit the description of indictable. Specifically, it was found that Assault with Weapon, Aggravated Assault and Assault Causing Bodily Harm constitute 50% of charges in the BCS data set, 56% in General Court and 45% in the Family Violence Court sample.

Another significant difference between the three data sets is the number of charges laid for breaches of court orders, restraining orders, etc. While the BCS data set demonstrates only

8% of all charges were breaches, the 1990-91 data from the Family Violence Court and General Court show an increase or higher rate, indicating change over time.

In conclusion, despite the fact that some considerable differences among the data sets were found, the data sets retain adequate or reasonable parallels to be used in a comparative analysis. The fact that the General Court has a more diverse collection of relationship types is a matter to consider and may well explain why the cases ended up in General rather than Family Violence Court[6]. In fact, it was found that several relationship types within the General Court data set, differed from the male/female, spousal scenario. Despite this difference, it must be noted that all of the relationships still fell within a category of interpersonal relationship that could be found within the Family Violence Court.

The General Court sample, was also characterized by higher measures of young, aboriginal males as suspects; the higher frequency of male victims and female suspects (which are not extremes of the other two courts but reversals); the higher frequency of prior records and the greater percentage of "more serious" charges. In a sense, the General Court sample represents an extreme in the overall pattern found in both the Family Violence Court and BCS data sets. It is difficult to assess the significance of this difference given the extreme difference in size of the data sets.

The result of examining these measures is that we can now more carefully assess the likelihood that any observed difference among court process and court outcome, is a result of the different courts themselves.

EVIDENCE OF CHANGE WITHIN THE CRIMINAL JUSTICE SYSTEM

In this section I will examine evidence of change within the criminal justice system to assess the extent to which it responds to the criteria outlined in Chapter Two. This will include an analysis of police behaviour, as well as an analysis of changes within the court system specifically. As such, I will begin by examining arrest rates and police policy changes. In keeping with the analysis of police behaviour, the enforcement of restraining orders will be considered. Following this analysis, I will turn to the central concern of this study, a comparison of court outcomes regarding case outcome, sentencing, and secondary victimization. Let us first examine how the police have responded to the demand for a more appropriate and progressive response to wife abuse cases.

POLICE ACTIVITY

1. LAYING OF CHARGES

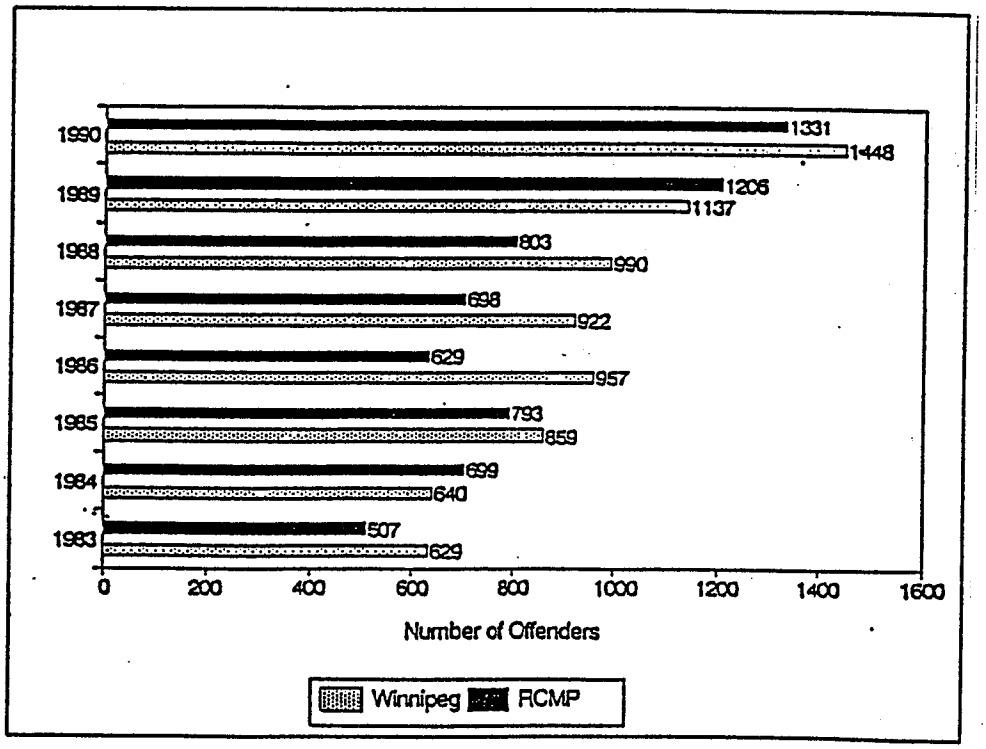
It is expected that with a greater public awareness of and subsequent demand for the arrest of wife abusers, we would find a higher number of charges over time. This expected increase in charging is considered to be indicative of a commitment by the police and the criminal justice system to fight wife abuse. It is

considered to be validation of the criminal nature of abuse as well as a measure of greater protection for battered women.

Chart 1 indicates that since the 1983 directive was issued in Manitoba the rate of arrests in cases of wife abuse have increased dramatically.

CHART 1

NUMBER OF CASES OF SPOUSAL ASSAULT
WHERE CHARGES WERE LAID - WINNIPEG & RCMP STATS 1983 - 1990



Based on Chart 1, it is clear that there has been a substantial increase in the number of charges laid each year. This supports the hypothesis that change would be found as a function of time. As well, we see the greatest number of charges being laid by the Winnipeg City Police Department in 1990, the year the specialized Family Violence Court was introduced[7]. It is likely that the implementation of the specialized court influenced the increase in charging by the police, however, specialization was not the sole influence and could not have impacted so rapidly on police activity. Certainly the continued efforts of women's groups and public education also contributed to an increased reporting of wife abuse which would have also influenced the increase in charges being laid.

Perhaps the most dramatic proof of positive change regarding the policing of wife abuse is the new police protocol introduced in June of 1992. The new protocol for police behaviour in wife abuse cases is outlined in a sixteen page Procedure Manual on Domestic Violence which was submitted to all Winnipeg City Police officers (Winnipeg Free Press, 1993:71).

Within the manual, police are instructed that, domestic violence situations involve a different dynamic than regular crimes against persons, therefore they must act accordingly. Hence, police are instructed to conduct all investigations of domestic violence cases in such a way that they ultimately keep the victim's needs in the forefront. For example, police are directed in the manual that a victim's allegation is enough to lay a charge, even with no

independent evidence (evidence which is rarely available in situations of wife abuse). Further, the manual states that police are not to ask wife abuse victims if they want to lay charges or intend to testify at the trial.

In addition, the new police protocol has led to the creation of a new data base on prior records of abusers. The Winnipeg City Police Department has created a unique and innovative data system in which an officer can call in and do a run down on the court history of every domestic abuser. This will show every individual who is currently on bail for domestic violence, has entered a peace bond, is the subject of a restraining order or nonmolestation order for a charge of domestic violence (Winnipeg Free Press, 1993:B1). Ultimately, this system serves to better protect women and takes away the burden on victims to provide documentation of a restraining order, peace bond, etc. The police can check their own computer rather than have a distressed victim searching for a piece of paper which proves a perpetrator has a history of abuse.

This protocol was in response to criticisms outlined in the Pedlar report. The protocol was issued in June 1992 and was the product of a year of consultations between police, Crown attorneys and women's groups. As such, this protocol is evidence that the police are not only listening and responding to women within the community, but they are working with these groups in creating a progressive and appropriate response to wife abuse.

Another area of police behaviour that was discussed within the Pedlar report was the enforcement of restraining orders.

Specifically, Pedlar's report suggests that the police lay charges more frequently for breaching these orders and as such, send out a message that these orders are more than a piece of paper. As such, let us turn now to the respective data sets in order to evaluate any change over time.

2. POLICE ACTIVITY AND RESTRAINING ORDERS

One of the criticisms that feminists have made in the past with regard to police response to wife abuse calls, is that restraining orders or protection orders were not being taken seriously. That is, that charges were not laid for breaching these orders unless accompanied by other offenses. As such, if there has indeed been progressive change in terms of police response to wife abuse cases, we can expect an increase in the number of charges for breaching these orders.

The percentage of breach charges within the General and Family Violence Court data sets show significant change over time. This indicates that the hypothesis that the General and Family Violence Court data would exhibit a higher percentage of breach charges over the BCS data was correct.

It should be noted that another change in police behaviour which demonstrates greater protection for victims is the fact that the police can now, through a computerized data base, access information which will inform them whether there is an existing restraining order or conditions of no contact between the parties. As such, the burden is no longer on the victim to have to produce

the documentation at the time of the offense.

Although, it is the police who lay charges, not the courts, the courts do have an interconnected role in terms of the restraining orders. It is the court who sets these orders in the first place. It is the court who makes no contact or communication by the accused with the complainant, a condition of bail or part of a sentence probation. It was discussed in Chapter Two, that a past criticism of the criminal justice system was the difficulty victims faced when seeking a restraining order. In the past, the courts did not want to infringe on a male's accessibility to the matrimonial home.

In the past, women were denied protection from the courts because they could not afford to hire their own lawyer in order to seek a restraining order. Today, within Manitoba's criminal justice system, as stated above, conditions of bail and probation frequently include no communication and contact by a woman's assailant. This negates the need now for women to have to go to court, at their expense to get a restraining order. While that remains an added option for some women, for those women who can not afford a lawyer or qualify for legal aid, they can still receive the protection they need.

The changes in police activity as described above are important not only in terms of their own response to wife abuse, but also because they influenced the subsequent court response. As Ursel points out, "each change in the [criminal justice system] provokes a crisis in the adjacent part of the system" (1992:3).

Thus, it is clear that with an increase in charges being laid, including breaches, the rest of the criminal justice system was affected. In fact, a crisis was provoked within the courts. The response was to create the specialized Family Violence Court.

A specialized court was created to handle the increasing number of cases. The creation of the court came, not only as a result of the increased number of wife abuse cases, but also due to a growing recognition that wife abuse involved a different dynamic than general assaults between strangers, usually men. As such, it became apparent that a specialized court with specially trained staff was necessary to give wife abuse cases the attention and understanding they required.

COMPARATIVE COURT ANALYSIS

It is the central concern of this study to assess the extent to which the courts themselves can respond in a progressive way to past criticisms, specifically - high case attrition, inappropriate sentencing, and finally, secondary victimization of women within the court process. It is through these criteria that I can test the hypotheses:

1. A comparison of the BCS data with the General Court data dispositions will reflect progressive change over time. That is, it is hypothesized that progressive change over time will be revealed in a comparison of court dispositions in the BCS and General Court data sets. As such,

i.) One can expect to find lower stay rates and lower case attrition in the General Court data when compared with the BCS data. This would result in more cases proceeding to sentence in the General Court data set as compared with the BCS data set;

ii.) One can expect more appropriate sentencing, consisting of greater rates of incarceration, supervised probation with treatment programs and less frequent use of fines and conditional discharges within the General Court data set as compared with the BCS data set;

2. In comparing data sets from the Family Violence Court and General Court, it is anticipated that the Family Violence Court dispositions will reflect progressive change resulting from specialization.

That is, it is hypothesized that progressive change due to specialization will be revealed in a comparison of court dispositions in the Family Violence Court and General Court data sets. As such,

i.) One can expect to find lower stay rates and lower case attrition in the Family Violence Court when compared with the General Court data. This will then result in more cases proceeding to sentence in the Family Violence Court as opposed to the General Court.

ii.) One can expect more appropriate sentencing, consisting of greater rates of incarceration, supervised probation with treatment programs and less frequent use of fines and conditional discharges in the Family Violence Court versus the General Court;

iii.) One will find less secondary victimization of witnesses within the courtroom procedure which would be based on a more sensitive, inclusive treatment by Crown attorneys and court personnel toward victims within the Family Violence Court as compared with the General Court.

With these questions in mind, let us examine the following findings:

3. COURT PROCESS

A past criticism of feminists and critics of the criminal justice system has been the low number of cases that are actually prosecuted by the criminal justice system. This has been largely a function of the failure of Crowns to proceed with wife abuse cases. As such, the stay rate of domestic cases are a significant component of case attrition. However, stay rate is not the only measure of attrition.

As such, it is necessary to also look at the percentage of cases which were "Dismissed For Want of Prosecution" or "Discharged". Based on these three measures,

i. It is expected that we will find a lower attrition rate within the General Court sample when compared with the BCS sample as a measure of progressive change over time, and:

ii. A lower attrition rate in the Family Violence Court when compared with the General Court sample as a measure of progressive change due to court specialization will also be found.

Based on my hypotheses that the General Court data would demonstrate progressive change over time and the Family Violence Court would demonstrate even more progressive change through specialization, we can expect that the General Court data will demonstrate a lower stay rate than the BCS data and the Family Violence Court data will show the lowest stay rate among all three data sets. Table 7 demonstrates the differences found among data sets regarding case attrition.

TABLE 7

CASE OUTCOME BY DATA SET

CASE OUTCOME	BCS N = 1625		FVC N = 1286		GENERAL N = 103	
	N	%	N	%	N	%
Stay	504	31%	283	22%	39	38%
DFWOP*	163	10%	90	7%	5	5%
Discharged	0	0%	39	3%	2	2%
TOTAL ATTRITION	667	41%	412	32%	46	45%
DISM./NOT GUILTY	102	6%	51	4%	5	5%
Found guilty	102	6%	77	6%	9	9%
Plead guilty	759	47%	746	58%	43	41%
TOTAL SENTENCED	861	53%	818	64%	52	50%

* "DFWOP" is the abbreviated form of "Dismissed for Want of Prosecution".

Table 7 indicates that there is not the expected difference between the BCS data set and the General Court data set, although we do find a significant difference between the Family Violence Court and the General Court samples, suggesting that specialization has been more significant in producing change than time.

The past 10 years has seen substantial change in the attitudes of both the public and officials of the criminal justice system towards wife abuse. The first step was reflected in the 1983 charging directive. This was followed by the creation of the Women's Initiative - a study to address the problem of wife abuse and give women within the community a chance to be heard. Both the charging directive and Women's Initiative contributed to the implementation of the Family Violence Court, and then the Pedlar

report in 1991. These initiatives, taken together, amount to a redefinition of wife abuse as understood in criminal terms. This is the basis for expecting that even the non-specialized, General Court would show a more progressive approach in the form of a lower stay rate than it had in the past. Yet, as we examine this data we find that changed attitudes have not produced as progressive an approach as specialization has.

The most significant difference regarding stay rate emerges between the Family Violence Court, and the other two courts. The Family Violence Court as expected, has a much lower stay rate, at 22% it is 16 percentage points lower than the General Court rate, and 9 percentage points lower than the BCS data. The lower stay rate is reflective of the Family Violence Court structure and policy.

The stay rate of the General Court is not lower than the BCS data as hypothesized. Instead, we find the BCS data exhibits a stay rate 7 percentage points lower than the General Court data. This may be a result of the high composition of serious charges within the General Court data set.

In terms of the percentage of cases that were Dismissed for Want of Prosecution, we find unexpectedly, the least amount of cases in the General Court sample, with 5%. This may be due in part to the fact that we find within the General Court sample a lower percentage of female victims and male perpetrators.

Specifically, in comparing the General Court and BCS data sets we find, that within the BCS data set, there was twice as many

(10%) cases Dismissed For Want of Prosecution than in the General Court data. In comparing the Family Violence Court and General Court data we find the Family Violence Court with only 2% more charges of Dismissed For Want of Prosecution.

It must be acknowledged that cases which are Dismissed for Want of Prosecution are usually situations in which the victim has recanted or refused to testify. As such, the 7% of cases which were Dismissed For Want of Prosecution within the Family Violence Court sample represent the court and staff's commitment to respecting the wishes of victims. Instead of resorting to having a witness declared hostile and compelling testimony, the Family Violence Court Crowns will dismiss the case. It is possible that in the past, cases which were Dismissed For Want of Prosecution were not proceeded with because the victim was disbelieved and the Crowns not sensitive to the issue of wife abuse. In the Family Violence Court, having a case "Dismissed for Want of Prosecution" may be a response to victims' needs or wishes, not in spite of them.

In terms of the number of cases which were discharged (which means the case was dismissed at the preliminary hearing), we find none of the cases in the BCS sample were discharged and only 1% more within the Family Violence Court when compared with General Court data. The low rate of cases resulting in a discharge is reflective of the fact that most accused will elect to be tried or plead guilty within the provincial level of court instead of at the Queen's Bench level. As such, preliminary hearings are infrequent, especially because if convicted at the Queen's Bench level,

sentences tend to be more severe. Overall, it appears that the General Court is similar to the Family Violence Court on this measure.

Taken together, the percentages of stays, Dismissed For Want of Prosecution and Discharged amount to the total percentage of case attrition. When one compares the total attrition rates, we did not find that the General Court data demonstrated a lower case attrition than the BCS data. Instead, the BCS data demonstrated a lower rate of attrition, although it was only 4% lower than the General Court rate. However, as anticipated, the Family Violence Court rate of attrition was the lowest among the three data sets, 9 percentage points lower than the BCS and 13 percentage points lower than the General Court data.

One of the most profound differences that one finds within Table 7 is in terms of the number of cases which proceed to sentencing. The Family Violence Court had the highest rate of cases that proceeded to sentencing. This is particularly important when we consider that despite the higher proportion of indictable charges in General Court, the Family Violence Court still has a higher sentencing rate. This is evidence of a progressive response to the feminist critique that wife abuse cases have in the past not been treated like other criminal offenses but, instead, have been ignored. Thus, as hypothesized we find that the Family Violence Court demonstrates a more progressive response to wife abuse in terms of the fewer number of cases which end in a stay of proceedings.

It was hypothesized that the data would demonstrate a higher number of cases proceeding to sentence in the General Court data when compared with the BCS data. However, it was found that the BCS data set had in fact, 3% more cases than the General Court.

As stated above, the Family Violence Court demonstrates a higher number of cases which proceeded to sentence than both the BCS and General Court data sets. In terms of the BCS data, we find that 11% fewer cases proceeded to sentencing when compared with the Family Violence Court. When we compare the General Court data set with the Family Violence Court we find 14% fewer cases proceeding to sentence.

This is a significant amount when one considers the nature of these cases. Wife abuse cases have traditionally been the most difficult cases to prosecute, particularly because victims are frequently hesitant or afraid to testify. Thus, an increase in the cases which proceeded to sentencing is a positive reflection in the changes implemented to date within the criminal justice system. This is especially true since, at the time of this research, the court had only been in operation for two years.

One must further note that the increase in cases which proceeded to sentencing include cases of a "less serious nature", that is, nonindictable offenses. This reflects the Family Violence Court and police commitment to treat all situations of wife abuse seriously - not just ones of obvious severity. This is essential for, as the data in this thesis demonstrates, a significant amount of abusers have previous records, with a high percentage of these

involving assaults. Research on wife abuse has documented that the violence escalates and repeats itself (MacLeod, 1987). Hence, a commitment to intervene early in the cycle of violence, before the violence escalates into a "more serious charge", can mean greater safety for many women.

We must also keep in mind why these cases are being stayed. Table 8 offers data regarding why cases were stayed in both the General and Family Violence Courts (data was not available for the BCS sample). Upon examination of this data, we find that the stays in the Family Violence Court, to a significant extent, reflect the wishes of the victim. In the Family Violence Court, the policy for its staff is to provide a "victim-sensitive" approach. Their mandate is to prosecute cases while keeping the victim's needs and wishes in the forefront. Thus, staying a case based on a victim's wishes is in keeping with this mandate. As such, we find in Table 8 36% of cases that were stayed in the Family Violence Court were stayed because a victim refused or recanted. This is compared to the 10% in General Court.

Another difference that emerges when examining reasons for stays is the significant percentage of cases that have been stayed because they were referred to mediation services in General Court. In fact, table 10 shows that 24% of cases were stayed because of "successful mediation". This is important to note as mediation does not exist as an option in the Family Violence Court.

TABLE 8

REASONS FOR STAY

REASON	FVC N = 289		GENERAL N = 37	
	N	%	N	%
Victim refused	32	11%	3	8%
Victim recants	72	25%	7	2%
Victim not served/failed to attend	58	20%	11	29%
Insufficient evidence	17	6%	2	5%
Mediation	-	-	9	24%
Peace bond	-	-	3	8%
Victim provoked/consensual fight	35	12%	-	-
Accused sought counselling	-	2%	7	2%
No information	69	24%	8	22%

The fact that these cases were referred to mediation services is significant because these cases involved domestic relationships. Table 9 demonstrates that of these 9 cases referred to mediation services, one third involved relationships with male perpetrators, female victims who were involved in a boyfriend/girlfriend or common-law relationship. Within the sibling and acquaintance categories, 3 out of 6 involved male/female relationships.

TABLE 9

CASES REFERRED TO MEDIATION BY RELATIONSHIP TYPE
GENERAL COURT SAMPLE

RELATIONSHIP	GENERAL COURT SAMPLE N = 9	
	N	%
Siblings	3	30
Ex-common-law	1	11
Boy/girlfriend	1	11
Ex-boy/girlfriend	1	11
Acquaintances*	3	30

* These 3 relationships consisted of the following relationships:
a) accused was former common-law of victim's cousin
b) victim was present boyfriend of accused's former girlfriend
c) victim was cousin of accused's former girlfriend
In short, all involved a third party and domestic relationship.

Of course,the fact that the General Court sample is small must be considered in examining this measure. Overall, 9 cases may not seem significant. Yet the fact that domestic cases within the General Court are being referred to mediation services at all is disturbing.

Mediation can not be considered an appropriate response to family violence because it presupposes the dispute involves persons of equal power - in a battering situation, the imbalance is obvious and as Shaffer states, "it is difficult to imagine a situation in which the power imbalance between the spouse is more pronounced and the potential consequences of mediation more disastrous" (1988:182). It is unrealistic to expect that a woman who has been subjected to repeated victimization would suddenly be able to articulate and defend her needs in a face-to-face confrontation with the very individual who has abused her. Although only six of

the nine cases in the General Court sample that were disposed by successful mediation involved a male/female dynamic (two of which were brother/sister and the other one acquaintances), the power dynamic between women and men exists within many types of relationships not only spousal.

It is a trend within General Court to refer cases to mediation services in order to lighten a saturated docket. This trend within the court is testament to why a specialized court is necessary to ensure a just response for wife abuse victims as opposed to General Court.

Thus, in examining the case attrition within the three courts: the Family Violence Court, the General Court - before and after specialization - we find attitudinal change over time does not substantially affect stay rate or case attrition. As such, we did not find, as expected a lower attrition rate in the General Court as compared to the BCS data, but in fact, a rate 4 percentage points higher.

However, as hypothesized, we did find the lowest attrition rate within the Family Violence Court - 9 percentage points lower than the BCS data set, and 13 percentage points lower than the General Court data set. This would suggest that specialization does offer a positive response to the need for a greater commitment to prosecute domestic cases.

In fact, it is through specialization that the Crowns have been able to lower the stay rate while remaining true to a victim-sensitive approach. The result is that, when a victim opposes

proceeding and refuses to testify or recants, a stay is entered. What must now be considered is whether these cases, once processed, are receiving more appropriate sentences as outlined before.

4. COMPARISON OF SENTENCES WITHIN THE THREE COURTS

Based on the hypothesis that specialization would offer greater progressive reform than change over time,

1. It was expected that the General Court sample would show a move toward progressive reform with more appropriate sentences than found in the BCS data,

i. Specifically, we would expect to find in the General Court sample less fines;

ii.less conditional discharges;

iii. a higher percentage of supervised probation with court mandated treatment programs;

iv. more frequent incarceration in comparison to the BCS data.

2. It is also expected that the Family Violence Court would demonstrate the most "appropriate" sentences for abusers in all three data sets and as such we would find in the Family Violence Court sample;

i. the least fines;

ii. the least conditional discharges;

iii. the highest percentage of supervised probation with court

mandated treatment programs;

iv. the most frequent incarceration in comparison to the General Court data.

Table 10 presents a comparative analysis of the sentencing pattern within the three courts. It is important to establish that sentences may be understood in terms of a continuum of severity according to the sanction imposed. A conditional discharge may be considered the least severe sanction while incarceration may be regarded as the most severe.

TABLE 10

SENTENCING PATTERN BY DATA SET

SENTENCE PATTERN	BCS N = 1625		FVC N = 1286		GENERAL N = 103	
	N	%	N	%	N	%
Total proceed to sentencing	813	53%	818	64%	52	50%
Probation	181	22%	636	78%	26	47%
Suspended sentence*	225	28%	247	30%	9	16%
Incarceration	93	11%	180	22%	24	42%
Fine	198	24%	172	21%	14	25%
Cond. Discharge	229	28%	90	11%	5	9%

NOTE: When one adds up the number of cases in the different sentencing categories the total is greater than the number of case which proceeded to sentencing. This is because each cases typically results in more than one disposition. This is the reason the percentage totals may be greater than 100.

* Suspended Sentences are frequently issued in conjunction with probation orders, this is particularly true in the FVC where 95% of Suspended Sent. occur with probation orders. In the courts which the number of Susp.sentences exceed the number of probation orders, a susp.sentence carries minimal sanction.

Table 10 indicates, as hypothesized, change over time in sentencing patterns. The General Court data shows a substantial

increase in the issuing of probation. The BCS data set indicates only 22% of the dispositions included probation. The General Court data set show 47%, this is a marked increase of 25 percentage points. Coupled with this, as expected, we find a significant decrease in the number of conditional discharges with only 9% in the General Court sample and 28% in the BCS data set. There was no substantial difference in terms of the frequency of fines being issued at disposition, which was not anticipated.

One of the most striking differences found in Table 10 is the frequency of incarceration within the General Court. We find that compared to the BCS data set with 11% of cases receiving incarceration, 42% of cases in the General Court sample received incarceration as a sentence. Both the incarceration and probation rates in General Court may be explained as the result of so many "serious" charges in the General Court sample.

Perhaps the most interesting findings within Table 10 is between the Family Violence Court and General Court data. This comparison of the data sets assess the impact of specialization on sentencing.

It is interesting to note that the rate of incarceration within the General Court sample is 20 percentage points more than the Family Violence Court rate of 22%. This may be due to a greater focus within the Family Violence Court on treatment and rehabilitation of the abusers.

In terms of the percentage of fines that were given out within the Family Violence Court, we find, as anticipated, the Family

Violence Court has the lowest percentage of all three data sets. However, it was not expected, that the General Court sample would demonstrate the lowest number of conditional discharges among all the data sets.

Perhaps one of the most important findings within Table 10 is the comparison we find between the Family Violence Court and General Court data. When comparing these two data sets we find that the measure in which the Family Violence Court shows a higher percentage, as anticipated, in the number of sentences involving probation (78%). This is 31 percentage points higher than in the General Court data. In fact, the Family Violence Court also demonstrates a rate 56 percentage points more than the BCS data in terms of probation.

Of further importance is the fact that the Family Violence Court demonstrates the greatest percentage of court mandated conditions within probation sentences. Table 11 provides evidence of the specialized court's move toward sentences which are more appropriate. These sentences not only provide a deterrent to wife abuse, but as Macleod points out, will "give the batterers the counselling they need, where appropriate and clearly convey the batterer's responsibility for his actions" (1987:89).

TABLE 11

CONDITIONS ON SENTENCING BY DATA SET

CONDITIONS	BCS N=181*		FVC N=818		GENERAL N=52	
	N	%	N	%	N	%
Supervised probation	-	-	567	69	25	48
Court mandated treat.	18	10	606	74	33	64
Batterers treatment	4	2	320	39	5	9
Alcohol treatment	9	5	234	29	17	32
Other treatment	5	3	52	6	12	23

* The sample size for the BCS data set is 181 because information was available on court orders for the 1983 data.
** Numbers may add up to more than total as accused often receive more than one type of treatment. Also, the data represents number of orders not individuals.

Probation is the most frequent sentence found in the Family Violence Court and almost always involves supervised conditions. This is relevant as supervised conditions may also speak to the period of time in which the victim is accorded additional protection because the assailants' behaviour is being monitored[8].

Quite impressively, we find not only a high incidence of probation, but a high incidence of probation sentences which are supervised. Within the Family Violence Court 69% of sentences which involved probation were supervised, as opposed to 48% in the General Court data set.

We also find that 74% cases within the Family Violence Court, involved court mandated treatment. The BCS data shows only 10% of cases involved court mandated treatment. This is indeed indicative of an effort by the criminal justice system to not only punish abusers, but treat them - a better solution to the problem of wife abuse.

As anticipated, the General Court sample demonstrates a 10% lower incidence of court mandated treatment when compared with the Family Violence Court data set, and 54% higher rate when compared with the BCS data, suggesting change over time. The increased rates of all treatment types within the General Court as compared with the BCS data suggests a greater commitment by the state to address some of the causes of domestic violence rather than simply provide a punitive response.

It is not surprising that the Family Violence Court data shows the highest percentage of batterer's treatment, at 39%, 30 percentage points greater than the General Court and 37 percentage points greater than the BCS data. However, the General Court does demonstrate the higher rates of alcohol and other treatment than the BCS data and 3 percentage points higher than the Family Violence Court data.

Sentences must reflect society's position on wife abuse. As wife abuse has come to be defined as a more serious crime today than in the past, we could expect more serious sentencing of such cases. We have found this as hypothesized. Overall, the General Court data has reflected a stronger and more appropriate, treatment-based sanctioning of domestic cases than in the past (as shown in the BCS data). However, it is in the Family Violence Court data that we find the most appropriate sentencing with the highest frequency of supervised probation and issuing of batterers treatment as a condition of the sentence.

Overall, the Family Violence Court showed the most appropriate

sentences on two out four types of dispositions with the highest percentages of probation and the lowest number of fines. Although the General Court data set had the highest number of dispositions resulting in incarceration, the Family Violence Court also had a higher percentage than in the past (BCS) data set. As such, it appears that specialization can promote progressive change within the areas feminists have identified as requiring change.

Feminists have in the past called for dispositions that not only involve serious penalties, but offer rehabilitation and treatment. The sentences within the Family Violence Court, and to a lesser extent, the General Court data, seem to reflect the greater commitment to addressing wife abuse in a more holistic approach within the criminal justice system.

Up to now, the evaluation of the criminal justice system has been based on objective criteria. However, I felt it would be informative to include a more subjective analysis based on court observation of victims themselves. One of the most pervasive criticisms of feminists in the past has been that victim's receive insensitive treatment during proceedings by court personnel.

Thus, to truly evaluate the Family Violence Court's response to wife abuse, actual observation of court room decorum was imperative. As well, an analysis of prosecutorial policy was needed to further assess the actual implementation of the victim-sensitive policy within the Family Violence Court. In order to better measure the degree to which Crowns in this court were sensitive to victims'

wishes, I felt it would be beneficial to observe in comparison, the decorum within the General Court.

5. COURT RESPONSE TO VICTIMS

It was hypothesized that victims would receive more sensitive and inclusive treatment by court personnel within the Family Violence Court. Feminists as well as workers within the battered women's movement, have for years pointed to the negative experiences female victims encounter within the court process. For years there has been the insidious assumption that women lie, as evidenced by the past rule that rape victims' testimony required corroboration. Female victims have been victimized further by the criminal justice system as attorneys tried to discredit their testimony based on myths and stereotypes. As such, any discussion of reform within the criminal justice system, must include an discussion of secondary victimization.

Without a doubt, the interaction between Crown attorney and victim can have a profound effect on the court experience of a female witness or victim. Thus, an analysis of the Crown's prosecutorial policy towards victims must be examined as a central evidence of progressive reform. I have supplemented this review of Crown policy with information collected from informal discussions with court personnel and victims. As well, I have drawn from my own observations within both General and Family Violence Courts.

Perhaps one of the strongest criticisms that feminists have had regarding the court procedure is that it has served to re-

victimize women. That is, because the burden of proof rests on the Crown and because the court procedure is based on discrediting witnesses and victims in order to find an accused not guilty, the court experience can often be overwhelming, exhausting and even degrading for victims.

The process of secondary victimization has been attributed to the adversarial style of justice within our legal system. One of the questions that I will explore is whether it is possible within an adversarial system to prevent secondary victimization. The prevention or at least, the reduction, of secondary victimization was one of the goals of the Family Violence Court.

Within large, complex organizations such as the criminal justice system, it becomes common to treat all individuals the same. Accounting for individual needs is time consuming and problematic. However, such standardization ultimately results in the alienation of and reduced cooperation from these individuals. It can inevitably "cost" the system more when the individual returns because their needs were not addressed initially. Hence, from both the point of view of the victim and the state, there is much to be gained by a more victim-sensitive approach, and this has been the mandate of the Family Violence Court.

In October of 1990, the Crown attorneys within the Family Violence Court were issued a directive from the Manitoba Department of Justice regarding the handling of spouse abuse cases (see: Appendix E). Although the Department of Justice has had guidelines for Crowns regarding the prosecution of domestic assault cases

since 1986, a new, revised policy guideline was necessary for the specialized court. The new protocol was unique and innovative as it recognized wife abuse as a crime which requires specialized prosecutorial procedures.

The protocol implies a dual mandate: 1. rigorous prosecution, while 2. maintaining a victim-sensitive approach. This mandate has resulted in more cases being prosecuted and proceeding to sentencing while at the same time remaining responsive to victims' concerns. Before this policy existed and presently in the General Court, victims' needs were not a central concern. This directive now demonstrates what a victim-sensitive procedure looks like.

Clearly, the Family Violence Court does include the same legal procedures used in prosecuting non-domestic criminal cases. What is different in the Family Violence Court, and thus constitutes a change in the structure of the proceedings, is the way in which these procedures are utilized. Evidence of this can be seen in the way that Family Violence Court personnel deal with uncooperative witnesses.

In assessing the implications of the policy, I will be looking at two factors which were sources of controversy and criticism regarding the criminal justice system: 1.the declaration of a witness as hostile[9] and, 2. citations for contempt of court. In addition to these issues I will also look at the practice of testimony bargaining.

The Crown attorneys in Family Violence Court have remained true to the mandate of a victim-sensitive approach developing a

creative alternative to the circumstances which usually provoke a declaration of a hostile witness.

Typically, a Crown will move to declare a witness hostile if she has made it known to Crown and Defense alike that she has no intention of testifying to the incidents or she fully intends to recant if put on the stand. Under these circumstances, which more often than not end in a stay of proceedings, the Crown in Family Violence Court have an understanding with the defense lawyer that the victim will be put on the stand to verify the statement she made to the police and specify her intention to deny it. Although the victim is not speaking as a witness for the Crown, the Crown attorneys feel that they have an opportunity while the victim is on the stand to probe, and attempt to determine whether the victim is fearful or whether there is the need for a restraining order. They explain the purpose of this practice as three fold:

1. It emphasizes the responsibility the victim has to appear in court, make a true statement to the police and emphasizes the seriousness of calling the police.
2. Such an action is a form of protection for the police and the Crown - they want it on the record that they pursued the case as far as possible.
3. The Crown is of the opinion that if the victim has nonpunitive contact with the Crown it will leave the door open for future intervention and perhaps victim cooperation in the future. (Ursel, 1992)

It should be noted that the process of declaring a witness hostile by the Crown does not require a great deal of formality. In fact, it can appear to be a tacit acceptance within the courtroom dynamic that the witness will be declared hostile, often obvious to everyone but the witness. This only makes an already degrading

process even more demeaning. However, sometimes a victim's refusal to testify can come without any prior indication of hesitation, despite pretrial communication between Crown and victim. As such, it is not until the victim is on the stand that the Crown becomes aware that the victim is an aggressive witness. By virtue of this timing, the declaration of the witness as hostile while she is on the stand is particularly intimidating and frightening.

It is positive to note that, in two years of court operation, and well over 4,000 cases, a victim has never been declared hostile in Family Violence Court. This in itself provides evidence that the criminal justice system is moving away from aggressive policy towards victims.

The same hesitation by Family Violence Court Crowns to hold a witness in contempt of court is further evidence of a change from aggressive to sensitive policies. In terms of holding a victim in contempt of court, the practice is based on the same victim-sensitive approach which is utilized when a witness is considered to be hostile. While the policy is permissive (that is, it does not rule out the possibility of a contempt citation), the conditions must be considered "flagrant" and the Crown must consult the Director of Prosecutions prior to such a citing. There have been a number of cases which could be considered "flagrant" and there have been a number of cases in which the Director was consulted[10]. Yet, in the past two years there has been no case in which a victim/witness has been cited for contempt of court.

In this respect, discretion has not been eliminated in the

Family Violence Court but is exercised differently. While it has been used in the past against victims, the potential now exists for discretion to be used with the victims' interests in mind. One example of the utilization of discretion with the victim's needs in mind is the unique practice of testimony bargaining.

The practice of testimony bargaining comes from the Crowns' dual mandate to prosecute wife abuse cases rigorously while still remaining sensitive to victims' needs. Testimony bargaining usually occurs when cases are scheduled for trial and the victim is reluctant to testify. Crowns will then discuss the case with the reluctant witness and "indicate a willingness to reduce the number or severity of the charges and/or recommend probation and court mandated counselling in return for the victim/witness's cooperation" (Ursel, 1992:28). Guilty pleas entered at trial are often the result of this "testimony bargaining." In fact, 30% of all guilty pleas within the Family Violence Court were attained as a result of testimony bargaining. This process allows the victim to influence the procedure.

The Crowns' refusal to pressure the victim/witness to testify results in a lower conviction rate at trial. Despite a lower conviction rate at trial relative to General Court, the overall rate of cases which proceed to sentence is high. This is a result of the prosecution's success at obtaining guilty pleas - the Family Violence Court in its first year saw 85% of charges which proceeded to sentencing disposed by way of a guilty plea (Ursel, 1992:75).

This high rate of guilty pleas is in part a function of the

close working relation between the Women's Advocacy Program (WAP) and the Crown attorney's office. WAP contacts all women who are victims of spousal assault through the mail to inform them of the advocacy services and to provide information concerning the status of their partner's case. This is intended to aid victims as they are made to feel part of the process, and their feelings and needs considered as the case proceeds. Hence, in providing better support and information to the victim/witness, the Women's Advocacy Program can increase the willingness of women to testify. Thus, the greater victim participation and cooperation within this court is by the victims' own volition.

Hence, an analysis of the directive to the Crowns regarding the prosecution of spouse abuse cases, indicates that prosecutors are treating victims with a more sensitive approach by considering the needs of the women testifying. Overall, this results in allowing women to have input into their own case while working with the prosecutors. Victims become part of the process rather than simply spectators.

COURT OBSERVATION

The above Crown policies within the Family Violence Court, when reviewed on paper, articulate a greater victim-sensitivity than in the past. However, the actual implementation of these policies must be considered in terms of their practical implications for battered women. In this final section, I will look at the results of my personal court observations within the Family

Violence and General Courts[11].

During one year of monitoring spouse abuse cases in the Family Violence Court I observed over 60 cases[12]. Within a two month period of observation within the General Court, 10 trial cases were observed. Through this combined observation I was able to identify differences in court room decorum on the basis of three sources of information: 1. observation of victim/Crown communication; 2. anecdotal information from speaking directly to Defense and Crown attorneys; and 3. interaction/conversational information obtained from speaking with victims. While it was not my role to approach victims[13], they would often observe me taking notes and approach me. This allowed me the opportunity to gain valuable information as to how victims felt about the court and its personnel.

My first observation was victim/Crown communication. Overall, I found that the atmosphere in General Court was not greatly different than in the Family Violence Court. However, I did notice a different interaction between Crown and victims outside of the courtroom.

In the Family Violence Court, I frequently observed the Crown attorney discussing with the victim/witness what to expect within the hearing[14]. I often noticed the Crown discussing the case with a victim's advocate or supportive companion. In the General Court, however, victims were frequently unaccompanied and did not have any observable discussion or preparation with the Crown attorney. In a sense, they were expected to show up, give testimony and then

leave. They were not given any apparent support. Perhaps this is because all victims I observed in General Court were men and thus, regarded by Crown's as not requiring support.

While collecting monitoring data for the Family Violence Court research project, I had the occasion to speak to both defense and Crown attorneys as well as to victims. Discussions with Defense attorneys were usually the result of their approaching me, during a recess to inquire about my role and presence at the trial. In speaking with approximately six different Defense attorneys all agreed that after experiencing court procedures and decorum in both the specialized and General Courts, there was no doubt that there was a more victim-sensitive approach within the Family Violence Court.

Crown attorneys in the Family Violence Court were usually aware of my role and other researchers who were present in court and taking notes. As such, they would often approach us regarding our observations. As employees of the specialized court, they believed that a victim-sensitive approach to justice was necessary and were interested in feedback.

Crown attorneys within the General Court were not aware of my role observing trials and making notes so I would often approach them during a recess to explain. The ten Crowns that I spoke to, within the General Court agreed that in their opinion there was no difference in the way that victims were treated within the General as opposed to Family Violence Courts. This opinion was held regardless of whether or not the Crown had prosecuted a case within

the Family Violence Court. Overall, the Crown attorneys believed that the only difference was in the number of support services within the specialized court. They suggested that the supplementary services within the Family Violence Court were greater and, as such, contributed to making the court experience less overwhelming for victims. Most Crowns made specific reference to the Women's Advocacy Program as a progressive support service for victims.

Most importantly, in speaking with eight female victims in the Family Violence Court, I found that the majority of them found the Crown attorneys to have been very understanding and helpful. One victim in particular - who later expressed the same feelings to a Winnipeg Free Press writer - stated that the Crown attorney who was handling her case was extremely helpful. She stated that he had taken the time to help her prepare for the court room experience, promptly returned all of her calls, and helped her to get in touch with support services. In fact, she felt so much safer that she wanted to speak to the press on her own initiative to publicly thank him.

Of course, not every women feels like this victim did. For some, the court process does not ease their abusive situation. However, prior to specialization, we did not find any women with these strong feelings of validation, certainly none who felt strongly enough to "go on record". Thus, this one woman's comments are significant and, while she may be an exception in her desire to share her feelings, I did find there was a general consensus that the staff in the Family Violence Court were helpful and made a

difficult situation a little easier.

The very fact that victims approached me to share their feelings about the specialized court and its personnel is significant. Their communication demonstrates that they felt comfortable and assertive enough to approach me. This may be interpreted as indicative of their sense of belonging and control within the court process. When speaking with victims, it was always clear that they understood the procedures as they occurred.

The qualitative and quantitative findings suggest that, it is within the realm of a specialized court, with specialized policy and staff, that reform can be made. If changes have "successfully" offered battered women greater protection and empowerment, it has been the change through specialization. This data, in comparing the BCS and General Court data sets, does demonstrate that the courts have progressed with time. When the Family Violence Court procedures and outcomes are examined in comparison to General Court we discover the most profound change.

SUMMARY

This study was intended to examine whether the criminal justice system could offer progressive reform to its traditional response to wife abuse. The criminal justice system was evaluated based on the following: police activity (i.e., the laying of charges and enforcement of restraining orders), and a comparison of the Family Violence Court and General Courts (both before and after the creation of the Family Violence Court) in terms of stay rate,

inappropriate sentencing, and secondary victimization within the three courts. An appropriate response by the court on these three measures was considered to be indicative of the court's potential to improve battered women's lives and empower victims.

In this study it was hypothesized that we would find evidence of progressive reforms in terms of a continuum - the BCS data (General Court prior to specialization) would indicate the least progressive response to wife abuse; the General Court data would offer better responses; and, finally, the Family Violence Court would demonstrate the fullest of the three courts'responses to wife abuse. Hence, it was hypothesized that this continuum would indicate that attudinal change over time does not offer the same substantial change as specialization.

In terms of police practice we find that there has been a steady increase since 1983 in the number of wife abuse charges being laid both in Winnipeg as well as in rural Manitoba. Clearly, there has been progress made over time. As expected, we found the greatest number of charges being laid within 1990, the year in which the specialized court was introduced. It can be expected that with a more progressive police protocol, a greater understanding of wife abuse, as well as a better interaction within all facets of the criminal justice system, we can anticipate a further increase in the number of spouse abuse cases in which charges will be laid.

Perhaps most significant is the new police protocol which keeps the needs of victims as a central concern and provides proof that progressive action is occurring at the police level. The

Pedlar report outlined many needed changes within the police department, this new protocol is an active response to these criticisms.

The issue of reoffending has also been responded to in a more appropriate way than in the past. Previously, breaches of court orders or restraining orders did not lead to charges being laid. Yet we find that in current court cases the Family Violence Court and General Court report a higher number of breaches than in data collected between 1985-1986, indicating a positive change by the police in enforcing such charges.

In terms of response by the courts themselves, the results of this study have shown that specialization *was* the most effective approach to creating progressive reform within the criminal justice system. While the data does also show progressive change over time on certain measures, we find that the Family Violence Court has been most successful in responding to the feminist demand for a more appropriate and victim-sensitive response to wife abuse. In terms of case attrition overall, we find that the General Court data did not demonstrate a more positive response to wife abuse than the BCS data with more cases proceeding to sentencing. Instead it was found that the BCS data demonstrated a lower case attrition and slightly higher percentage of cases proceeding to sentence. However, what was found as hypothesized, was that the Family Violence Court demonstrated a lower attrition rate and higher rate of cases which proceed to sentence, than both the BCS and General Court data sets. The Family Violence Court also exhibited the

lowest stay rate as hypothesized.

When cases were disposed, we find more appropriate sentences such as supervised probation with court mandated treatment programs, more sentences of incarceration and less conditional discharges in the General Court than in the BCS data. Within the Family Violence Court we find sentences that reflect both the disapproval by society of wife abuse but also sentences which reflect a move to treat abusers. While sentences must serve as a deterrent for future abuse, they must also serve to end the causes of the abuse. Hence, we find in the Family Violence Court sentences the greatest number of cases to probation and has the highest percentage of sentences which involved court mandated conditions for treatment.

The increase in supervised probation within the Family Violence Court not only serves to help the perpetrator, but also serves to help the victim. Supervised probation offers greater protection for women as the offender is monitored and frequently involved in treatment for the period of probation. It also demonstrates that the court has listened to battered women themselves who, when asked (for example in the Pedlar report and Women's Initiative Report) stated that they wanted to see their partners helped but not necessarily punished.

This data also showed a significant percentage of cases which ended in incarceration. Although the rate of incarceration in the Family Violence Court was lower than the rate in General Court, this may be the result of the size of the General Court sample.

However, the percentage of incarceration within the Family Violence Court was higher than the BCS data set. This is significant for years ago, most offenders received greater sentences for robbing his neighbour than beating his wife. The issuing of stronger sentences is indicative of the validation of wife abuse as a serious, unacceptable crime.

Finally, as all Crown personnel - whether in general or the specialized court - have been instructed on the Zero-Tolerance policy on domestic violence, we can expect that a more victim-sensitive attitude prevails throughout the criminal justice system than in the past. As such, we would expect a more victim sensitive approach in the General Court today than would be found BCS specialization. However, it was clear that it was in the Family Violence Court, with its prosecutorial policy and specially trained personnel that the most sensitive approach to victims was found.

The creation of specific support services - such as the Women's Advocacy Program and an administrative committee based on input from members of the community - constitute unique structural modifications which have created a more victim-sensitive process. Not only have these changes served to bring the victim and her needs into the court process, they have resulted in more appropriate justice. Thus, within this specialized court we found the least amount of secondary victimization.

The findings of this study suggest that it is through specialization that the most effective response to wife abuse can be implemented. The specialization of staff and structural

modifications in procedure and policy within the Family Violence Court have given battered women greater protection than in the past, a greater involvement and understanding in their own cases and most importantly, validated that wife abuse is unacceptable and, therefore, a criminal act to be prosecuted.

Thus, as hypothesized, reform is possible and has occurred - to a lesser extent over time in the General Court and, most substantially, in the specialized Family Violence Court. Manitoba's response to wife abuse which incorporates modifications within the court process and specialization of policy and staff appears to have the greatest potential for responding to the specific interests and needs of wife abuse victims.

Without doubt, this study has not addressed all questions that feminists must pose regarding any potential reform within the state. The implications of this study for further research will be considered in the concluding chapter. As well, the concluding chapter will incorporate a discussion of how this study has contributed to the greater feminist question about engaging with the state.

ENDNOTES

1. In comparing the three data sets I can not always include the BCS data because of the different instrument used to collect data prior to 1990. Wherever comparable data exists we will report on all three data sets.

2.According to the *Aboriginal Justice Inquiry*, Aboriginal persons make up only 12% of Manitoba's entire population (A.J.I, 1991:85).

3. For an in depth discussion of class issues within the criminal justice system see Mandel (1991) and Reiman (1983).

4.An important methodological issue to consider is the fact that in the collection of all three data sets, the researcher was restricted to recording only one type of past conviction. However, the accused may have had a prior record of *both* general and domestic assault, *as well as* convictions that would fit within the "other" category. Because only one "type" of prior conviction could be recorded, and because a preference was given for recording "domestic" prior records, it is possible that the data within each data set does not reflect the entire criminal background of the suspects within it. The type of prior recorded which was recorded was that which was the most similar to the charge being sentenced. For example, if an accused was convicted of sexual assault, if he also had a prior conviction for sexual assault and general assault, the sexual assault would have been recorded. The rationale for this choice was that the prior conviction of sexual assault would have the most profound impact on sentencing in the case at bar.

5.While these differences are significant, it is difficult to measure implications regarding the overall argument because of data size.

6.Perhaps subsequent research on the Family Violence Court could more critically address how cases which fit the description of "domestic", but which do not conform to the spousal dynamic, are treated within the Family Violence Court. That is, perhaps future research could examine whether specialization is geared too specifically toward cases which involve a male/female interpersonal relationship in contrast to other relationship types such as same sex siblings. Perhaps an even more important question is whether cases which do not involve a unequal power dynamic such as the dynamic between a man and woman, should be dealt with in the Family Violence Court at all.

7.It is interesting to note that based on Chart 1, RCMP rates increased much earlier than those of the Winnipeg City Police Department. This may be because the RCMP had a more thorough control over how officers interpreted the new charging directive. The Winnipeg City Police did not respond as rigorously until pressured from various sources such as the Pedlar Report, the

Women's Initiative, the creation of the Family Violence Court and growing publicity regarding their response to wife abuse calls.

8. It is interesting to note that 48% of all probation sentences in the Family Violence Court and 45% in the General Court were for a period of 2 years. This is important because the extended period of probation allows for any waiting period that mandated treatment may require.

9.It should be noted that declaring (or not declaring) a witness hostile is not a "policy" per se. Rather, it is a rule of evidence. However, for the context of this discussion, what will be discussed is the Crown policy regarding the application of this evidence rule.

10. For example, in one situation a female victim, who had been assaulted in the past by the same partner whom the Crown was presently prosecuting, refused to testify that she had been assaulted; that she had called the police herself and given a statement to the police. She denied even knowing who the accused was (although they had arrived at court together), and once on the stand, the woman was extremely belligerent towards the judge and Crown, claiming that she should not be in court in the first place. Because of the severity of the assault and because of her hostile attitude, at recess the Crown debated whether she should be declared a hostile witness. She was not however and the charges were stayed.

11.I had no opportunity to observe court processes prior to specialization.

12.This observation included full trials, preliminary hearings, guilty pleas and sentencing.

13. Research assistants such as myself were instructed to be as inconspicuous as possible - in deference to the victim and so as not to influence any court room behaviour.

14.The hearings which I attended included preliminary inquiries, trials, screening court and any other time a victim was required to attend.

CHAPTER SIX

CONCLUSION

Within this chapter I will discuss how this study has contributed to the feminist discourse concerning state engagement. Specifically, I will address how the data analysis and findings of this study provide evidence that there is, in fact, potential for reform within the criminal justice system on the topic of wife battering. More specifically, it is my position that this study demonstrates that in Manitoba the state has moved from complacency to intervention on wife abuse. Most importantly, it is my position that this intervention has served to improve victims' lives by providing greater choices, better treatment and, ultimately, greater protection.

In creating a specialized court, with its present victim-sensitive approach to justice, Manitoba's criminal justice system has served to validate and empower victims to a greater extent than in the past. While the data have demonstrated a progressive attitude regarding wife abuse within the criminal justice system over time, it is clear that specialization has shown the most substantial modifications necessary for a more victim-focused approach to justice.

terms of how my data can speak to them and in terms of future research.

Of all the criteria for reform that has been discussed in this research, the most specific measure for evaluating the reforms made to date is what Ursel (1991) has argued should be the measure for "success": not the impact of the state on the battered women's movement, but the impact of changes for abused women themselves. In other words, we must question if creating a specialized court has resulted in "more support and more options to battered women or women at risk to escape [domestic] violence" (Ursel, 1991:268).

The Family Violence Court has a double mandate: the rigorous prosecution of cases while maintaining a victim-sensitive approach to the adminstration of justice. This effort to provide serious intervention can be seen as giving greater protection to women, which must be foremost in any reform. This study has demonstrated that this intervention is unlike court response in the past. With more specialized support services (such as the Women's Advocacy Program and unique practices such as testimony bargaining), we clearly find that battered women now have more options, more support and greater safety than before. Based on this criterion, reforms within the Family Violence Court must be considered progressive.

In assessing the Family Violence Court in terms of its policies and how it is administrated, it is clear that the court has provided many more options for women than in the past. The interdisciplinary contributions of the court's Implementation

Committee has created a greater understanding of the issue of domestic violence in relation to the criminal justice system. This, in turn, has allowed those working within the Family Violence Court to confront issues of greater subtlety and complexity. Hence, issues that may not have even been identified in the past can now be addressed with a greater scope for creativity than possible in General Court. As such, the Family Violence Court Crowns can now work toward ensuring that victims' needs are addressed in court.

While Ursel looks at the criteria for progressive reform specifically in terms greater protection for battered women, Snider (1992) evaluates reform in a broader context of change. Snider advocates that feminist strategies for reform should be ones which aim to empower the women whom they are designed to benefit. Specifically, she points to certain key questions that must be addressed when evaluating reform:

1. How are social relations of domination by sex, class, race challenged or reinforced by this reform?
2. Which women of which class or race benefit or are harmed from the reform?
3. How does this reform affect the male right to beat?
4. Does it [the reform] help build structures for further change? (Snider,1992:121)

In addressing the above criteria, we can further substantiate the claim that the Family Violence Court offers evidence of progressive reform within the criminal justice system. In terms of Snider's first question, it is important to specify that this study speaks specifically to social relations of domination by sex and can only respond to this question in terms of social/sexual

relations.

It has been argued by feminists that complacency of male violence toward women by our institutions perpetuates male domination over women. If this is so, then the Zero Tolerance policy and police and court reforms implemented in Manitoba can be seen not only as intervention but as a challenge to domination by sex. The sanctioning of male violence within the criminal justice system demonstrates that the state will no longer condone male violence. Without these sanctions, violence is reinforced.

In response to Snider's second question, we must point out that the policy in Manitoba regarding wife abuse stands for all women, regardless of race, sexuality, ethnicity or socioeconomic status. However, because women of low socioeconomic status do not have the access to resources which would offer them private solutions, the Family Violence Court gives them a positive form of intervention.

It must be noted that to create the substantive justice that Snider speaks of, the policy in Manitoba must translate in to more than formal equality. One must find that the way in which the policy is carried out ultimately results in equality of effect. That is, a policy which treats all women the same, may not always result in equal justice. For example, women who are doublely disadvantaged or marginalized by class and ethnicity or race, may not obtain a similar result when treated the same as a white woman of a higher socioecomonic status.

In order to work towards a more substantive justice within Manitoba's criminal justice system, it is important that Crown attorneys in the Family Violence Court are able to use their discretion in the prosecution of these cases. For example, in a situation where the accused and victim are immigrants, a conviction could result in deportation of the accused. This could ultimately create undue hardship for both the victim and the accused. In a situation such as this, a Crown's discretion and communication with the victim would be paramount in order to create a fair and just response to the accused's act.

The fact that the Family Violence Court has sought to create a high profile within the media creates the opportunity for intense scrutiny by the public and various interest groups. This accountability to the community is another way that the Zero Tolerance policy can be translated from mere formal equality to substantive justice. Thus, with this accountability and the use of Crown discretion, the public can evaluate the Zero Tolerance policy in terms of its *effect*, not just what the policy claims to do on paper.

Snider states in her third question that a reform must effect the male right to beat. Clearly the Zero Tolerance policy in Manitoba removes this right and criminalizes the behaviour.

Finally, Snider questions what future implications a reform may have. In terms of the specialization of a court, personnel and support services we find that the reform has begun the momentum for change throughout the criminal justice system, particularly within

the correctional system. Reform within one part of the criminal justice system may trigger reform within subsequent parts. For the initial reforms - such as the 1983 charging directive -required a reform within the court system. The response was the specialized court. This specialized court has created a response in the correctional system. Thus, probation services have been restructured and now have a specific unit designed to deal only with domestic violence offenders.

Snider further identifies measures for long-term successful reform that are consistent with the positions of Schechter (1992) and Currie (1992)[1]: 1.it must involve uniting different class fractions; 2. it must be visible, 3.thus holding people accountable if slippage occurs; 4.it must have the potential to be translated into rights, therefore gaining ideological legitimacy; and, finally, 5.it must be institutionalized and therefore have a bureaucratic investment, then there are more groups than the working or underprivileged classes interested in working for the reform (1991:191). These are the requirements for substantive justice.

In considering the criteria that Snider has outlined for long-term reform, again it can be suggested that the Family Violence Court and its policies indicate progressive, long term change.

The changes within Manitoba's criminal justice system have involved contributions from individuals of many different classes such as bureaucrats, politicians, and front-line workers. Furthermore, the research conducted by The Winnipeg Area Study in

1983, and later in 1991, clearly shows that regardless of class, individuals support the new directive on prosecuting batterers as well as the new specialized court. The survey conducted by the Winnipeg Area Study indicated that 85% of the population agreed with the 1983 charging directive, 8% were undecided and 6% disagreed (Ursel, 1991). A follow-up study in 1991 indicated further growth in support with 87% agreeing with the directive to charge, 8% remaining undecided and only 4.5% disagreeing. As Ursel states: "[s]uch immediate and overwhelming public support for such a significant change in criminal justice policy is unprecedented and revealed the extent to which a policy of criminalizing family violence was long overdue" (1991:2).

Snider suggests that reform must be visible for long term change. The fact that the Family Violence Court is specialized makes it more visible than any other court unit. Moreover, the Family Violence Court is new and unlike any other court in Canada in that it only deals with domestic cases. Its uniqueness has generated much interest within the media. In fact, its administrators have encouraged publicity and public awareness of the court by holding press conferences and releasing annual reports.

It has also been proposed by Snider that if the reform is visible it can hold people accountable. My data attest to the fact that slippage does occur. Yet, with the strong visibility of the specialized court, the involvement of the press and the Court Implementation Committee which is based on a variety of

departmental and non government individuals, this slippage can be addressed and accounted for.

The rigorous enforcement of the Zero Tolerance policy on wife abuse can also be an indicator of the potential for long term reform as it clearly asserts that wife abuse is not a right of men. Most importantly, the prosecution of these cases asserts women's rights to be free of violence in the same way that it asserts male rights. Wife abuse is not a newly defined crime, but in the past there was a failure by the criminal justice system to treat it as a crime. Now the rigorous prosecution of such cases provides ideological legitimacy that wife abuse will not be tolerated by society.

Finally, Snider suggests that reform can be long term if it is institutionalized. Manitoba's criminal justice system has truly created a major bureaucratic investment on the topic of wife abuse. The creation of a separate court, Court Implementation Committee, specialized Crown personnel and separate specialized correctional unit demonstrates a strong bureaucratic investment that can be further developed for continued reform.

Based on Ursel's requirements for reform, it appears that Manitoba's criminal justice system offers evidence of progressive change to assist battered women. Perhaps this is also in part due to the fact that within the Family Violence Court, we do not find a faceless group of male elites making policies for battered women. Instead we find a committee of individuals from both the criminal justice system and the larger community. We find advocates of

battered women and battered women themselves offering input regarding the implementation of the court. Never before has a court in Manitoba been developed and administrated like this. The ultimate result is a democratization of justice.

The effect of the tasks undertaken by the Court Implementation team has been the incorporation of victims' concerns into the justice process. This court has provided a forum for victims, the community, service providers, judges, prosecutors and defense attorneys to all offer input and advocate for change.

This democratization has been integral to the legitimation of the Family Violence Court as an alternative to the older General Court model which was perceived as insensitive to the needs of victims. With such an integrated approach, there can be early detection of problems within the specialized court and, hence, there can be rapid and accurate response to any difficulties. It is this unique restructuring of the court that has better allowed the Family Violence Court to meet its goals despite dramatic and unanticipated growth in the volume of cases.

The creation of this specialized court with its specialized staff and policies has marked a significant departure from the mainstream justice system, and it is these structural modifications that have resulted in the potential for empowerment and more appropriate treatment for battered women. Thus,

> Justice as it evolved in Family Violence Court is inclusive rather than exclusive and power in this context does not appear to operate on a zero sum basis. To empower the victim or the community of women/victims/children has not disempowered the court or its personnel. On the contrary Crown attorneys have greater discretion

in handling domestic assaults in Family Violence Court than they have in most other jurisdictions, judges preside over complex and demanding cases and utilize broad discretion in sentencing, and defense are called upon to exercise considerable ingenuity in representing their client, all the while respecting the dignity of the victim and pursuing a resolution respectful of the needs and wishes of the family involved. (Ursel, 1992:38)

The data in this study neither suggests that the Family Violence Court has responded to all past weaknesses of the criminal justice system's treatment of wife abuse cases; nor does it suggest that this specialized court will end wife abuse. The causes of wife abuse are complex and deeply embedded within the structures of our society. Yet this data do demonstrate that, through specialization and attitudinal change, societal institutions such as the legal system can serve to empower women. If the Family Violence Court and its specialized personnel, can help one woman to live free of violence, live her life with greater choices and freedom, then progressive change has occurred.

Without doubt, what is necessary to truly understand the implications of the Family Violence Court is time. At the time of this research, the court has only been in operation for two years, and Manitoba's Department of Justice's announcement of a "Zero Tolerance"policy is equally as recent. It is necessary to allow this unprecedented court more time to truly evaluate any potential backlash or potential for further reforms.

The findings in this study were not only limited by the short operation time of the court itself, but by methodological constraints. While triangulation was employed as a method of data

collection, perhaps other sources of data collection such as in-depth interviews with victims who had cases within the Family Violence Court could have been useful. Perhaps this could be the focus of a subsequent study, in which women who had cases processed in the specialized court would be interviewed and compared with victims who encountered the criminal justice system prior to specialization. Certainly, such a study would offer further understanding as to the change that has occurred both over time and as a result of specialization. Most importantly, it would be an opportunity for women to speak out.

Social life is deeply complex and social research can never claim absolutes. As such, this study has not professed to speak for all battered women. It has instead been the purpose of this study to contribute to our understanding of the relationship between wife abuse and society's institutions. Critical analysis is necessary whenever a powerful institution such as the criminal justice system makes claims of reform on issues which concern marginalized groups in our society. Hence, when our Minister of Justice suggests that domestic violence will no longer be tolerated within our province, it is necessary to critically examine efforts to implement such a policy.

As stated at the beginning of this study, everyday women are victims of domestic violence. Everyday, all around the world, women are killed by male partners. This can never be overlooked and must be reiterated in this conclusion. We can not end this examination by suggesting that reforms to date within the justice system are

sufficient or complete. However, we must conclude with the hopeful perspective that, as women's social and economic status continues to improve over time, perhaps women's oppression through violence will also end.

Women have fought to have wife abuse identified, criminalized and now prosecuted. Perhaps now that measures are in place to more appropriately deal with men who abuse their partners, we can now focus on other institutions which also perpetuate women's secondary status - a status which ultimately leads to our abuse. The media, our educational system, our gendered economy, child rearing, religion and socialization practices must be reframed so as not to portray women as secondary, but as equal members of society.

As Schechter (1982:238) points out, "material preconditions must exist to end violence against women". Such preconditions require resources which are equally available to men and women and offer equal opportunities within social and economic life. In order to create such preconditions, we must break the public/private dichotomy of social life which designates individuals to these spheres based on gender and which subsequently defines what the resources to which individuals may have access.

MacLeod (1980:65)advocates three basic strategies to create more equal circumstances for women in social and economic life: programs which help to promote the protection of abused women and offer safety; programs which aim at the economic independence of women through educating and training women; and programs dedicated to information and research. This study fits the last and the

Family Violence Court fits the first prescribed strategy.

Ultimately, it is the task of feminists both within the community and academia, to identify the factors which make women the victims of male violence. However, it is the task of *everyone* to work toward a society in which women are valued and not violated.

ENDNOTES

1. Schechter suggests that reform be examined in terms of whether or not it has brought women together to participate democratically and struggle together (1982:181).

Currie has also pointed to the need to make justice accountable and accessible as past attempts at reform by the criminal justice system have resulted in "changes" which were "safely met within the current system - without any meaningful redistribution of power" (1992:270).

APPENDIX A

TRACKING SCHEDULE

The following schedules were used in the Family Violence Court Research Project.

TVAR1 CASE NAME ---------

TVAR2 I.D. NUMBER -------

TVAR3 CASE NUMBER ---------

TVAR4 DATE FILE OPENED (I.E. FIRST APPEARED IN DOCKET COURT) ------

TVAR5 LEGAL AID -

YES 1
NO 2
NO DEFENCE (DEFENDS SELF) 3
NO INFORMATION 9

PART 1 CHARGES
**SEE CODE BOOK PAGE 1 **

TVAR6A CHARGE 1 --
TMVAR6B# -
TMVAR6C (STAYED ..... 1) (PROCEDED .... 2) (DISMISSED ... 3) -

TVAR7A CHARGE 2 --
TVAR7B# -
TVAR7C -

TVAR8A CHARGE 3 --
TVAR8B# -
TVAR8C -

TVAR9A CHARGE 4 --
TVAR9B# -
TVAR9C -

TVAR10A CHARGE 5 --
TVAR10B# -
TVAR10C -

TVAR11A CHARGE 6 --
TVAR11B# -
TVAR12C -

TVAR13A CHARGE 7 --
TVAR13B# -
TVAR13C -

TVAR14A CHARGE 8 --
TVAR14B# -
TVAR14C -

TVAR15A CHARGE 9 --
TVAR15B# -
TVAR15C -

TVAR16A CHARGE 10
TVAR16B# __
TVAR16C _
_

TVAR17 WHEN OFFENSE OCCURRED? (DAY/MONTH/YEAR) ______
TVAR18 IF CHILD ABUSE, DURATION OF ABUSE (IN MONTHS) ___

TVAR19A TYPE OF OFFENCE **SEE CODE BOOK PAGE 2A ** _
TVAR19B WHERE WAS THE CASE HEARD _
FAMILY VIOLENCE COURT..... 1
PROVINCIAL COURT 2
QUEEN'S BENCH 3

TVAR19C CROWN ELECTION _
INDICTABLE 1
SUMMARY 2
BOTH 3

TVAR20 ORIGIN OF CASE _
FAMILY VIOLENCE COURT 1
IMPORT 2
TRANSFER 3

TVAR21 PLACE OF OFFENCE **SEE CODE BOOK PAGE 2B ** __

TVAR22 SUSPECT-VICTIM RELATIONSHIP: **SEE CODE BOOK PAGE 2C** __

TVAR23 OFFENCE REPORTED BY: **SEE CODE BOOK PAGE 2D** __

TVAR24 SEX OF VICTIM: _
MALE 1
FEMALE 2

TVAR25 AGE OF VICTIM (IN YEARS) __

TVAR26 IF FEMALE, WAS THE VICTIM PREGNANT AT TIME _
YES 1
NO 2

TVAR27 OCCUPATION OF VICTIM: **SEE CODE BOOK PAGE 3A** __

TVAR28 RACE OF VICTIM: **SEE CODE BOOK PAGE 3B ** _

TVAR29 WAS THERE A LANGUAGE BARRIER? _
YES 1
NO 2
NO INFORMATION 9

TVAR30 WAS THE VICTIM DISABLED? _
YES 1
NO 2
NO INFORMATION 9

IF YES TO TVAR30 SPECIFY DISABILITY**SEE CODE BOOK PAGE 3C **

TVAR31A DISABILITY 1 __
TVAR31B DISABILITY 2 __
TVAR31C DISABILITY 3 __

TVAR32 SEX OF SUSPECT: _
MALE 1
FEMALE 2

TVAR33 AGE OF SUSPECT __

TVAR34 OCCUPATION OF SUSPECT: **SEE CODE BOOK PAGE 3A ** __

TVAR35 RACE OF SUSPECT: **SEE CODE BOOK PAGE 3B ** _

TVAR36 WAS THERE A LANGUAGE BARRIER? _
YES 1
NO 2
NOT APPLICABLE 7

TVAR37 WAS THE SUSPECT DISABLED? _
YES 1
NO 2
NO INFORMATION 9

IF YES TO TVAR37, SPECIFY DISABILITY OF SUSPECT:
**SEE CODE BOOK PAGE 3C **

TVAR38A DISABILITY 1 __
TVAR38B DISABILITY 2 __
TVAR38C DISABILITY 3 __

TVAR39 ACTUAL USE WEAPON _
YES 1
NO 2
NO INFORMATION 9

DESCRIBE THE WEAPON(S) USED **SEE CODE BOOK PAGE 3D **

TVAR40A WEAPON 1 __
TVAR40B WEAPON 2 __

TVAR41 THREATENED USE WEAPON _
YES 1
NO 2
NO INFORMATION 9

DESCRIBE THE WEAPON(S) THREATENED **SEE CODE BOOK PAGE 3D **

TVAR42A WEAPON 1 __
TVAR42B WEAPON 2 __

TVAR43 USE OF ALCOHOL/DRUGS
**SEE CODE BOOK PAGE 3E **

IF YES TO TVAR43, TYPE OF INTOXICANT PRESENT
**SEE CODE BOOK PAGE 4A **

TVAR44A INTOXICANT 1
TVAR44B INTOXICANT 2

TVAR45 WAS/WERE THERE WITNESS(ES)?
YES 1
NO 2
NO INFORMATION 9

TVAR46 IF YES TO TVAR45 RELATIONSHIP TO VICTIM:
**SEE CODE BOOK PAGE 4B **

TVAR47 WERE ANY INJURIES SUFFERED BY THE VICTIM?
YES 1
NO 2
NO INFORMATION 9

IF YES TO TVAR47, DISCUSS THE NATURE OF THOSE INJURIES.
**SEE CODE BOOK PAGE 4C **

TVAR48A INJURY 1
TVAR48B INJURY 2

USE THE FOLLOWING FOR TVAR51 - TVAR57
YES 1
NO 2
NOT APPLICABLE 7
NO INFORMATION 9

TVAR49 DID THE VICTIM GET MEDICAL ATTENTION?

TVAR50 WERE THERE ANY PRIOR CONTACTS WITH POLICE?

TVAR51 DID THE SUSPECT HAVE A CRIMINAL RECORD?

TVAR52 DID THE SUSPECT HAVE A CRIMINAL RECORD?

TVAR53 IF YES TO TVAR52 WHAT IS THE NATURE OF THE RECORD?
**SEE CODE BOOK PAGE 4D **

TVAR54 ACTION TAKEN AT THE POLICE LEVEL:
CHARGED AND HELD 1
CHARGED AND RELEASED 2
NO INFORMATION 3

TVAR55 AT THE PSB COURT, WHAT ACTION WAS TAKEN: _

HELD IN CUSTODY 1
RELEASED NO CONDITION 2
RELEASED CONDITIONS 3
NO INFORMATION 9

AT PSB LEVEL, IF RELEASED WITH CONDITIONS SPECIFY:
**SEE CODE BOOK PAGE 5C **

TVAR57A CONDITION 1 _ _
TVAR57B CONDITION 2 _ _
TVAR57C CONDITION 3 _ _

TVAR58 AT PSB COURT, DID CROWN AGREE TO RELEASE? _

YES 1
NO 2
NOT APPLICABLE 7
NO INFORMATION 9

TVAR59 IF HELD AT PSB, HOW LONG BEFORE FIRST APPEARANCE IN FVC? _ _
**SEE CODE BOOK PAGE 5D **

TVAR60 IF NOT HELD BUT CHARGED, HOW LONG FOR FIRST APPEARANCE IN FVC? _ _
**SEE CODE BOOK PAGE 5D **

TVAR61 REQUEST FOR VARIANCE OF CONDITIONS _

YES 1
NO 2
NO INFORMATION 9

TVAR62 IF YES TO TVAR61, REQUESTED BY: _

VICTIM INITIATED 1
ACCUSED INITIATED 2
JOINTLY INITIATED 3
NOT APPLICABLE 7
NO INFORMATION 9

IF YES TO TVAR62, WHICH CONDITIONS? **SEE CODE BOOK PAGE 5A **

TVAR63A CONDITION 1 _ _
TVAR63B CONDITION 2 _ _
TVAR63C CONDITION 3 _ _

WHICH AGENCIES WERE CONTACTED FROM INTAKE INTO THE SYSTEM.
**SEE CODE BOOK PAGE 5C *

TVAR64A AGENCY 1 _ _
TVAR64B AGENCY 2 _ _
TVAR64C AGENCY 3 _ _

PART 2

TVAR65 IF CHARGES LAID, DATE OF CASE ENTRY TO CROWN: _ _ _ _ _ _

TVAR66 WERE CHARGES ADDED? _
YES 1
NO 2

IF YES TO TVAR70 WHAT WERE THEY?

SEE CODE BOOK PAGE 1

TVAR67A CHARGE 1 ADDED _ _
TVAR67B CHARGE 2 ADDED _ _
TVAR67C CHARGE 3 ADDED _ _

TVAR68 DID THE ACCUSED PLEAD GUILTY IN COURT? _
YES 1
NO 2
NOT APPLICABLE 7
NO INFORMATION 9

IF YES TO TVAR68 TO WHAT CHARGES?
**SEE CODE BOOK PAGE 1 **

TVAR69A CHARGE 1 GUILTY PLEA _ _
TVAR69B CHARGE 2 GUILTY PLEA _ _
TVAR69C CHARGE 3 GUILTY PLEA _ _
TVAR69D CHARGE 4 GULITY PLEA _ _

TVAR70 WAS THE CASE EVENTUALLY STAYED BY THE CROWN? _
YES 1
NO 2
NOT APPLICABLE 7

TVAR71 IF YES TO TVAR70, WHY WAS THE CASE STAYED BY THE CROWN? _ _
** SEE CODE BOOK PAGE 5D **

PART 3

TVAR72 WAS THE ACCUSED REMANDED? _
YES 1
NO 2
NO INFORMATION 9

TVAR73 IF YES TO TVAR72, HOW MANY TIMES? _ _
NOT APPLICABLE 7
NO INFORMATION 9

TVAR74 WAS A SUBPOENA ISSUED TO THE VICTIM? —

YES 1
NO 2
NOT APPLICABLE 7
NO INFORMATION 9

TVAR75 DID THE ACCUSED ELECT A TRIAL? —

YES 1
NO 2

TVAR76 IF YES TO TVAR75, THE TRIAL ELECTED WAS BY: —

**SEE CODE BOOK PAGE 6A **

TVAR77 WAS THERE A PRELIMINARY HEARING? —

YES 1
NO 2
NO INFORMATION 9

TVAR78 IF YES TO TVAR77, WAS THE ACCUSED COMMITTED TO TRIAL? —

YES 1
NO 2
NO INFORMATION 9

TVAR79 WERE REPORTS REQUESTED ? —

YES 1
NO 2
NO INFORMATION 9

IF YES TO TVAR79, WHAT KIND OF REPORTS? *SEE CODE BOOK PAGE 6B **

TVAR80A REPORT 1 —
TVAR80B REPORT 2 —
TVAR80C REPORT 3 —

NATURE OF THE REPORT

TVAR81 ASSESSMENT OF DANGER TO VICTIM —

TVAR82 ASSESSMENT OF DAMAGE TO VICTIM —

TVAR83 POTENTIAL FOR REHABILITATION —

1	2	3	4	5
VERY LOW	LOW	MEDIUM	HIGH	VERY HIGH

TVAR84 WHAT WAS THE VERDICT? —

GUILTY 1
NOT GUILTY 2

FINAL DISPOSITION

TVAR79 DATE OF FINAL DISPOSITION _ _ _ _ _ _

TVAR80 NAME OF JUDGE .**SEE CODE BOOK PAGE 6C ** _ _
TVAR81 CHARGE 1: **SEE CODE BOOK PAGE 1 ** _ _

TVAR82A DISPOSITION 1 CHARGE 1 **SEE CODE BOOK PAGE 6D ** _ _
TVAR82B DISPOSITION 2 CHARGE 1 _ _
TVAR82C DISPOSITION 3 CHARGE 1 _ _

SPECIFY CONDITIONS **SEE CODE BOOK PAGE 7A **
TVAR83A CONDITION 1 _ _
TVAR83B CONDITION 2 _ _
TVAR83C CONDITION 3 _ _

TVAR84 IF FINE/RESTITUTION AMOUNT IN DOLLARS _ _ _ _
TVAR85 IF PROBATION TIME IN MONTHS _ _
TVAR86 IF INCARCERATION TIME IN MONTHS _ _ _

TVAR87 CHARGE 2: **SEE CODE BOOK PAGE 1 ** _ _

TVAR88A DISPOSITION 1 CHARGE 2 **SEE CODE BOOK PAGE 6D ** _ _
TVAR88B DISPOSITION 2 CHARGE 2 _ _
TVAR88C DISPOSITION 3 CHARGE 2 _ _

TVAR89A CONDITION 1 _ _
TVAR89B CONDITION 2 _ _
TVAR89C CONDITION 3 _ _

TVAR90 IF FINE/RESTITUTION AMOUNT IN DOLLARS _ _ _ _
TVAR91 IF PROBATION TIME IN MONTHS _ _
TVAR92 IF INCARCERATION TIME IN MONTHS _ _ _

TVAR93 CHARGE 3: **SEE CODE BOOK PAGE 1 ** _ _

TVAR94A DISPOSITION 1 CHARGE 3 **SEE CODE BOOK PAGE 6D ** _ _
TVAR94B DISPOSITION 2 CHARGE 3 _ _
TVAR94C DISPOSITION 3 CHARGE 3 _ _

TVAR95A CONDITION 1 _ _
TVAR95B CONDITION 2 _ _
TVAR95C CONDITION 3 _ _

TVAR96 IF FINE/RESTITUTION AMOUNT IN DOLLARS _ _ _ _
TVAR97 IF PROBATION TIME IN MONTHS _ _
TVAR98 IF INCARCERATION TIME IN MONTHS _ _ _

TVAR99 IS SENTENCE IS BEING SERVED CONCURRENTLY _
YES 1
NO 2
NO INFORMATION 9

APPENDIX B

TRACKING CODE BOOK

TRACKING CODE BOOK

1. CHARGE CODE

MURDER 11
ATTEMPTED MURDER 12
MANSLAUGHTER 13
ASSAULT WITH A WEAPON 14
AGGRAVATED ASSAULT 15
ASSAULT CAUSING BODILY HARM 16
COMMON ASSAULT/ASSAULT 17
SEXUAL ASSAULT 18
SEXUAL ASSAULT THREATS/BODILY HARM/WEAPON ... 19
AGGRAVATED SEXUAL ASSAULT 20
UNLAWFUL/FORCIBLE CONFINEMENT 21
BREAK & ENTER 22
ATTEMPTED BREAK & ENTER 23
UNLAWFULLY IN A DWELLING 24
UTTERING THREATS 25
POSS. WEAPON DANGEROUS TO PUBLIC PEACE 26
BREACH OF RECOGNIZANCE 27
BREACH OF PROBATION 28
BREACH OF COURT ORDER/PEACE BOND 29
MISCHIEF 30
ABDUCTION 31
CAUSING DISTURBANCE 32
HARASSING/ANNOYING PHONE CALLS 33
OTHER (SPECIFY) _____ 34
SEXUAL INTERFERENCE 35
POINTING A FIREARM 36
INVITITATION TO SEXUAL TOUCHING 37
POSSESSION OF PROHIBITED WEAPON 38
SEXUAL EXPLOITATION 39
FMA 40
HTA 41
INDECENT ASSAULT 42
SEXUAL INTERFERENCE UNDER 14 43
GROSS INDECENCY 44
INCEST 45
ASSAULTING A POLICE OFFICER 46
FORCIBLE ENTRY 47
ANAL INTERCOURSE 48
BESTIALITY 49
NO INFORMATION 99

2A. TYPE OF OFFENCE CODE

SPOUSAL ABUSE	1
CHILD ABUSE	2
ELDER ABUSE	3
DATING RELATIONSHIP	4
GENERAL ASSAULT	5
OTHER	6

2B. PLACE OF OFFENCE

VICTIM'S RESIDENCE	01
OFFENDER'S RESIDENCE	02
COMMON RESIDENCE	03
OTHER RESIDENCE	04
AT WORK	05
IN PUBLIC PLACE	06
OTHER PLACE (SPECIFY) _____	07
NO INFORMATION	99

2C. RELATIONSHIP CODE

MARRIED	01
EX-SPOUSE/LEGALLY SEPARATED	02
DIVORCED	03
COMMON LAW	04
EX-COMMON LAW	05
BOYFRIEND/GIRLFRIEND	06
EXBOYFRIEND/GIRLFRIEND	07
NATURAL CHILD	08
STEP CHILD	09
FRIEND	10
KNOWN ACQUAINTANCE	11
STRANGER	12
CAREGIVER	13
OTHER (SPECIFY) _____	14
NO INFORMATION	99

2D. OFFENCE REPORTED BY

VICTIM	01
SPOUSE	02
FRIEND	03
PARENT	04
OTHER RELATIVE (SPECIFY) _____	05
NEIGHBOUR	06
TEACHER	07
CHILD CARE (DAY CARE)	08
SOCIAL WORKER	09
CAREGIVER	10
OTHER (SPECIFY) _____	11
NOT APPLICABLE	77
NO INFORMATION	99

3A. EMPLOYMENT CODE

EMPLOYED - PROFESSIONAL	01
EMPLOYED - SKILLED/SEMI-SKILLED	02
EMPLOYED - UNSKILLED	03
EMPLOYED - OTHER (SPECIFY) _____	04
HOMEMAKER	05
STUDENT	06
UNEMPLOYED	07
DEPENDENT	08
OTHER (SPECIFY) _____	09
NO INFORMATION	10

3B. RACE CODE

CAUCASIAN	1
NATIVE	2
BLACK	3
ORIENTAL	4
EAST INDIAN	5
OTHER (SPECIFY) _____	6

3C. DISABILITY CODE

VISUALLY IMPAIRED	01
HEARING IMPAIRED	02
COGNITIVELY IMPAIRED	03
PHYSICALLY IMPAIRED	04
SPEECH IMPEDIMENT	05
LANGUAGE (INTERPRETOR REQUIRED)	06
OTHER (SPECIFY)	07

3D. DESCRIPTION OF WEAPON

KNIFE	01
BLUNT OBJECT	02
SHARP OBJECT	03
GUN	04
RIFLE	05
HOUSEHOLD OBJECTS	06
OTHER	07
NOT APPLICABLE	77
NO INFORMATION	99

3E. ALCOHOL PRESENT CODE

PRESENT IN VICTIM AND SUSPECT	1
PRESENT IN VICTIM BUT NOT IN SUSPECT	2
PRESENT IN SUSPECT BUT NOT IN VICTIM	3
NOT PRESENT IN EITHER VICTIM OR SUSPECT	4
PRESENT IN SUSPECT BUT NO INFO RE:VICTIM	5
PRESENT IN VICTIM BUT NO INFO ON SUSPECT	6
NOT APPLICABLE	7
NO INFORMATION	9

4A. INTOXICANT CODE

BEER/WINE	1
HARD LIQUOR	2
PRESCRIPTION	3
NON-PRESCRIPTION	4
NOT APPLICABLE	7
NO INFORMATION	9

4B. WITNESS RELATIONSHIP

CHILD(REN)	1
FRIEND	2
PARENT	3
OTHER RELATIVE	4
NEIGHBOUR	5
OTHER (SPECIFY) _____	6
NOT APPLICABLE	7
NO INFORMATION	9

4C. INJURY CODE

MINOR CUTS/BRUISES	01
MAJOR CUTS/BRUISES	02
BITES	03
BROKEN BONES/TEETH	04
BLACK EYE	05
STITCHES REQUIRED	06
MISCARRIAGE	07
ATTEMPT SUICIDE	08
EMOTIONAL STRESS/BREAKDOWN	09
BUMPS TO HEAD/NOT VISIBLE	10
OTHER	11
NO INFORMATION	99

4D. TYPE OF PRIOR RECORD CODE

DOMESTIC ASSAULT	1
GENERAL ASSAULT	2
OTHER (SPECIFY) _____	3
CHILD ABUSE	4
SEXUAL ASSAULT	5
NOT APPLICABLE	7
NO INFORMATION	9

5A. COURT ORDERS

RELEASED WITH BAIL	01
KEEP THE PEACE AND BE OF GOOD BEHAVIOUR	02
REPORT TO DESIGNATED PERSON AS DIRECTED	03
REMAIN IN JURISDICTION/HOME	04
PERSONAL APPEARANCE	05
REPORT CHANGE IN ADDRESS/OCCUPATION	06
NO CONTACT/COMMUNICATION	07
CONTACT/COMMUNICATION BY PHONE ONLY	08
ABSTAIN FROM ALCOHOL CONSUMPTION	09
RESTRICTION/CHANGE OF VISITATION	10
TO RESIDE AT GIVEN RESIDENCE	11
NOT TO POSSESS FIREARMS	12
NONDISCLOSURE	13
OTHER (SPECIFY) _____	14
NOT APPLICABLE	77
NO INFORMATION	99

5B. LENGTH OF TIME BEFORE COURT APPEARANCE

< 1 WEEK	01
1 WEEK	02
BETWEEN 1 TO 2 WEEKS	03
2 WEEKS	04
BETWEEN 2 TO 3 WEEKS	05
3 WEEKS	06
BETWEEN 3 TO 4 WEEKS	07
1 MONTH	08
MORE THAN 1 MONTH	09
NOT APPLICABLE (IMPORT)	10
NO INFORMATION	99

5C. SERVICES CONTACTED

MEDICAL	01
WAP	02
VICTIM ASSISTANCE	03
SHELTER	04
PROBATION	05
CHILD AND FAMILY SERVICES	06
OTHER SOCIAL SERVICE AGENCY	07
NOT APPLICABLE	77
NO INFORMATION	99

5D. DISMISSED/STAYED CODE

VICTIM REFUSED TO TESTIFY	01
VICTIM RETRACTED ORIGINAL STATEMENT	02
FAILED TO ATTEND COURT	03
ACCUSED SOUGHT COUNSELLING	04
INSUFFICIENT EVIDENCE	05
VICTIM NOT SERVED	06
VICTIM RECANTS	07
OTHER (SPECIFY) _____	08
NOT APPLICABLE	77
NO INFORMATION	99

6A. COURT ELECTION CODE

PC JUDGE	1
QB JUDGE ALONE	3
QB JUDGE AND JURY	4
NO INFORMATION	9

6B. REPORT CODE

PRESENTENCE REPORT	1
WAP REPORT	2
PSYCHIATRIC REPORT	3
OTHER	4
NO INFORMATION	9

6C. SENTENCING JUDGE

MYERS	01
DEVINE	02
KOPPSTEIN	03
COLLARMAN	04
MITCHELL	05
GARFINKLE	06
GUY	07
KRAMER	08
KIMMELMAN	09

10

6D. FINAL DISPOSITION

ACQUITTAL	01
ABSOLUTE DISCHARGE	02
CONDITIONAL DISCHARGE	03
SUSPENDED SENTENCE	04
PROBATION	05
FINE	06
INCARCERATION	07
OTHER _____	08

6E. IF PROBATION, CONDITIONS

UNSUPERVISED	01
SUPERVISED	02
ATTEND ABUSE GROUP	03
ABSTAIN FROM ALCOHOL	04
ATTEND ALCOHOL TREATMENT	05
OTHER TREATMENT	06
NON ASSOCIATION WITH COMPLAINANT	07
CONTACT/COMMUNICATION BY PHONE ONLY	08
ABSTAIN FROM POSSESSING/CARRYING WEAPON	09
REMAIN IN JURISDICTION	10
OTHER CONDITIONS	11
NOT APPLICABLE	77
NO INFORMATION	99

MONITORING SCHEDULE
TRIALS AND GUILTY PLEAS
FOR PRAIRIE RESEARCH
SPOUSE ABUSE
JULY 6, 1992

APPENDIX C

MVAR1 CASE NAME ---------

MVAR2 I.D. NUMBER ----------

MVAR3 POLICE NUMBER ----------

MVAR4 DATE OF FIRST APPEARANCE ------

MVAR5 LENGTH OF TRIAL IN DAYS --

MVAR6 NUMBER OF ACCUSED -

MVAR7 TRIAL JUDGE ** SEE CODE BOOK PAGE 7A ** --

MVAR8 CROWN (STANNARD ... 1 RIDD ... 2 ST. HILL ... 3 OTHER ... 4)
ROOSEWINKLE... 5) -

MVAR9 LEGAL AID -
YES 1
NO 2
NO DEFENCE (DEFENDS SELF) 3
NO INFO RE LAWYER..... 4
NO INFORMATION..... 9

ORIGINAL CHARGES AT TRIAL (# OF COUNTS): **SEE CODE BOOK PAGE 1**

MVAR10A CHARGE 1
MVAR10B# --
MVAR10C (STAY ... 1 PROCEED ... 2 DISMISS ... 3 PLEA B.... 4) -
-

MVAR11A CHARGE 2
MVAR11B# --
MVAR11C -
-

MVAR12A CHARGE 3
MVAR12B# --
MVAR12C -
-

MVAR13A CHARGE 4
MVAR13B# --
MVAR13C -
-

MVAR14A CHARGE 5
MVAR14B# --
MVAR14C -
-

MVAR15A CHARGE 6
MVAR15B# --
MVAR15C -
-

MVAR16A CHARGE 7
MVAR16B# --
MVAR16C -
-

MVAR17A CHARGE 8
MVAR17B#
MVAR17C

MVAR18A CHARGE 9
MVAR18B#
MVAR18C

MVAR19A CHARGE 10
MVAR19B#
MVAR19C

MVAR20 DATE OF INCIDENCE

MVAR21 ORIGIN OF CASE
- FAMILY VIOLENCE COURT 1
- IMPORT 2
- TRANSFER 3

MVAR22 TYPE OF HEARING/APPEARANCE:
- PRELIMINARY HEARING WITH P.B AND STAY..... 2
- PRELIMINARY HEARING..... 3
- ENTER A GUILTY PLEA 4
- TRIAL..... 5
- STAY WITH PEACE BOND AT TRIAL..... 6
- STAY AT DOCKET OR SCREENING COURT..... 8

MVAR23 IF TRIAL, TYPE OF TRIAL:
- PROVINCIAL COURT JUDGE ALONE 1
- QUEEN'S BENCH JUDGE ALONE 3
- QUEEN'S BENCH JUDGE AND JURY 4
- RE-ELECTION 5

MVAR24 CROWN ELECTION
- INDICTMENT 1
- SUMMARY 2
- BOTH 3
- NO INFORMATION 9

MVAR25 WHERE WAS CASE HEARD
- FAMILY VIOLENCE COURT 1
- PROVINCIAL COURT 2
- QUEEN'S BENCH 3

MVAR26 WAS THE VICTIM ACCOMPANIED INTO COURT BY A SUPPORTIVE OTHER.
- YES 1
- NO 2
- NOT APPLICABLE 7
- NO INFORMATION 9

MVAR27 SPECIFY WHO ACCOMPANIED
RELATIVE 1
FRIEND 2
ADVOCATE 3
OTHER 4

MVAR28A SUSPECT-VICTIM RELATIONSHIP: ‡‡SEE CODE BOOK PAGE 2A‡

MVAR28B IF MULTIPLE SUSPECT/VICTIM RELATIONSHIP ‡‡SEE CODE PAGE 2B‡‡

MVAR29 OFFENCE REPORTED BY: ‡‡SEE CODE BOOK PAGE 2C‡‡

SEX OF VICTIM(S):
MVAR30A VICTIM 1 (MALE ... 1) (FEMALE ... 2)
MVAR30B VICTIM 2
MVAR30C VICTIM 3
MVAR30D VICTIM 4

AGE OF VICTIM(S) (IN YEARS)
MVAR31A AGE OF VICTIM 1
MVAR31B AGE OF VICTIM 2
MVAR31C AGE OF VICTIM 3
MVAR31D AGE OF VICTIM 4

MVAR32 EMPLOYMENT STATUS OF VICTIM
‡‡SEE CODE BOOK PAGE 2D‡‡

MVAR33 RACE OF VICTIM:
‡‡SEE CODE BOOK PAGE 3A‡‡

MVAR34A WAS THERE A LANGUAGE BARRIER (YES ... 1 NO ... 2)

MVAR34B IF YES TO MVAR34A, INTERPRETOR USED?
(YES ... 1 NO ... 2 NA ... 7)

MVAR35 DISABILITY OF VICTIM:
YES 1
NO 2

IF YES TO MVAR35, TYPE OF DISABILITY
‡‡SEE CODE BOOK PAGE 3B ‡‡

MVAR36A DISABILITY 1
MVAR36B DISABILITY 2
MVAR36C DISABILITY 3

SEX OF SUSPECT(S):
MVAR37A SUSPECT 1 (MALE ... 1) (FEMALE ... 2)
MVAR37B SUSPECT 2
MVAR37C SUSPECT 3
MVAR37D SUSPECT 4

AGE OF SUSPECT(S) (IN YEARS)
MVAR38A AGE OF SUSPECT 1
MVAR38B AGE OF SUSPECT 2
MVAR38C AGE OF SUSPECT 3
MVAR38D AGE OF SUSPECT 4

MVAR39 EMPLOYMENT STATUS OF DEFENDENT
‡‡SEE CODE BOOK PAGE 2D‡‡

MVAR40 RACE OF DEFENDENT:
‡‡SEE CODE BOOK PAGE 3A‡‡

MVAR41A WAS THERE A LANGUAGE BARRIER? (YES ... 1 NO ... 2)

MVAR41B IF YES TO MVAR34A, INTERPRETOR USED?
(YES ... 1 NO ... 2 NA ... 7)

MVAR42 DISABILITY OF DEFENDENT:
YES 1
NO 2

IF YES TO MVAR42, TYPE OF DISABILITY
‡‡SEE CODE BOOK PAGE 3B ‡‡
MVAR43A DISABILITY 1
MVAR43B DISABILITY 2
MVAR43C DISABILITY 3

MVAR44 CHARGES ADDED.
YES 1
NO 2
NOT APPLICABLE 7

MVAR45A CHARGE 1 ADDED ‡‡SEE CODE BOOK PAGE 1‡‡
MVAR45B# COUNTS

MVAR46A CHARGE 2 ADDED
MVAR46B# COUNTS

MVAR47A CHARGE 3 ADDED
MVAR47B# COUNTS

MVAR48 WAS THERE A CHANGE OF PLEA?
YES 1
NO 2
NOT APPLICABLE 7

MVAR49 IF YES TO MVAR48, WHAT WAS THE PLEA?
GUILTY TO ORIGINAL CHARGE(S) 1
GUILTY TO A LESSER OFFENCE 2
GUILTY TO FEWER OFFENSES 3
OTHER (SPECIFY) _____ 4
NOT APPLICABLE 7

MVAR50 WHEN WAS THE CHANGE OF PLEA ENTERED?

BEFORE TRIAL COMMENCED 1
DURING CROWN'S CASE 2
AT CONCLUSION OF CROWN'S CASE 3
DURING DEFENCE'S CASE 4
SCREENING OR DOCKET COURT_____ 5
NOT APPLICABLE 7

*** IF GUILTY PLEA COMPLETE MVAR51 TO MVAR55 ***

MVAR51 WERE THERE ANY INJURIES

YES 1
NO 2
NOT APPLICABLE 7

IF YES TO MVAR51, SPECIFY: **SEE CODE BOOK PAGE 3C **

MVAR52A INJURY 1
MVAR52B INJURY 2

MVAR53 DID VICTIM RECEIVE MEDICAL ATTENTION

YES 1
NO 2
NOT APPLICABLE 7
NO INFORMATION 9

MVAR54 USE OF DRUGS/ALCOHOL

(VICTIM ... 1 ACCUSED ... 2 BOTH ... 3 NEITHER ... 4 NI ... 9)

MVAR55A DID THE DEFENDANT MAKE A STATEMENT WHICH THE CROWN SOUGHT TO INTRODUCE AS INFORMATION?

YES 1
NO 2
NO INFORMATION 9

MVAR55B TO WHOM WAS THE STATEMENT MADE?

POLICE 1
OTHER (SPECIFY) _____ 2
NOT APPLICABLE 7

*** GUILTY PLEAS PROCEED TO PAGE 10 ***

‡‡‡ IF TRIAL COMPLETE MVAR56 TO MVAR94 ‡‡‡

MVAR56 DID VICTIM/WITNESS APPEAR?
YES 1
NO 2

MVAR57 IF NO TO MVAR56, WAS A WARRANT ISSUED?
YES 1
NO 2

MVAR58 WERE CHARGES DISMISSED?
YES 1
NO 2

MVAR59 REASON FOR DISMISSAL
‡‡SEE CODE PAGE 3D‡‡

MVAR60 WAS THE VICTIM <u>UNCOOPERATIVE</u>?
YES 1
NO 2
NOT APPLICABLE 7

MVAR61 DID CROWN MOVE TO HAVE WITNESS DECLARED HOSTILE?
YES 1
NO 2
NOT APPLICABLE 7

MVAR62 IF NO TO MVAR61, WAS CASE STAYED?
YES 1
NO 2

MVAR63 REASON FOR STAY
‡‡SEE CODE BOOK PAGE 3D‡‡

<u>CROWN'S CASE</u>

IF THE VICTIM TESTIFIED, BRIEFLY DESCRIBE THE TESTIMONY.
‡‡SEE CODE BOOK PAGE 4A‡‡

MVAR64A VICTIM'S STATEMENT 1

MVAR64B VICTIM'S STATEMENT 2

MVAR64C VICTIM'S STATEMENT 3

MVAR64D VICTIM'S STATEMENT 4

MVAR65 WERE THERE ANY INJURIES
YES 1
NO 2
NOT APPLICABLE 7

IF YES TO MVAR65, SPECIFY: ‡‡SEE CODE BOOK PAGE 3C ‡‡

MVAR66A INJURY 1

MVAR66B INJURY 2

MVAR67 DID VICTIM RECEIVE MEDICAL ATTENTION
YES 1
NO 2
NOT APPLICABLE 7
NO INFORMATION 9

CROSS EXAMINATION OF VICTIM:

MVAR68A HER/HIS USE OF ALCOHOL/DRUGS? (YES ... 1) (NO ... 2) (NA ... 7)

MVAR68B NATURE OF INJURIES OR LACK THEREOF?

MVAR68C ARGUMENT?

MVAR68D BOTH BECAME VIOLENT?

MVAR68E PROVOCATION?

MVAR68F RETALIATION?

MVAR68G CIRCUMSTANCES (PHYS. OR EMOT. AND/OR TIME) IMPEDE MEMORY

POLICE WITNESSES EVIDENCE, IDENTIFY AND SUMMARIZE TESTIMONY:
‡‡SEE CODE BOOK PAGE 4B‡‡

POLICE WITNESS 1

MVAR69A
MVAR69B
MVAR69C
MVAR69D
MVAR69E

POLICE WITNESS 2

MVAR70A
MVAR70B
MVAR70C
MVAR70D

CROSS EXAMINATION OF POLICE

MVAR71A VICTIM'S SOBRIETY (YES ... 1 NO ... 2 NA ... 7)
MVAR71B ACCUSED'S SOBRIETY
MVAR71C NATURE OF INJURIES
MVAR71D VICTIM'S BEHAVIOUR
MVAR71E DEFENDENT'S BEHAVIOUR
MVAR71F CONDITION OF SITE

MVAR72 CROWN'S THIRD PARTY WITNESS(ES) 1 **SEE CODE BOOK PAGE 4C **

MVAR73A TESTIMONY 1 **SEE CODE BOOK PAGE 5A **

MVAR73B TESTIMONY 2

MVAR73C TESTIMONY 3

MVAR74 CROWN'S WITNESS 2
MVAR75 TESTIMONY 1

MVAR76 CROWN'S WITNESS 3
MVAR77 TESTIMONY 1

MVAR78 CROWN'S WITNESS 4
MVAR79 TESTIMONY 1

MVAR80 DID THE DEFENDANT MAKE A STATEMENT WHICH THE CROWN SOUGHT TO INTRODUCE AS EVIDENCE?
YES 1
NO 2
NO INFORMATION 9

MVAR81 IF YES TO MVAR80, TO WHOM WAS THE STATEMENT MADE?
POLICE 1
OTHER (SPECIFY) _____ 2
NOT APPLICABLE 7

MVAR82 IF YES TO MVAR81, WAS THE STATEMENT ALLOWED IN?
YES 1
NO 2
NOT APPLICABLE 7

DEFENCE'S CASE

MVAR83 DID THE DEFENCE CALL WITNESSES?
YES 1
NO 2

MVAR84 IF YES TO MVAR83, DID THE DEFENDANT TESTIFY?
YES 1
NO 2
NOT APPLICABLE 7

TESTIMONY FOR DEFENCE (ACCUSED)
SEE CODE BOOK PAGE 5B

MVAR85A TESTIMONY 1

MVAR85B TESTIMONY 2

MVAR85C TESTIMONY 3

MVAR85D TESTIMONY 4

CROSS EXAMINATION OF ACCUSED

MVAR86A USE OF ALCOHOL/DRUGS? (YES ... 1 NO ... 2 NA ... 7) -

MVAR86B EXTENT OF FORCE USED? -

MVAR86C ACCUSED'S EMOTIONAL STATE? -

MVAR86D PREVIOUS ASSAULTS? -

TESTIMONY FOR DEFENCE (THIRD PARTY)

MVAR87 DEFENCE WITNESS 1 ‡‡SEE CODE BOOK PAGE 4C‡‡ - -

MVAR88A TESTIMONY 1 ‡‡SEE CODE BOOK PAGE 5C‡‡
MVAR88B TESTIMONY 2 - -
MVAR88C TESTIMONY 3 - -
- -

MVAR89 DEFENCE WITNESS 2
MVAR90 TESTIMONY 1 - -
- -

MVAR91 DEFENCE WITNESS 3
MVAR92 TESTIMONY 1 - -
- -

MVAR93 DEFENCE WITNESS 4
MVAR94 TESTIMONY 1 - -
- -

‡‡ APPLICABLE FOR BOTH TRIAL AND GUILTY PLEAS ‡‡

CLOSING ARGUMENTS BRIEFLY SUMMARIZE:

DEFENCE SUMMATION ‡‡SEE CODE BOOK PAGE 6A‡‡

MVAR95A
MVAR95B - -
MVAR95C - -
MVAR95D - - - -

CROWN SUMMATION ‡‡SEE CODE BOOK PAGE 6B‡‡

MVAR96A - -
MVAR96B - -
MVAR96C - -
MVAR96D - -

VERDICT

MVAR97 IF A PRELIMINARY: -
COMMITTED TO TRIAL 1
DISCHARGED 2

MVAR98 IF A TRIAL: -
GUILTY 3
NOT GUILTY 4
GUILTY OF A LESSER OFFENCE 5
DISMISSED _____ 6
NOT APPLICABLE..... 7
PEACE BOND..... 8

MVAR99 DID ACCUSED HAVE A PRIOR RECORD? (YES ... 1 NO ... 2)

MVAR100 IF YES TO MVAR99, DID THE RECORD INCLUDE ASSAULT?

MVAR101 IF YES TO MVAR101, DID RECORD INCLUDE SPOUSAL ASSAULT?

MVAR102 WERE REPORTS REQUESTED ?

YES 1
NO 2
NO INFORMATION 9

IF YES TO MVAR102, WHAT KIND OF REPORTS? ‡SEE CODE BOOK PAGE 6C ‡‡

MVAR103A REPORT 1

MVAR103B REPORT 2

MVAR103C REPORT 3

NATURE OF THE REPORT

MVAR104 ASSESSMENT OF DANGER TO VICTIM

MVAR105 ASSESSMENT OF DAMAGE TO VICTIM

MVAR106 POTENTIAL FOR REHABILITATION

1	2	3	4	5
VERY LOW	LOW	MEDIUM	HIGH	VERY HIGH

CROWN'S RECOMMENDATION RE: SENTENCE ‡‡SEE CODE BOOK PAGE 6D‡‡

MVAR107A RECOMMENDATION 1

MVAR107B RECOMMENDATION 2

MVAR107C RECOMMENDATION 3

CONDITIONS: ‡‡SEE CODE BOOK PAGE 7C‡‡

MVAR108A CONDITIONS 1
MVAR108B CONDITIONS 2
MVAR108C CONDITIONS 3

MVAR109 IF PROBATION SPECIFY LENGTH IN MONTHS
MVAR110 IF INCARCERATION SPECIFY LENGTH IN MONTHS

DEFENCE RECOMMENDATION RE: SENTENCE ‡‡SEE CODE BOOK PAGE 6D ‡‡

MVAR111A RECOMMENDATION 1 --

MVAR111B RECOMMENDATION 2 --

MVAR111C RECOMMENDATION 3 --

CONDITIONS ‡‡SEE CODE BOOK PAGE 7A‡‡

MVAR112A CONDITIONS 1 --
MVAR112B CONDITIONS 2 --
MVAR112C CONDITIONS 3 --

MVAR113 IF PROBATION SPECIFY LENGTH IN MONTHS --
MVAR114 IF INCARCERATION SPECIFY LENGTH IN MONTHS ---

JUDGE'S REMARKS ‡‡SEE CODE BOOK PAGE 7A‡

MVAR115A --
MVAR115B --
MVAR115C --
MVAR115D --

FINAL DISPOSITION

MVAR116 DATE OF FINAL DISPOSITION ------

MVAR117 SENTENCING JUDGE ‡‡SEE CODE BOOK PAGE 7B‡‡ --

MVAR118 CHARGE 1: ‡‡SEE CODE BOOK PAGE 1 ‡‡ --

MVAR119A DISPOSITION1 CHARGE1 ‡‡SEE CODE BOOK PAGE 6D ‡‡ --

MVAR119B DISPOSITION2 CHARGE1 --

MVAR119C DISPOSITION3 CHARGE1 --

CONDITIONS: ‡‡SEE CODE BOOK PAGE 7C‡‡

MVAR120A CONDITION 1 --
MVAR120B CONDITION 2 --
MVAR120C CONDITION 3 --

MVAR121 IF FINE/RESTITUTION SPECIFY AMOUNT ----
MVAR122 IF PROBATION SPECIFY LENGTH IN MONTHS --
MVAR123 IF INCARCERATION SPECIFY LENGTH IN MONTHS ---

MVAR124 CHARGE 2: ‡‡SEE CODE BOOK PAGE 1 ‡‡ --

MVAR125A DISPOSITION1 CHARGE2 ‡‡SEE CODE BOOK PAGE 6D ‡‡ --

MVAR125B DISPOSITION2 CHARGE2 --

MVAR125C DISPOSITION3 CHARGE2 --

CONDITIONS: ‡‡SEE CODE BOOK PAGE 7C ‡‡

MVAR126A CONDITION 1
MVAR126B CONDITION 2 --
MVAR126C CONDITION 3 --
--

MVAR127 IF FINE/RESTITUTION SPECIFY AMOUNT
MVAR128 IF PROBATION SPECIFY LENGTH IN MONTHS ----
MVAR129 IF INCARCERATION SPECIFY LENGTH IN MONTHS --

MVAR130 CHARGE 3: ‡‡SEE CODE BOOK PAGE 1 ‡‡ --

MVAR131A DISPOSITION1 CHARGE3 ‡‡SEE CODE BOOK PAGE 6D ‡‡ --

MVAR131B DISPOSITION2 CHARGE3 --

MVAR131C DISPOSITION3 CHARGE3 --

CONDITIONS: ‡‡SEE CODE BOOK PAGE 7C‡‡

MVAR132A CONDITION 1
MVAR132B CONDITION 2 --
MVAR132C CONDITION 3 --
--

MVAR133 IF FINE/RESTITUTION SPECIFY AMOUNT
MVAR134 IF PROBATION SPECIFY LENGTH IN MONTHS ----
MVAR135 IF INCARCERATION SPECIFY LENGTH IN MONTHS --

MVAR136 IS SENTENCE IS BEING SERVED CONCURRENTLY -
YES 1
NO 2
NO INFORMATION 9

APPENDIX D

MONITORING CODE BOOK
FAMILY VIOLENCE COURT
FOR PRAIRIE RESEARCH
JULY 6, 1992

1A. CHARGE CODE

MURDER	11
ATTEMPTED MURDER	12
MANSLAUGHTER	13
ASSAULT WITH A WEAPON	14
AGGRAVATED ASSAULT	15
ASSAULT CAUSING BODILY HARM	16
COMMON ASSAULT/ASSAULT	17
SEXUAL ASSAULT	18
SEXUAL ASSAULT THREATS/BODILY HARM/WEAPON	19
AGGRAVATED SEXUAL ASSAULT	20
UNLAWFUL/FORCIBLE CONFINEMENT	21
BREAK AND ENTER	22
ATTEMPTED BREAK & ENTER	23
UNLAWFULLY IN A DWELLING	24
UTTERING THREATS	25
POSS. WEAPON DANGEROUS TO PUBLIC PEACE	26
BREACH OF RECOGNIZANCE	27
BREACH OF PROBATION	28
BREACH OF COURT ORDER/PEACE BOND	29
MISCHIEF	30
ABDUCTION	31
CAUSING DISTURBANCE	32
HARASSING/ANNOYING PHONE CALLS	33
HOUSEBREAK ENTER W/INTENT	34
SEXUAL INTERFERENCE	35
POINTING A FIREARM	36
INVITATION TO SEXUAL TOUCHING	37
POSSESSION OF PROHIBITED WEAPON	38
SEXUAL EXPLOITATION	39
FMA	40
HTA	41
INDECENT ASSAULT	42
SEXUAL INTERFERENCE UNDER 14	43
GROSS INDECENCY	44
INCEST	45
ASSAULTING A POLICE OFFICER	46
FORCIBLE ENTRY	47
ANAL INTERCOURSE	48
BESTIALITY	49
OTHER	50
ABDUCTION	51
NO INFORMATION	99

2A. RELATIONSHIP CODE

MARRIED	01
EX-SPOUSE/LEGALLY SEPARATED	02
DIVORCED	03
COMMON LAW	04
EX-COMMON LAW	05
BOYFRIEND/GIRLFRIEND	06
EXBOYFRIEND/GIRLFRIEND	07
NATURAL CHILD	08
STEP CHILD	09
FRIEND	10
KNOWN ACQUAINTANCE	11
STRANGER	12
CAREGIVER	13
OTHER (SPECIFY) _____	14
NO INFORMATION	99

2B. MULTIPLE VICTIM/SUSPECT RELATIONAL CODE

ALL FAMILY MEMBERS	1
VICTIMS FAMILY AND THIRD PARTY	2
SUSPECTS FAMILY AND THIRD PARTY	3
THIRD PARTY ONLY	4

2C. OFFENCE REPORTED BY

VICTIM	01
SPOUSE	02
FRIEND	03
PARENT	04
OTHER RELATIVE (SPECIFY) _____	05
NEIGHBOUR	06
TEACHER	07
CHILD CARE (DAY CARE)	08
SOCIAL WORKER	09
CAREGIVER	10
OTHER (SPECIFY) _____	11
NOT APPLICABLE	77
NO INFORMATION	99

2D. EMPLOYMENT CODE

EMPLOYED - PROFESSIONAL	01
EMPLOYED - SKILLED/SEMI-SKILLED	02
EMPLOYED - UNSKILLED	03
EMPLOYED - OTHER (SPECIFY) _____	04
HOMEMAKER	05
STUDENT	06
UNEMPLOYED	07
DEPENDENT (CHILDREN)	08
OTHER (SPECIFY) _____	09
RETIRED	10
NO INFORMATION	99

3A. RACE CODE

CAUCASIAN	1
NATIVE	2
BLACK	3
ORIENTAL	4
EAST INDIAN	5
OTHER (SPECIFY) _____	6

3B. DISABILITY CODE

VISUALLY IMPAIRED	01
HEARING IMPAIRED	02
COGNITIVELY IMPAIRED	03
PHYSICALLY IMPAIRED	04
SPEECH IMPEDIMENT	05
LANGUAGE (INTERPRETER REQUIRED)	06
OTHER (SPECIFY)	07

3C. INJURY CODE

MINOR CUTS/BRUISES	01
MAJOR CUTS/BRUISES	02
BITES	03
BROKEN BONES/TEETH	04
BLACK EYE	05
STITCHES REQUIRED	06
MISCARRIAGE	07
BUMPS TO HEAD/NOT VISIBLE	08
ATTEMPT SUICIDE	09
EMOTIONAL STRESS/BREAKDOWN	10
DAMAGE GENITALS	11
DAMAGE TO REPRODUCTIVE ORGANS	12
PREGNANCY	13
OTHER	14
NO INFORMATION	99

3D. DISMISSED/STAYED CODE

VICTIM REFUSED TO TESTIFY	01
VICTIM RETRACTED ORIGINAL STATEMENT	02
FAILED TO ATTEND COURT	03
ACCUSED SOUGHT COUNSELLING	04
INSUFFICIENT EVIDENCE	05
VICTIM NOT SERVED	06
VICTIM RECANTS	07
VICTIM PROVOKED	08
CONSENSUAL FIGHT	09
OTHER (SPECIFY) _____	10
NOT APPLICABLE	77
NO INFORMATION	99

4A. TESTIMONY FOR CROWN (VICTIM)

GAVE ACCOUNT OF INCIDENT	01
NO RECONCILIATION	02
NOT FIRST TIME VICTIMIZED BY ACCUSED	03
FEARS FOR LIFE	04
ACCUSED NEEDS PUNISHMENT	05
ACCUSED NEEDS COUNSELLING	06
RECONCILIATION	07
VICTIM RECANTS	08
LEAVE US ALONE	09
OTHER	10
NOT APPLICABLE	77
NO INFORMATION	99

4B. TESTIMONY FOR CROWN (POLICE)

ATTENDED CALL PLACED BY VICTIM	01
ATTENDED CALL PLACED BY OTHER	02
NOTICED INJURIES ON VICTIM	03
DID NOT NOTICE INJURIES ON VICTIM	04
SPOKE TO VICTIM	05
SPOKE TO ACCUSED	06
SPOKE TO BOTH VICTIM AND ACCUSED	07
SPOKE TO OTHER	08
ACCUSED COOPERATIVE	09
ACCUSED NON-COOPERATIVE	10
VICTIM DECLINED MEDICAL ATTENTION	11
VICTIM SOUGHT MEDICAL ATTENTION	12
REMARKED ON CONDITION OF IMMEDIATE AREA	13
VICTIM UNDER INFLUENCE OF ALCOHOL	14
ACCUSED UNDER INFLUENCE OF ALCOHOL	15
BOTH UNDER INFLUENCE OF ALCOHOL	16
CHILDREN PRESENT	17
CORROBORATED PREVIOUS POLICE TESTIMONY	18
WEAPON USED	19
WEAPON THREATENED	20
WEAPON SEIZED	21
OTHER	22
NO INFORMATION	99

4C. CROWN'S OTHER WITNESSES (EXCLUDING VICTIM)

NEIGHBOUR	01
FRIEND	02
FAMILY MEMBER	03
CHILD(REN)	04
SOCIAL WORKER	05
PROBATION OFFICER	06
MEDICAL DOCTOR	07
NURSE	08
CO-WORKER	09
POLICE OFFICER	10
FORENSIC	11
WITNESS	12
OTHER (SPECIFY)	13

5A. TESTIMONY FOR CROWN (THIRD PARTY)

ATTENTION TO EXTENT OF VICTIM'S INJURIES	01
EXTENT OF PHYSICAL FORCE USED	02
DAMAGE TO PREMISES	03
ATTACK ON DEFENDANT'S CREDIBILITY	04
CREDIBILITY OF VICTIM'S TESTIMONY	05
CORROBORATION OF VICTIM'S TESTIMONY	06
VICTIM'S EMOTIONAL STRESS	07
INTIMIDATION OF VICTIM BY DEFENDANT	08
CORROBORATION OF PREVIOUS WITNESSES	09
WEAPON USED	10
WEAPON THREATENED	11
OTHER	12

5B. TESTIMONY FOR DEFENCE (ACCUSED)

DENIAL OF CIRCUMSTANCES	01
SELF-DEFENCE	02
PROVOCATION BY VICTIM	03
RETALIATION	04
ARGUMENT STARTED BY VICTIM	05
BOTH BECAME VIOLENT	06
USE OF DRUGS/ALCOHOL	07
ATTEMPT TO DISCREDIT VICTIM	08
STRESS DUE TO UNEMPLOYMENT	09
GENERALIZED STRESS	10
OTHER	11
NOT APPLICABLE	77
NO INFORMATION	99

5C. TESTIMONY FOR DEFENCE (THIRD PARTY)

DENIAL OF CIRCUMSTANCES	01
SELF-DEFENCE	02
PROVOCATION BY VICTIM	03
RETALIATION	04
ARGUMENT STARTED BY VICTIM	05
BOTH BECAME VIOLENT	06
USE OF DRUGS/ALCOHOL	07
ATTEMPT TO DISCREDIT VICTIM	08
ACCUSED OF GOOD CHARACTER	09
GOOD PROVIDER	10
GOOD PARENT	11
STRESS DUE TO UNEMPLOYMENT	12
GENERALIZED STRESS	13
CORROBORATES PREVIOUS TESTIMONY	14
OTHER	15
NOT APPLICABLE	77
NO INFORMATION	99

6A. DEFENCE SUMMATION

ATTENTION TO DEFENDANT'S CHARACTER	01
SPEAKS TO LACK OF CRIMINAL RECORD	02
FIRST INCIDENT OF THIS NATURE REPORTED	03
CALLS ATTENTION TO CONSENSUAL FIGHT	04
ACTING IN SELF-DEFENCE	05
VICTIM PROVOKED DEFENDANT	06
RECONCILIATION IN PROGRESS	07
NO HARM INTENDED BY DEFENDANT	08
DEFENDANT SUSTAINED INJURIES IN THE DISPUTE	09
CALLS ATTENTION TO CREDIBILITY OF VICTIM	10
GOOD PROVIDER	11
GOOD PARENT	12
NEED TO SUSTAIN EMPLOYMENT	13
OTHER	14

6B. CROWN'S SUMMATION

ATTENTION TO EXTENT OF VICTIM'S INJURIES	01
EXTENT OF PHYSICAL FORCE USED	02
DAMAGE TO PREMISES	03
ATTACK ON DEFENDANT'S CREDIBILITY	04
CREDIBILITY OF VICTIM'S TESTIMONY	05
CORROBORATION OF VICTIM'S TESTIMONY	06
VICTIM'S EMOTIONAL STRESS	07
INTIMIDATION OF VICTIM BY DEFENDANT	08
INVOKES WAP REPORT	09
OTHER	10

6C. REPORTS REQUESTED CODE

PRESENTENCE REPORT	1
WAP	2
PSYCHIATRIC/PSYCHOLOGICAL	3
CHILD/WITNESS VICTIM PROGRAM	4
CHILD PROTECTION SERVICE	5
OTHER	6

6D. FINAL DISPOSITION

ACQUITTAL	01
ABSOLUTE DISCHARGE	02
CONDITIONAL DISCHARGE	03
SUSPENDED SENTENCE	04
PROBATION	05
FINE	06
INCARCERATION	07
PEACE BOND	08
UP TO JUDGE'S DISCRETION	09
OTHER _____	10
INTERMITTENT SENTENCE	11

7A. JUDGE'S REMARKS

CREDIBILITY OF VICTIM	01
CREDIBILITY OF DEFENDANT	02
BOTH CREDIBLE WITNESSES	03
EXCESSIVE FORCE UNDER CIRCUMSTANCES	04
POTENTIAL FOR FURTHER VIOLENCE	05
CONCERN ABOUT CHILDREN	06
TOOK INTO CONSIDERATION VICTIM'S WISHES	07
ASSAULT OCCURRED	08
CROWN SHOWED BEYOND REASONABLE DOUBT	09
CROWN DID NOT SHOW BEYOND REASONABLE DOUBT	10
OTHER	11

7B. SENTENCING JUDGE

MYERS	01
DEVINE	02
KOPSTEIN	03
COLLERMAN	04
MITCHELL	05
GARFINKEL	06
GUY	07
KRAMER	08
KIMMELMAN	09
CONNOR	10
ALLEN	11
DUVAL	12
GIESBRECHT	13
SWAIL	14
RUBIN	15
HARRIS	16
MORLOCK	17
WEBSTER	18
GYLES	19
OTHER	25

7C. IF PROBATION, CONDITIONS

UNSUPERVISED	01
SUPERVISED	02
ATTEND ABUSE GROUP	03
ABSTAIN FROM ALCOHOL	04
ATTEND ALCOHOL TREATMENT	05
OTHER TREATMENT	06
NON ASSOCIATION WITH COMPLAINANT	07
CONTACT BY PHONE ONLY	08
CONTACT ONLY FOR ACCESS TO CHILD(REN)	09
ABSTAIN FROM POSSESSING/CARRYING WEAPON	10
REMAIN IN JURISDICTION	11
CONDITIONS AS COURT ORDERED	12
OTHER CONDITIONS (SPECIFY)	13
ANGER MANAGEMENT	14
NOT TO RESIDE W/COMP UNTIL TREAT COMPLETE	15
NOT APPLICABLE	77
NO INFORMATION	99

APPENDIX E

Manitoba
Department of Justice

Guideline No. 2:SPO:1

Public Prosecutions

Policy Directive

Subject: Spousal Abuse
Date: October 10, 1990

POLICY STATEMENT:

Criminal proceedings will be instituted in all cases where a spouse has been assaulted. Where a police officer has reasonable and probable grounds to believe that a husband or wife has been assaulted, the police have been requested to lay the appropriate criminal charge as disclosed by the complainants evidence.

Spousal assault, for the purposes of this policy, is defined as physical or sexual assault or the threat of physical or sexual assault of a spouse by a person with whom they have, or have had an intimate relationship, whether or not they are legally married or living together at the time of the assault or threat.

(1) Every effort should be made to encourage battered spouses to testify including putting such witnesses on the stand, but where the charge is provable by other evidence, the reluctant spouse should be excused without further sanction.

(2) Where there is not sufficient evidence without that of the battered spouse, regard must be had to the circumstances of each offence. The more serious the offence, the more appropriate it would be to take all reasonable steps to compel testimony.

(3) Any women who requests that charges be dropped should be directed to contact the Women's Advocacy Program, and the practice of directing any such women to write a letter to the Crown Attorney should be discontinued. When a women is referred to the Women's Advocacy Program, it should be confirmed by a memorandum or a telephone call to their office, by the Crown Attorney, advising of any particular concerns by the prosecution. Contact with Women's Advocacy and its outcome should be noted in the file.

(4) The complainant should be advised that they did not lay the charge and the responsibility for prosecution of the case rests with the Crown Attorney.

(5) If a complainant fails to attend Court in response to a subpoena, the Crown Attorney has the discretion to request a warrant, thus authorizing police intervention to determine the safety of the woman. When the woman has been located, she should be referred to the Women's Advocacy Program to identify and respond to her concerns.

(6) Unfortunately, the Women's Advocacy Program only operates in the City of Winnipeg. However, in some centres outside the City of Winnipeg there are similar programs to which a Crown Attorney may refer a victim/witness.

(7) The battered spouse, who chooses not to testify, should not, unless special or unusual circumstances exist, be made the subject of further prosecution as a result of her failure to testify.

(8) A battered spouse who fails to attend Court in answer to a subpoena, or who refuses, once sworn, to answer questions is in contempt of Court and may be called upon by the presiding Judge to answer for her contempt. Crown Attorneys may move to cite such witnesses for contempt if the circumstances are flagrant, in the sense that the witness refused a prior warning to cooperate as required. Prior to citing for contempt the Director should be consulted.

(9) The initiation of criminal charges against a battered spouse as a result of her failure to testify (i.e. charges of public mischief) should not be undertaken without the review of the file, and the matter should be referred through the Senior Crown Attorney responsible for prosecutions in the area to the appropriate Director of Prosecutions.

RATIONALE:

The policy was implemented as a result of a Ministerial directive in 1983. The obvious proximity of the complainant to the accused makes prosecution of spousal abuse difficult. The policy establishes a consistent approach to the prosecution of these cases.

BIBLIOGRAPHY

Acker, J., Barry, K. 1984. "Letters/Comments on MacKinnion's 'Feminism, Marxism Method and the State'", Signs: Journal of Women in Culture and Society, 10, 11, 175-179

Adamson, N., Briskin, L., McPhail, M. 1984. Feminist Organizing for Change: The Contemporary Women's Movement in Canada, Toronto: McGraw -Hill Ryerson Ltd.

Adelberg, E. 1984. "When the victim goes to jail: The law on contempt of court", Status of Women News, 9, 3-8

Armstrong, P., Armstrong, H. 1978. The Double Ghetto, Toronto: McClelland & Stewart.

Berk, S., Fenstermaker, R., Loseke, D. 1980-81. "Handling Family Violence: Situational Determinants of Police Arrest in Domestic Disturbances",Law & Society Review, 15, 2, 317-346

Blair, S. 1979. "Making the Legal System Work for Battered Women", in Moore, D. (ed.), Battered Women, Beverly Hills: Sage Publications, Inc.

Bottomley, A., 1984. "What is happening to family law? A feminist critique of conciliation", Women in Law - Explorations in Law, Family & Sexuality, Routledge, Kegan & Paul.

Brickey, S., Comack, E. 1986. The Social Basis of Law, Toronto: Garamond Press.

Burris, C., Jaffe, P. 1983. "Wife Abuse As a Crime: The Impact of Police Laying Charges", Canadian Journal of Human Justice, 25, 309-317.

Comack, E., Brickey, S. 1991. The Social Basis of Law, Halifax: Garamond Press.

Comack, E., 1992. "Women and Crime", in Linden, R. (ed.), Criminology: A Canadian Perspective, Toronto: H.B.J.

Comack, E., 1993. Feminist Engagement with the Law: The Legal Recognition of the 'Battered Women Syndrome', Ottawa: The C.R.I.A.W. Papers.

Currie, D. 1990. "Battered Women & the State: From the Failure of Theory to a Theory of Failure", The Journal of Human Justice, Spring, 1, 2, 80-95 .

Currie, D., MacLean, B.D., 1992. Rethinking The Administration of Justice. Halifax: Fernwood Publishing.

Currie, R.F., Rondeau, D.A., 1989. Report for the City of Winnipeg Police: 1989 Winnipeg Area Study, Winnipeg: Department of Sociology, University of Manitoba.

Davidson, T. 1977. Wifebeating: A Recurring Phenomenon Throughout History: A Psychosociological Study in Domestic Violence, New York: Van Norstand Reinhold.

Delgado, R., Dunn, C., et al. 1985. "Fairness & Formality: Minimizing the risk of Prejudice in Alternative Dispute Resolution", Wisconsin Law Review, 46, 1359-1401.

Dobash, R., Dobash, R. 1977. "Love, Honor & Obey: Institutional Ideology & the Struggle for Battered Women", Contemporary Crisis, 1, 405-415.

Donovan, J. 1988. Feminist Theory: The Intellectual Traditions of American Feminism, New York: Frederick Ungar Publishing Co. Inc.

Dutton, D. 1984. "Interventions into the Problem of Wife Assault: Therapeutic, Policy and Research Implications", Canadian Journal of Behaviourial Science, 16, 4, Oct., 281-297.

Dworkin, A., MacKinnon, C., Pornography and Civil Rights: A New Day for Women's Equality, Minneapolis:Organization Against Pornography.

Eisenstein, Z. 1977. "Constructing a Theory of Capitalist Patriarchy & Socialist Feminism", Insurgent Sociologist, 7, 3, 3-17.

Eisenstein, Z., 1979. Capitalist Patriarchy & the Case for Socialist Feminism, New York: Monthly Review Press.

Ferraro, K. 1989. "Policing Woman Battering", Social Problems, 36, 1, Feb., 61-74.

Franzway, S., Court, D., Connell, R.W. 1989. Staking A Claim - Feminism, Bureaucracy and the State, United Kingdom: Polity Press.

Gavigan, S. 1986. "Women, Law & Patriarchal Relations: Perspectives within the Sociology of Law", in Boyd, N. (ed.), The Social Dimensions of Law, Scarborough: Prentice-Hall.

Goundry, S., 1994. Women, Disability And The Law: Identifying Barriers To Equality In The Law Of Non-Consensual Sterilization, Child Welfare And Sexual Assault, A paper prepared for The Canadian Disability Rights Council.

Gunn, R., Minch, C. 1988. Sexual Assault: The Dilemma of Disclosure, the Questions/Conviction, Winnipeg: University of Manitoba Press.

Jaffe, P., Burris, C. 1982. An Integrated Response to Wife Assault: A Community Model, Ottawa: Solicitor General of Canada.

Jaggar, A. 1983. Feminist Politics & Human Nature, Totowa: Rowan and Allanheld.

MacKinnon, C. 1983. " Feminism, Marxism & the State: Towards Feminist Jurisprudence", Signs, 8, 635-658.

MacLeod, L. 1987. Battered But Not Beaten, Ottawa: Canadian Council on the Status of Women.

Mandel, M. 1991. "Class Bias in Canadian Sentencing Law" in Brickey, S., Comack, E., (eds.), The Social Basis of Law,

McCann, K. 1985. "Battered Women & the Law: The Limits of the Legislation" in Smart, C., Brophy, J., (eds.), Women in Law, London: Routledge & Kegan Paul.

McGillivray, A. 1987. "Battered Women: Definition Models & Prosecutorial Policy", Canadian Journal of Family Law, 6, 15.

Morgan, S. 1982. Conjugal Terrorism: A Psychological & Community Treatment Model of Wife Abuse, California: R & E Research Assoc.

Morris, A. 1987. Women, Crime and Criminal Justice, London: Basil Blackwell.

Paterson, E. 1979. "How the Legal System Responds to Battered Women" in Moore, D. Battered Women.

Pedlar, D. 1991. The Domestic Violence Review into the Administration of Justice in Manitoba, Manitoba: Department of Justice.

Public Inquiry Into the Administration of Justice and Aboriginal People, 1991. Report of the Aboriginal Justice Inquiry of Manitoba - the Justice System and Aboriginal People, Winnipeg: The Inquiry.

Reiman, J. 1983. The Rich Get Richer and the Poor Get Prison, New Jersey: John Wiley.

Saunders, D., Size, P. 1986. "Attitudes about Woman Abuse among Police Officers, Victims and Victim Advocates", Journal of Interpersonal Violence, 1, 1, March, 25-42.

Schechter, S. 1982. Women & Male Violence: the visions and struggles of the Battered Women's Movement, Boston: South End Press.

Shaffer, M. 1988. "Divorce Mediation: A Feminist Perspective", University of Toronto Faculty of Law Review, 46, 1, 162-200.

Sheehy, E., Boyd, E. 1986. "Feminist Perspectives on Law: Canadian Theory & Practice", Canadian Journal of Women and the Law, 2, 1-52.

Smart, C. 1986. "Feminism & Law: Some Problems of Analysis & Strategy", International Journal of the Sociology of Law, 14, 109-123.

Snider, L. 1991. "The Potential of the Criminal Justice System to Promote Feminists Concerns" in Comack, E., Brickey, S. (eds.) The Social Basis of Law - 2nd Edition.

Snider, L. 1992. "Feminism, Punishment and the Potential of Empowerment", Dept. of Sociology, Queens University, June, 1-36.

Sobsey, 1988. Sexual Abuse and Exploitation of People with Disabilities, Edmonton: Developmental Disabilities Centre, University of Alberta.

Straus, M. 1976. "Sexual Inequality, Cultural Norms, and Wife-Beating", Victimology: An International Journal, 1, 1, 54-70.

Tierney, K. 1982. "The Battered Women's Movement & The Creation of the Wife-Beating Problem", Social Problems, 29, 207-220.

Ursel, E.J. 1986. "The State and the Maintenance of Patriarchy: A Case Study of Family, Labour and Welfare Legislation in Canada" in Dickinson, J., Russell, B. (eds.), Family, Economy & State - The Social Reproduction Process Under Capitalism, Toronto: Garamond Press.

Ursel, E.J. 1991. "Considering the Impact of the Battered Women's Movement on the State: The Example of Manitoba" in Comack, E., Brickey, S. (eds.), The Social Basis of Law - 2nd Edition.

Ursel, E.J. 1992. Private Lives, Public Policy - 100 Years of State Intervention in the Family, Toronto: Women's Press.

Ursel, E.J. 1992. Manitoba Family Violence Court - Final Report Year 1, Winnipeg, Manitoba.

Walker, G. 1990. Family Violence & the Women's Movement - The Conceptual Politics of Struggle, Toronto: University of Toronto Press.

Wigmore, 1913. The Principles of Judicial Proof As Given by Logic, Psychology and General Experience

Winnipeg Free Press, 1992. "Domestic Violence Attacked: Serious Numbers of Arrests Predicted Under Police Policy", Monday, July 12, A1, B1.

Women's Education and Action Fund, Aboriginal Women's Council, Canadian Association of Sexual Assault Centres, DAWN Canada, Intervenor Factum in the case of *R. v. O'Connor*.

Women's Initiative Consulting Committee, 1989. The Women's Initiative, Winnipeg.