



* John Murray

DOMESTIC VIOLENCE

'Beating' the Problem

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I was a 20 year old constable when I first attended a domestic dispute and like every other new experience it tends to stick in my mind. The husband and wife had assaulted each other, both were covered in blood, and both demanded that justice be done! Being inexperienced, and unskilled I stumbled through the process of trying to discern the true facts, but was eventually forced to leave with the situation unresolved. I can remember how inadequate I felt in that role because of my age and inexperience.

Later as a police prosecutor I experienced the difficulties of proof in those relatively few cases of "domestic" assault which reach courts. Wives often failed to answer summonses, or if they did, seldom asserted the facts appearing in their statements.

Later still as a detective, I investigated serious assaults and murder emanating from domestic circumstances. On one occasion after causing serious injury to his wife, a man set fire to his home as a gesture of complete despair.

I am not suggesting by these introductory remarks that I am in the best position to write about domestic violence. On the contrary, I realise the shortcomings of being too close to the action and offer a warning that I may tend to be subjective. They do however, draw attention to three matters which are the subject of some debate, namely,

- Who should intervene in domestic disputes?
- Is the law in this area adequate?
- Is the extent of the problem fully appreciated?

WHO SHOULD INTERVENE?

Under normal circumstances the family unit functions as a self regulating body with its day to day problems being

resolved internally. A point can be reached however, when this independence is insufficient to cope with a problem and any preference to avoid outside involvement is over-ridden by the need for assistance. This first outward indication, therefore, is usually a culmination of a series of similar events which have gone unreported.

Because of the continuance of domestic unrest, which is usually vocal, the neighbours become aware of it well before the first reported incident. Perhaps after an initial tentative offer of help to the victim, neighbours tend to avoid the situation altogether. The violent family becomes isolated and the only avenue of assistance generally known to them is the police, who are called as a last resort and quite often after injuries have been caused.

Some argue that intervention in a family crisis is not the responsibility of the police. The most obvious answer to suggest that it is, lies in the undeniable danger to the intervenor. Historically domestic situations have been the cause of death and serious injury not only to the participants but to the intervenor as well. Police are the most appropriate body to attend as they have the facility to counter violence, plus the statutory backing of powers of arrest.

As I suggested in my introduction, a young and inexperienced policeman is a meagre tool for resolution. Most studies on this subject identify this inadequacy and suggest that senior police or specialists perform this duty. In South Australia we employ what seems to be a unique system of policing in this area. A "mixed patrol" comprising one male and one female uniform officer respond to most radio taskings involving any family conflict. Women's groups applaud this principle, and suggest (as we also find) that the woman, who is usually the aggrieved part, relates more easily to another woman. These

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crews are particularly skilled, through specialised training and continual on the job experience, to police the domestic dispute by arrest if appropriate, but more usually by mediation and the proffering of advice.

But this is only part of the answer for the comparative success we seem to enjoy in South Australia. The best possible relationship exists between the police and the Department of Community Welfare through their Crisis Care Unit. This Unit operates on a 24 hour basis and liaises directly with the police communications room. Where police are unable to resolve the situation and are unable to leave the home because of a fear of renewed aggression, the Crisis Care Unit is summoned.

Commencing in February 1976 as a joint Police and Community Welfare initiative, the Crisis Care Unit now employs 16 graduates in the social sciences, who are assisted by volunteer workers. Since its inception members of the Unit have attended 7,000 family conflicts, on request from either police or a participant in the dispute.

Andrew Paterson, Supervisor of the Unit, is a psychology graduate with a substantial background in community welfare work. He explains that the role of the Unit is based on Crisis Intervention Theory which suggests the best time to intervene in personal crisis situations is at the time they are happening. The mobility of the Unit enables Crisis Care workers to communicate with people in their own environment, and the Unit has the accessibility to remedial resources such as emergency housing, women's shelters etc.

The following example illustrates the inadequacy of police as the sole intervenor, and highlights the benefit of a Crisis Intervention Unit as a supplementary service.

A husband and wife have been arguing continually for some months. Occasionally she is assaulted but has never brought this to the attention of anyone outside her own family. She calls the police to her home one night when her husband has assaulted her, as she is fearful of continued assault and serious injury.

When the police attend they speak to both parties. The wife complains of assault and the husband denies it, making counter allegations of assault against his wife. She has no outward signs of injury nor are there any other factors which corroborate her account. Unable to resolve the situation, either by appeasement or direct police action through removal of the source of the trouble, the police are frustrated. They, like the woman gain the impression that there is a real danger of her being assaulted when they leave. . .

Pausing at this point: the dilemma of the police is evident. There is insufficient evidence to justify an arrest, and if they leave the situation at this stage there is a real danger of the woman being seriously injured. This is the position in which police find themselves if they do not have the assistance of supportive agencies; and it is for that reason that intervention cannot be left solely with the police. In the case cited, Adelaide Police have a trump card — the Crisis Care Unit.

Using a two way radio the police would contact the Unit and request the attendance of a Crisis Care worker at the scene, and as they are a 24 hour service they would arrive with little delay. Initially, they would try to ascertain the cause of the conflict and then lead into general counselling. If the Unit is unable to resolve the situation and share the same apprehension that there is a danger of continued violence they will organise and assist the wife in alternative housing for at least that night. Follow up service either by counselling or referral to appropriate agencies is arranged if necessary.

The real benefit of the Crisis Care Unit is that it over-

comes the lacuna between potential danger and circumstances falling short of legal remedy.

There is a growing awareness of the effectiveness and esteem of this Unit and police are sometimes by-passed by direct contact to the Unit by a participant in a dispute. In one month they attend in excess of 200 disputes.

IS THE LAW ADEQUATE?

I am often asked by Women's Groups to comment on the adequacy of the law relating to domestic disputes. When I answer that generally speaking they are adequate, I am promptly asked to justify the inaction or reluctance of police to enforce them. Consequently consideration of the law and the attitude of the police is interwoven.

Assault arising from domestic circumstances is no different by definition, to that of common assault.

The claim that police are reluctant to arrest or take other positive action has been made for too long and too loud to be without substance. I do think that police are generally cautious, and at times over-cautious when attending domestic situations. This possibly stems from two sources. Prior to the Family Law Act the number of times a police car attended at the matrimonial home or the total number of complaints of cruelty made by one party against the other, tended to serve as evidentiary fact for the ensuing divorce case. Police felt they were being implemented, and a conditioned feeling such as that is not lost overnight. Secondly, enforcing the provisions of the law against one spouse and relying on the other for proof, meets with many practical difficulties which distinguish it from street or public offences; and the "once bitten, twice shy" principle applies again. Contrary to common belief, wives are often reluctant to give evidence against their husbands, and fear of reprisal is not always the reason. There is a natural reluctance to do so, and imprisoning the husband is seen by some wives as an inappropriate sentence. Few desire the punitive sanction being imposed but are satisfied by the "removal" of the husband.

But I do agree with feminists who make the point quite clearly that assault by a spouse is still a criminal offence and should be policed as such. What I try to convey to women's groups when I have occasion to address them, is the practical distinction which makes the collection of evidence much harder. These difficulties arise (apart from the reluctance to make a statement) where there is no obvious signs of injury or other corroborative fact coupled with a denial by the husband who perhaps makes a counter allegation. Any cry by women's groups that police should nevertheless arrest in these circumstances is met with an equally vocal and predictable cry from civil libertarians.

There is a mistaken belief that the police can only act in assault cases where the spouse prefers the charge. No such provision exists and the discretion to prosecute (in criminal cases) lies with the police.

Where the husband and wife are living apart, police are sometimes requested to remove one from the other's property, and if necessary arrest him/her for being unlawfully on the premises, either under Statute Law or the provisions of the Family Law Act. The Supreme Court on appeal has stated on more than one occasion that the offence of unlawfully on the premises must amount to more than a mere trespass and must include behaviour akin to some unlawful act. So if a husband visits his estranged wife for a prima facie purpose of reconciliation, despite the fact that he may be causing her some annoyance, police are powerless to move him. This applies notwithstanding any existing Family Court injunction which may prohibit entry.

The lack of real power to enforce injunctions is what concerns feminists most. They demonstrate the inadequacy of the law through the complaints of aggrieved wives. One account given was that police claim they cannot act unless there is an injunction against one party, and then when the wife takes the trouble to obtain an injunction from the Family Court and produces it to the police officer at the time of its apparent breach, police claim it to be worthless. Its enforcement *at that time* is in fact impossible, as there is no power to arrest for its breach unless a warrant is issued from the Family Court.

The U.K. Domestic Violence and Matrimonial Proceedings Act, 1976, goes some way toward curing this problem. This Act provides that the court shall have jurisdiction to grant injunctions against molestation and the exclusion of a spouse from the matrimonial home, whether or not any other relief is sought in the proceedings and irrespective of whether the spouses are legally husband and wife or cohabitants. It enables a judge to attach a power of arrest to an injunction where (a) he grants an injunction containing a provision restraining the use of violence against the applicant or a child and (b) he is satisfied that the addressee has caused actual bodily harm to the applicant or the child and (c) he considers he is likely to do so again. The Act empowers police to arrest, without a warrant, a person who he has reasonable cause for suspecting of being in breach of an injunction. The person arrested must be brought before a judge within a period of 24 hours beginning at the time of his arrest.

THE EXTENT OF THE PROBLEM

Statistics are notoriously lacking in this area and although most police forces can present figures based on radio message/car taskings for particular jobs, none seem to keep figures precisely on this topic. Domestic violence is incorporated under a general heading of "disturbance" in South Australia which may incorporate circumstances quite distinct from this subject, such as neighbours fighting, noisy dogs etc. It is interesting to note however that 34% of radio taskings in the metropolitan area relate to disturbances of one sort or another. The trend is seasonal with the majority of calls occurring in summer. In December 1978 Adelaide Police responded to 3,551 disturbances.

I join with the women's groups who have attempted to solve the problems of the battered woman, but suggest that to be only one of the serious consequences of domestic conflict. It cannot be denied that homicides arise from family crisis also. It is not only the wife who becomes a victim, but the perpetrator, children of the marriage and the intervenor are just as likely to be killed or injured. In each State within recent memory there are sufficient cases to confirm the accuracy of this statement.

Studies overseas have revealed that the number of homicides arising from domestic circumstances could be as high as 30%. Findings in USA estimate that wife beating victims could

number as many as 28 million. I do not know of any Australian statistics.

CONCLUSION

The profound affects of an untimely or unskilled intervention should be realised. Every police force should look closely at the attributes of their response crews and consider the advisability of a supportive service. A significant part of the South Australian Police Cadet Training includes psychology, laws and role play sessions relative to domestic situations, all aimed at providing some understanding of the peculiarities of family crises.

The problem of domestic violence will never be cured entirely, but the Women's Adviser to the Premier, Rosemary Wighton, is vitally concerned with improving the odds. As a member of her Committee on Domestic Violence, I can now fully appreciate the difficulties expressed from the women's point of view and they in turn are beginning to understand the difficulties of policing. As a joint effort we are currently preparing a proposal for adoption of legislation similar to that in the UK. In the meantime, women's groups and senior Regional Police Chiefs, are meeting in open ground with a view to improving liaison and understanding.

Summarising, I would consider the following points pertinent to the three questions posed —

- Intervention should be at the earliest possible time.
- Police should respond to the initial call.
- Police response crews should be either specialised or at least trained sufficiently in the peculiarities of law and behaviour in this area.
- Where police are unable to resolve the dispute and/or there is a possibility of renewed aggression when they leave, assistance from a supportive agency should be sought
- Whenever possible the supportive agency should attend at the scene — the time lost by referral to the following day may be critical.
- Police should not dissuade wives from taking action.
- Where the evidence and circumstances support a criminal charge police should enforce it.
- Provisions of the Criminal Law are adequate.
- Family Law Act injunctions are inadequate in the sense that they cannot be enforced by arrest.
- The Domestic Violence and Matrimonial Proceedings Act, 1976 (UK) provides a model for future legislative initiatives relative to arrest and enforcement of injunctions.
- Police and supportive agencies should liaise and exchange ideas so that each is aware of the other's problems.

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