

The Struggle of Women to Prove Domestic Violence:  
Heightened Awareness, Medical Evidence, New Techniques, and Bias

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For many years, the house she came home to did not provide safety or shelter. In the place where most people feel safest, their home, a woman was raped at gunpoint and almost burned alive by the man who was supposed to love her the most, her husband (Preston, 2010). This is the story of a Mexican woman, “L. R.,” and unfortunately, this is a common occurrence in today’s world. Domestic violence between spouses and other family members is a problem that is often ignored and hard to prove. Many women are afraid to leave abusive relationships out of fear that their husbands will hurt or kill them and their children. However, there is hope as more and more people become aware of this situation. L.R. is proof of this. She was recently allowed to move from Mexico to the United States in order to escape abuse from her husband and to feel safe from danger (Preston, 2010). Laws everywhere are changing—they are helping women defend themselves against violence in their homes. Forensic and medical technology is advancing, thus giving domestic violence victims more tools to prove their cases. Also, staff who deal with domestic violence victims are given more specific training to better serve them (Ledray, 2010). Although women today have more rights against violent men, there is still a significant need to improve the system relating to domestic violence; a bias persists. By making and enforcing new laws that help prevent and discourage domestic violence; by making use of new scientific technology in relation to evidence in domestic violence cases; by educating people about proper evidence collection techniques; and by educating the public about domestic violence, domestic violence victims should become less frequent and their offenders should be found guilty at a higher frequency.

Many cultures around the world accept male violence towards women, (Al-Kayyali, 2009). One survey showed that women, especially in the Middle East, believe that physical violence towards a woman is an acceptable form of disciplinary action (Al-Kayyali, 2009). As early as 753 B.C., laws existed in Rome—the Laws of Chastisement—allowing men to beat their wives (Ledray, 2010). In the Middle Ages, it was still common for men to beat their wives (Ledray, 2010). By the 1500s, marital rape was seen as non-existent since women “gave themselves to their husbands in contract, and could not withdraw that consent until they divorced (Ledray, 2010, Table 1).

Three-hundred years later, marital rape is finally recognized and laws against wife-beatings are emerging (Ledray, 2010). In the United States, one of the first laws against domestic violence, which took away men’s rights to beat their wives, was introduced in 1871 in Alabama (Ledray, 2010). Throughout the twentieth century, as women gained the right to vote and other civil rights, they simultaneously gained more power against violent men (Ledray, 2010). Today, the battering of women is recognized, support groups are formed, and laws are made stating that it is illegal for men to harm women (Ledray, 2010). Over the centuries, women have gained more protection against violence from men, but unfortunately, it is still a common and underreported occurrence.

There is still a great need to help the women who suffer despite the progress that has been made. The way society views women who have been abused by men is problematic. However, new laws born from the increased awareness have led to greater protection of women against violent offenders. Advancement in the field of technology has led to more ways of providing evidence against the violent offender. Hospitals and medical clinics are paying more attention to rape and assault victims, which helps in the collection of evidence.

In the last few decades, several laws have been passed promoting the rights of women as related to domestic violence. One of these is the Abuse Prevention Act, which was passed in 1991 (Ptacket, 1999). This Act includes a “refrain from abuse order” which prohibits the offender from harming or threatening the victim and a “no contact order” which makes it illegal for the offender to communicate with the woman in any way she specifies, which may also include preventing communication with the children and not allowing him to visit her workplace (Ptacket, 1999). There is also a “vacate order” stating that the man must get out of the house and stay away until further notice; a “temporary custody order” which grants the woman temporary custody of the children; a “temporary support order” which requires the man to pay for the children or wife if he is legally obligated to; and a “restitution order” where the man must pay for any damage whether it be physical or to personal belongings (Ptacket, 1999).

The restraining order is a form of protection for women. Although several judges and violent men say that a restraining order is “just a piece of paper” and will not stop the violence at home, a large majority of women have reported otherwise, stating that it has stopped the abuse altogether (Ptacket, 1999). The restraining order is similar to the protection order. Either it involves a long-term or a short-term period of no contact, no harassment or abuse, financial support for the children and the wife and psychotherapy for the man involved in domestic abuse (Jasper, 2007). According to Barnes (1998), verbal threats, physical harm, emotional abuse, harassment, property damage, rape, and the defendant’s release from jail are all plausible reasons to file a protection order (Barnes, 1998c).

The Violent Crime Control and Law Enforcement Act of 1994 was passed in order to prevent men from possessing firearms while a restraining order is filed against them (Jasper, 2007). This assists in preventing further violent acts that could result in death or serious injury.

The Full Faith and Credit Provision to the Violence Against Women Act assures that states will uphold other states' protection orders so that men cannot follow women across the country with the intent to cause them harm (Jasper, 2007). The Violence against Women Act, itself, was put into existence to end gender-related violence, help fight against laws that excluded boyfriends or men that were living with the women assaulted from rape laws, and identified jurors and judges degradation of sexually and physically abused women in the court, and a need to put an end to it (Barnes, 1998c). Not only have laws helped, but also new groups that have been formed help. The Community Oriented Policing Services also known as "COPS" is an organization that gets the public involved and makes them aware of domestic violence (Jasper, 2007). Anyone who suspects foul play is supposed to contact the police regardless of whether the victim asks them to or doesn't (Jasper, 2007).

Rape Shield Laws were made to protect a woman from unfair judgment in the courtroom. In the past, a judge or the defense would try to sway the jury to vote against a woman by bringing up her sexual past and presenting her as promiscuous or whorish (Barnes, 1998c). If the woman had any kind of reputation for being overly sexual, this would be brought up to bring doubt onto the claim that she did not want sex (Barnes, 1998c). These kinds of questions discouraged many women from wanting to take their case to court because of public humiliation (Barnes, 1998c). The Rape Shield Law does not allow a woman's sexual past to be presented as evidence against her, except under special circumstances (Barnes, 1998c). Related to this is an amendment to the Federal Rules of Evidence, which allows the history of the defendant to be used as evidence if it includes other rapes or assaults (Barnes, 1998c). The recent attention and spread of awareness of domestic violence has given rise to several laws that make it easier for women to get out of bad situations within their homes.

It is debatable whether medical and forensic evidence actually increases the chances of a woman winning a domestic violence case. One study was done using field cases to investigate the effectiveness of medical evidence in domestic violence cases. This study obtained reasons for filing the case. Note that the numbers do not add up to one hundred percent because more than one reason can be listed for filing a case. Only 27.1% of these cases were filed due to medical evidence (Gray, 1993). The rest thought that they could win in court due to a witness other than the victim (10.6%), due to the defendant’s acknowledgement of guilt (37.2%), and due to the victim’s convincing account of the event itself (47.7%) (Gray, 1993). In addition to this, it was reported that out of all medical exams given in relation to domestic violence, 30% fail to detect abnormalities (Gray, 1993).

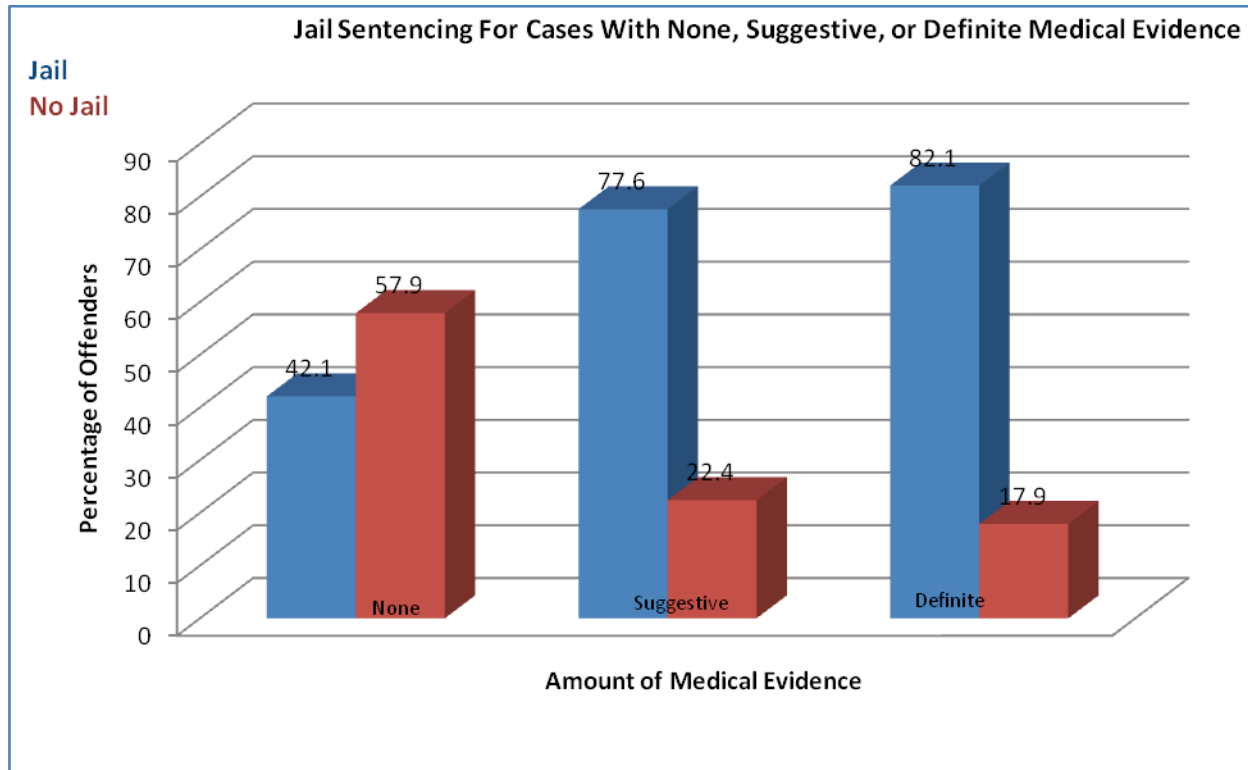
Table 1: Reasons for Filing Charges

| Reasons for Filing Cases/Charges | Percentage of Cases with Reason Listed |
|----------------------------------|--|
| Offender Acknowledged Guilt      | 37.20%                                 |
| Convincing Victim                | 47.70%                                 |
| Medical Evidence                 | 27.10%                                 |
| Eyewitness                       | 10.60%                                 |

SOURCE: Gray, E. (1993). *Unequal justice: the prosecution of child sexual abuse: based on a comprehensive examination of criminal courts conducted under the auspices of the NCJW Center for the Child*. New York, NY: Free Pr.

Another study investigated whether or not the amount of medical evidence affected whether the offender was sentenced to jail time. In cases where no medical evidence was presented 42.1% of offenders were sentenced to jail time (Gray, 1993). With suggestive evidence, 77.6% had jail time, and with definite medical evidence, 82.1% were sent to jail (Gray, 1993). From this data, it can be seen that there is a positive correlation between amount of medical evidence and number of offenders serving jail time.

Graph 1: Jail Sentencing For Cases with None, Suggestive or Definite Evidence.



SOURCE: Gray, E. (1993). *Unequal justice: the prosecution of child sexual abuse: based on a comprehensive examination of criminal courts conducted under the auspices of the NCJW Center for the Child*. New York, NY: Free Pr.

A problem regarding medical evidence, especially when dealing with young victims, is that the child is not taken to the doctor for a medical examination after the abuse occurs; thus, there is no evidence to file charges (Gray, 1993). This may be because there is no witness to the abuse besides the child and the offender. Later, the child changes the story or denies the event, other reasons include that the child is considered too young to know what is really going on, or the rest of the family does not want to get a beloved family member in trouble with the law (Gray, 1993). In addition, many people in charge of collecting evidence feel uncomfortable taking pictures of the victim's genitals or other private areas for evidence (Ledray, 2010).

In 1992, in British Columbia, the correlation between certain types of evidence and if the legal outcome was in the victim's favor in cases of sexual assault was investigated in (Le,

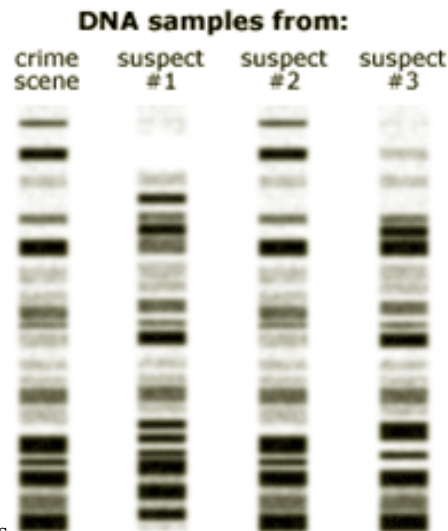
Marion, McGregor, & Wiebe, 1999). A system based on a scale from one to four (with four being the worst) determines the intensity of physical injuries caused to a victim (Le et al., 1999). The outcomes of cases showed evidence that documentation of moderate to severe physical injury (two to four on the injury scale) contributed to victim's winning rate in court cases (Le et al., 1999). However, evidence of a genital injury or visualization of sperm by microscopy did not contribute to winning a case (Le et al., 1999). From this study, it can be concluded that some types of medical evidence help prove assault, but medical evidence itself is not always enough.

A new invention to help clinics with the collection of medical evidence in domestic violence cases is the "rape kit" (Jasper, 2007). If the victim has gone directly to the hospital or clinic from the site of abuse, they are instructed not to shower, and all of their clothes are taken for evidence (Jasper, 2007). A urine sample is taken from the victim and used to test for drugging (Jasper, 2007). Tests and medications for HIV and other STDs are administered in order to reduce the chances of STDs (Jasper, 2007). A pregnancy test is given, and resources are available to allow the victim to terminate a pregnancy (Ledray, 2010). If blood, skin under the nails, or seminal fluid can be obtained, it is collected for DNA evidence (Ledray, 2010). All physical injuries are photographed and described in words as well (Ledray, 2010). Lastly, a referral for counseling is given to the victim (Jasper, 2007).

Hair, blood, semen, and skin cells all contain very small amounts of DNA. In order to use them for evidence, technology has been devised to amplify the amount of DNA from the tiny amount they possess. Up until recently, there was no easy way to do this. Luckily, Kary Mullis developed a DNA amplification method known as the Polymerase Chain Reaction (PCR), winning the Nobel Prize in 1993 (Russell, 2010). How this technique works is that the original double-stranded DNA target sequence is denatured into single strands and annealed (paired) with



two primers (Russell, 2010). The primers are then extended with *Taq*, a DNA polymerase (Russell, 2010). These steps are repeated 30-35 rounds until the DNA sequence is a long enough length for scientists to be able to link it to a specific person (Russell, 2010). Gel Electrophoresis is used to visualize the results (Russell, 2010).



Photograph 1: Gel Electrophoresis

SOURCE: Understanding Evolution. *Gel Electrophoresis*. Retrieved from [http://evolution.berkeley.edu/evolibrary/news/060301\\_crime](http://evolution.berkeley.edu/evolibrary/news/060301_crime).

As seen in photograph 1, using Gel Electrophoresis can determine if the DNA found on a victim or at a crime scene matches the accused offender. For example, in the above picture you will notice that lanes (from left to right) one and three have identical DNA fragment patterns. This indicates that they have the same DNA sequence, and the DNA belongs to the same person. The farthest lane to the left is a reference lane, using the DNA sequence found at the crime scene. The DNA from suspects is then obtained and run in the other lanes in order to compare the sequences. For example, if skin was found under the victim's nails and sequenced in lane one, then a strand of hair was taken from the victim and was sequenced in lane two. Next, an accused man's hair was sequenced in lane three, and another suspect's DNA was sequenced in lane four. By doing so, scientists would be able to prove that the victim did not have her own

skin under her nails, and that the man whose DNA was in lane three had been scratched by the victim. Thanks to this Nobel Prize winning invention, one more way to prove domestic abuse in court is available.

A relatively new invention is the colposcope. The colposcope is often used in the forensic examination of victims of domestic sexual abuse. It magnifies the minute injuries in the genital area that are too small to see with the human eye by (Ledray, 2010). This invention helps document evidence by recoding the magnification settings, position of where the injury was found, and some types of measurement (Pyrek, 2006). It has increased findings of injuries from 1% of cases to 87% of cases (Pyrek, 2006). This device has increased the amount of evidence available to present in court cases of sexual domestic violence offenses.

Not only are new and innovative techniques emerging, but personal ones as well. More specific instruction and techniques are being taught to people who deal with domestic violence such as jurors, law enforcement personnel, et cetera. One example of this can be found in the New Jersey Division of Criminal Justice's training manual. The training manual instructs officers to express the seriousness of domestic violence at the scene of the crime ("New Jersey Division of Criminal Justice," 2003). It also tells the officers to make sure to interview the victim outside the hearing range of the accused person, and to make sure that the police officer's presence feels positive on the victim ("New Jersey Division of Criminal Justice," 2003). Moreover, when asking questions, the police officer's emphasize the importance of making their tone of voice sound non-antagonistic, and rather reassuring and friendly ("New Jersey Division of Criminal Justice," 2003). The questions that an officer asks a victim should be as specific as, "Who hit you?" and not as vague as, "Are you ok?" ("New Jersey Division of Criminal Justice," 2003, p. 6). The manual also informs the officers of the emotions that the victim may be feeling

such as “fear for self, children and possibly, for the suspect, immobilization and shock, feelings of helplessness and hopelessness to effect change, guilt, shame or embarrassment, feelings of self-blame, and/or feelings of isolation”(“New Jersey Division of Criminal Justice, 2003, p.8). The fact that police officers are being trained about the importance and seriousness of domestic violence shows that progress is being made towards helping victims and that society is recognizing the fact that women are not to be blamed for violence directed at them.

A new form of training and education that informs the public about domestic violence is expert testimony to jurors in the courtroom. Expert testimony is when a family-violence expert comes to the court and gives the jury information about normal behavior for victims of domestic abuse (Barnes, 1998b). The expert explains why victims change their stories or possibly minimize their injuries due to their relationship with the defendant (Barnes, 1998b). Without this knowledge, it is possible that many jurors could see the changing of stories as evidence of lying et cetera, thus resulting in the offender not being charged and a woman being sent back into a worse situation.

Although not widely practiced due to skepticism of its effectiveness, some doctors and nurses have recently begun using a new technique: screening for domestic violence during regular doctor visits (Marcus, 2008). One article points out that domestic-violence-related injuries are more common than other diseases that women are regularly checked for, but are often ignored (Marcus, 2008). A doctor who was interviewed suggests that doctors feel uncomfortable with the topic and are embarrassed to ask, or leave the victim to fend for herself thinking that if she really wanted to stop the injuries she would leave the situation (Marcus, 2008). People who do not believe in the questioning method feel that telling a woman to leave her assaulter could put her in a dangerous situation; many experts agree (Marcus, 2008).

There are several benefits to the questioning method, despite its downfalls. Dr. Marcus says that “[By inquiring about domestic abuse] you open the door so that the patient knows she can come to you” which is the most important step (Marcus, 2008, p. 2). Since the doctor’s office and the patient’s medical records are private and confidential, a woman can feel safe answering questions (Marcus, 2008). Additionally, it is much less likely that the abuser would stop a woman from going to the doctor than the police station, where it would be obvious that she is reporting him (Marcus, 2008). Although the patient may deny any involvement in domestic violence at first, if the question is asked often enough it is more likely that a woman will eventually respond (Marcus, 2008). With new techniques like this on the rise, women have more access to receiving the help they need.

For female victims, it is harder to obtain help because of the societal views on domestic violence. One critical reason that it is hard for women to prove that they were a victim of domestic violence is that jurors, judges, and society in general are biased against them. One reported incidence of this type of bias was in a case involving Pamela Dunn and her husband. Pamela told a judge that her husband locks her up in their house, chokes her repeatedly and threatens to kill her (Ptacket, 1999). Although Judge Paul Heffernan made it illegal for her husband to contact her, he nevertheless yelled at her for having the police accompany her back to her house to collect her possessions. Moreover, Heffernan told her to “act as an adult” and that the “court has more serious things” to deal with other than her “situation is trivial,” and that she was “wasting the tax payers’ money” (Ptacket, 1999, p. 3-5).

Judge Paul King also has showed bias against women. During one domestic violence case, he ordered the husband not to beat his wife, but still allowed him to live at home with her (Ptacket, 1999). He explicitly said that he did not believe she was beaten, even though the police

confirmed her statement (Ptacket, 1999). He mockingly suggested that all women involved in domestic violence cases are just looking for an easy way to get their husbands out of the house (Ptacket, 1999). The majority of society shares these viewpoints and this was evident in Judge Paul King's victory of the "Man of the Year Award" later that year (Ptacket, 1999).

The punishments in the case involving Susannah Palmer and her husband demonstrate how women are punished harshly for self-defense, whereas men can be violent and are barely punished for it. Susannah complained to the judge that her husband James had forced both her and her children out of their home during the night while he had sex with a prostitute (Barnes, 1998a). Anytime that she tried to live somewhere else, her husband would break in, destroy all the furniture or sell it and then beat her (Barnes, 1998a). One day, he ran towards her while she was holding a knife (Barnes, 1998a). Frightened, she held the knife up in front of herself while he struck her, injuring him (Barnes, 1998a). The judge charged Susannah with intent of harm and she was sentenced to jail for a long period, whereas her husband only went to jail for six weeks (Barnes, 1998a). The fact that she was charged more harshly for self-defense than he was for repeated malicious intent shows the judge's bias towards males.

Recently, the effect of domestic violence on women has been given a name: Battered Women's Syndrome (Barnes, 1998b). This "syndrome" attempts to explain the actions of women involved in domestic violence. Symptoms include a learned helplessness, a cycle of violence, and psychological instability (Barnes, 1998b). "Learned helplessness" includes the inability to or lack of want to defend oneself, however women often actively think of escape, and physically resist (Barnes, 1998b). The "cycle of violence" refers to the offender being violent, then apologizing, and doing kind things for a period of time, however, this is not applicable to all cases (Barnes, 1998b). As the name of this condition suggests that victims of domestic violence

have Post Traumatic Stress Disorders (PTSD) and they lack emotion towards the event or are numb in response (Barnes, 1998b). Not only does this suggest that women who have been involved in domestic violence are unstable and crazy, but also the criteria of it does not apply to all women (Barnes, 1998b).

Even though many people still deny the existence of domestic violence as a common occurrence in today's world, statistics clearly show that this is not true, especially since data is underreported. Others may argue that women who press charges or bring their abusers to court due to increased attention given to domestic violence actually do not benefit from it. Instead, the men increase their attacks and threats towards these women. Although this may be the case in some instances, if women actively seek out enough help or go to a shelter the abuse will stop completely and they can get their lives back instead of being stuck at home and being abused for the rest of their lives.

Women have raised their status from subhuman to human compared to the men in their lives, yet there is still room for improvement. More needs to be done to make sure that women feel secure enough to reach out for help before violence occurs. Our society needs to recognize that women have the same rights as men and women should be viewed as rational beings when arguing a case, not just as complainers. Additional training needs to continue in hospitals and in the community to collect evidence, to spot signs of domestic violence and abuse, and to know how to support a victim. Once women can feel safe in their own home, overall society will function better.

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