

Barbara J. Hart's Collected Writings



Barbara J. Hart

[Minnesota Center Against Violence and Abuse](http://www.mincava.umn.edu) (<http://www.mincava.umn.edu>)

Publication Date: All papers are Copyrighted by Barbara J. Hart unless otherwise noted.

Table of Contents

Assessing Whether Batterers Will Kill.....	1
Battered Women and the Criminal Justice System.....	2
BARRIERS TO VICTIM PARTICIPATION IN THE CRIMINAL JUSTICE SYSTEM.....	3
STRATEGIES TO FACILITATE VICTIM PARTICIPATION.....	5
THE CHALLENGE TO THE CRIMINAL JUSTICE SYSTEM.....	10
REFERENCES.....	11
Children of Domestic Violence: Risks and remedies.....	12
Risks posed to children from violent homes.....	12
Strategies to protection children from violent homes.....	14
Conclusion.....	15
References.....	16
Coordinated Community Approaches to Domestic Violence.....	17
Introduction.....	17
Approaches to coordinated community response.....	19
Overview of the evaluation literature on coordinated community response.....	21
Measuring success.....	22
Building collaborative investigative processes.....	23
Domestic Violence: A model protocol for police response.....	25
MODEL PROTOCOL FOR POLICE RESPONSE TO DOMESTIC VIOLENCE.....	26
REFERENCES.....	36
Domestic Violence Intervention System: A model for response to woman abuse.....	36
LAW ENFORCEMENT.....	36
VICTIM-WITNESS ADVOCACY.....	40
PROSECUTION.....	41
LEGAL ADVOCACY.....	43
JUDICIAL PARTICIPATION.....	44
PROBATION AND PAROLE.....	47
SYSTEMS COORDINATION.....	48
CONCLUSION.....	48
REFERENCES.....	48
Legal Advocacy Against Domestic Violence.....	50
I. Problem Statement.....	50
II. Documenting the Program.....	50
III. Results and Impact.....	53
Appendices.....	54
The Legal Road to Freedom	54
Abstract.....	54
HISTORY OF LAW ON DOMESTIC VIOLENCE.....	55
ISSUES ADDRESSED IN RECENT LEGAL REFORM.	56
RECENT DEVELOPMENTS IN THE LAW.....	59

LAW REFORM IMPLEMENTATION.....	64
REFERENCES.....	65
Parental Abduction and Domestic Violence.....	69
Children of Domestic Violence.....	70
Parental Abduction and Domestic Violence.....	71
Strategies to Protect Children and Prevent Parental Abduction.....	72
Conclusion.....	75
Personalized Safety Plan.....	75
PERSONALIZED SAFETY PLAN.....	75
Recidivism Prediction and Parole Decisions.....	80
Recidivism Prediction.....	80
Data on Men Who Batter Intimates.....	81
Recidivism Across the Country.....	82
Rehabilitation and Recidivism.....	84
Parole Decision-Making and Recidivism.....	85
Parole Should Be Denied.....	85
References.....	86
Safety Planning for Children: Strategizing for unsupervised visits with batterers.....	87
Disclaimer - No guarantees.....	89
Process of safety planning.....	89
Possible Safety Strategies.....	91
Rehearsal.....	95
Mother's Supplemental Safety Planning.....	96
Risks of Safety Planning.....	96
ISSUES FOR ADVOCATES.....	97
Sandy & Jane; the invisible and imperiled victims of Sam & Joe.....	98
Victim Issues.....	99
BARRIERS TO VICTIM PARTICIPATION IN PROSECUTION.....	100
STRATEGIES TO FACILITATE VICTIM PARTICIPATION.....	103
OTHER VICTIM ISSUES.....	106
THE CHALLENGE TO PROSECUTION.....	108
Violence Against Women Act: Identifying projects for law enforcement and prosecution grants.....	109
I. Core Advocacy Programs.....	109
II. Other Victim Services Initiatives.....	113
III. Law Enforcement and Prosecution Initiatives.....	118
IV. Non-prioritized Initiatives.....	120
VI. Critical Evaluation and Priority-Setting for VAWA Funding.....	120
Conclusion.....	122
Custody & Visitation Decision-Making When There Are Allegations of Domestic Violence.....	122

Assessing Whether Batterers Will Kill

Some batterers are life-endangering. While it is true that all batterers are dangerous, some are more likely to kill than others and some are more likely to kill at specific times. Regardless of whether there is a protection from abuse order in effect, officers should evaluate whether an assailant is likely to kill his* partner or other family members and/or police personnel and take appropriate action.

Assessment is tricky and never fool-proof. It is important to conduct an assessment at every call, no matter how many times an officer has responded to the same household. The dispatcher and responding officer can utilize the indicators described below in making an assessment of the batterer's potential to kill. Considering these factors may or may not reveal actual potential for homicidal assault. But, **the likelihood of a homicide is greater when these factors are present.** The greater the number of indicators that the batterer demonstrates or the greater the intensity of indicators, the greater the likelihood of a life-threatening attack.

Use all of the information you have about the batterer, current as well as past incident information. A thorough investigation at the scene will provide much of the information necessary to make this assessment. However, law enforcement will not obtain reliable information from an interview conducted with the victim and perpetrator together or from the batterer alone.

1. **Threats of homicide or suicide.** The batterer who has threatened to kill himself, his partner, the children or her relatives must be considered extremely dangerous.
2. **Fantasies of homicide or suicide.** The more the batterer has developed a fantasy about who, how, when, and/or where to kill, the more dangerous he may be. The batterer who has previously acted out part of a homicide or suicide fantasy may be invested in killing as a viable "solution" to his problems. As in suicide assessment, the more detailed the plan and the more available the method, the greater the risk.
3. **Weapons.** Where a batterer possesses weapons and has used them or has threatened to use them in the past in his assaults on the battered woman, the children or himself, his access to those weapons increases his potential for lethal assault. The use of guns is a strong predictor of homicide. If a batterer has a history of arson or the threat of arson, fire should be considered a weapon.
4. **"Ownership" of the battered partner.** The batterer who says "Death before Divorce!" or "You belong to me and will never belong to another!" may be stating his fundamental belief that the woman has no right to life separate from him. A batterer who believes he is absolutely entitled to his female partner, her services, her obedience and her loyalty, no matter what, is likely to be life-endangering.
5. **Centrality of the partner.** A man who idolizes his female partner, or who depends heavily on her to organize and sustain his life, or who has isolated himself from all other community, may retaliate against a partner who decides to end the relationship. He rationalizes that her "betrayal" justifies his lethal retaliation.
6. **Separation Violence.** When a batterer believes that he is about to lose his partner, if he can't envision life without her or if the separation causes him great despair or rage, he may choose to kill.

7. **Depression.**Where a batterer has been acutely depressed and sees little hope for moving beyond the depression, he may be a candidate for homicide and suicide. Research shows that many men who are hospitalized for depression have homicidal fantasies directed at family members.
8. **Access to the battered woman and/or to family members.**If the batterer cannot find her, he cannot kill her. If he does not have access to the children, he cannot use them as a means of access to the battered woman. Careful safety planning and police assistance are required for those times when contact is required, e.g. court appearances and custody exchanges.
9. **Repeated outreach to law enforcement.**Partner or spousal homicide almost always occurs in a context of historical violence. Prior calls to the police indicate elevated risk of life-threatening conduct. The more calls, the greater the potential danger.
10. **Escalation of batterer risk.**A less obvious indicator of increasing danger may be the sharp escalation of personal risk undertaken by a batterer; when a batterer begins to act without regard to the legal or social consequences that previously constrained his violence, chances of lethal assault increase significantly.
11. **Hostage-taking.** A hostage-taker is at high risk of inflicting homicide. Between 75% and 90% of all hostage takings in the US are related to domestic violence situations.

If an intervention worker concludes that a batterer is likely to kill or commit life-endangering violence, extraordinary measures should be taken to protect the victim and her children. This may include notifying the victim and law enforcement of risk, as well as seeking a mental health commitment, where appropriate. The victim should be advised that the presence of these indicators may mean that the batterer is contemplating homicide and that she should immediately take action to protect herself and should contact the local battered woman's program to further assess lethality and develop safety plans.

Hart, B. "**Assessing Whether Batters Will Kill**" PCADV, 1990.

Battered Women and the Criminal Justice System

Domestic violence victims are both similar to and strikingly different from other victims of violent crime. Thus, they require all the information, assistance and input that facilitates the committed, informed participation of other victims and witnesses, but beyond these, they require enhanced protection and advocacy.

Battered women are often similar to other victims of violent crime in that they want perpetrators to stop their conduct, to pay dues for the crimes committed and to compensate victims for the losses sustained as a result of their criminal conduct. They are also similar to other crime victims in that they have interests in justice that may differ from the interests of the justice system. They may want privacy or anonymity in the prosecution process while the criminal justice system values public accountability. They may want speedy disposition while the justice system labors at a snail's pace. They may want input in decisions about plea negotiations and sentencing while the justice system concludes that this inclusiveness precludes the expeditious handling of criminal cases, unduly interferes with prosecutorial discretion or intrudes upon the rights of defendants. They may want sentences for perpetrators that are specifically crafted to protect victims while courts may focus on offender rehabilitation and ignore victim safety.

What is also true about battered women, as it is of other victims of violent crime, is that they are not all cut from the same cloth and do not all want the same outcomes. Battered women have varied interests in participation in prosecution process and in outcomes. There is no profile of a battered woman witness that fits all or most battered women.

BARRIERS TO VICTIM PARTICIPATION IN THE CRIMINAL JUSTICE SYSTEM

While each battered woman's experience should be recognized as unique, there are many commonalities among battered women victim-witnesses. Perhaps the most critical commonality is that battered women confront significant barriers to safe and effective participation as victim-witnesses in the criminal justice process.

Recidivism and retaliation

Like other victims of violent crime, battered women fear retaliation. Fully 50% of all victims of violent crime report they are fearful that perpetrators will seek reprisal for their participation in prosecution. And like other victim-witnesses who are threatened by the perpetrator (or his agent) during the pendency of prosecution, they are twice as likely to resist participation in prosecution as those not threatened (Davis et al., 1990).

The National Crime Survey from 1978 to 1982 showed that an estimated 32% of battered women were re-victimized within six months after the assault giving rise to criminal justice intervention. They were victimized an average of three times each. In contrast, the 1982 NCS data on stranger violence showed that only 13% of the victims of stranger crimes were subsequently assaulted during a six month period. Unlike domestic violence victims, victims of stranger crime were assaulted only once during that period (Langan and Innes, 1986).

There are many reasons why battered women appear to be at elevated risk for retaliatory violence. Most other victims of violent crime are not in relationship with the defendant and are not living with (or did not formerly reside with) the defendant. Most have not previously suffered attacks or sustained injury at the hands of the defendant. Most have not been held hostage by the defendant or experienced his terroristic threats, targeted graphically at the victim or members of her family. Most other victim-witnesses are not economically dependent upon the defendant during the pendency of prosecution and, potentially, thereafter. Most will not be compelled into continuing contact with the defendant during the criminal process and after disposition because of shared parenthood. Most other victims of crime are not integrally interconnected with the criminal assailant. Most other victims of crime are not at elevated risk of violent assault after intervention by the criminal justice system. However, battered women are most often killed when attempting to seek legal redress or when leaving an abusive relationship (Browne, 1987; Sonkin et al., 1985).

Criminal justice system personnel too often believe that battered women will be safer and less exposed to life-jeopardizing violence once they are separated from the offender; once prosecution has commenced. Quite to the contrary, evidence of the gravity of violence inflicted after separation of the couple is substantial. Batterers may, in fact, escalate their violence to coerce a battered woman into "reconciliation," to retaliate for the battered woman's participation in the prosecution process, or to coerce her into seeking termination of the prosecution. If the batterer cannot "recapture" the battered woman as his ally, he may seek retribution for her desertion and for her disloyalty in exposing him to criminal consequences. Although not all batterers engage in

escalated violence during the pendency of prosecution, as many as half threaten retaliatory violence (Davis et al., 1990) and at least 30% of batterers may inflict further assaults during the pre-disposition phase of prosecution (Goldsmith, 1991).

A battered woman whose prior attempts to seek prosecution or civil protection orders, only to have the perpetrator escalate his violence, may be unwilling to face the risk that prosecution will further endanger, rather than protect her (Family Violence, 1991). Men who batter have kidnapped victims or seriously injured and even killed battered women to prevent their participation as witnesses (Gwinn, 1991; Hart, 1985).

Battered women may, thus, be much more concerned about preventing future violence than about vindicating the state's interest in penalizing the defendant for the crimes previously committed. This orientation of the battered woman toward future safety may create a tension with those in the criminal justice system singularly focused on winning criminal convictions.

Victim-blaming attitudes

Unlike other victims of violent crime, battered women are often viewed by the police, the prosecutor, judges, jurors and probation/parole staff as responsible for the crimes committed against them; responsible either because battered women are believed to "provoke" the perpetrator into violence or because they are believed to have the power to avoid the criminal assault through accommodating the perpetrator's demands. Other victims of violent crime are not seen as culpable for the crimes inflicted upon them, but battered women frequently report that criminal justice system personnel appear to consider them "unworthy victims" who are clogging up the courts with unimportant family matters. Some, therefore, impose barriers to a battered woman's use of the criminal justice system. Police fail to arrest or file incident reports. Prosecutors delay charging, require substantial corroboration, acquiesce in repeated continuances, or impose fees upon the victim (Ford, 1991). The reluctance of the criminal justice system to vigorously proceed with domestic violence cases quickly erodes victim confidence in the system's alliance with the victim.

Even though justice system actors may eschew victim-blaming attitudes, criminal process may be confounded by similar attitudes embraced by either the defendant or the battered woman, herself. Uniformly, the perpetrator of domestic violence blames the victim for his conduct, claiming that she provoked him so profoundly that his crimes are excusable, if not justifiable. Batterers often persuade battered women of the correctness of this perspective. Beyond this, the battered woman may also blame herself, feeling she should have been smarter and figured out a way to prevent the violence or she should have been more courageous and found a way to safely leave the relationship. This self-blame may go as far as believing that it is not fair to arrest and prosecute the perpetrator.

Systemic resistance to the prosecution of batterers

Unlike many victims of stranger assault, but like other victims known to defendants, victims of domestic violence may be reluctant witnesses or may be assumed to be so (Cannavale and Falcon, 1976). There are many reasons for this. Many battered women who earnestly seek prosecution find substantial resistance to the appropriate charging of defendants. National data reveal that law enforcement routinely classify domestic assault as misdemeanors even though the criminal conduct involved actually included bodily injury as serious or more serious than 90% of all rapes, robberies and aggravated assaults (Langan and Innes, 1986). When serious

assaults are trivialized and charged as misdemeanors or cited as summary offenses, victims of domestic violence may conclude that the costs and risks of prosecution outweigh the potential consequences for assailants. Thus, battered women may lose interest in criminal prosecution.

Further, some battered women, initially committed to prosecution, become discouraged with the criminal process; discouraged because of delays (Ford and Burke, 1987), lack of witness protection (Family Violence, 1991), or because of prosecutor indifference or insensitivity (McGuire, 1991; Hart, 1991).

Victim reluctance

Similar to other victims of crime, when battered women are poor, have few personal or financial resources or find participation in prosecution costly, they may be reluctant to proceed. Rural battered women may not have transportation and may find it impossible to arrange for multiple trips to the court-house. Women with school age children may have to find expensive and inconvenient child care for all court appearances outside of school hours. Seriously injured battered women may find employers unwilling to accommodate court appearances after they have been considerate about many medical appointments.

Although it is commonly believed that battered women withdraw cooperation because of decisions to reconcile with defendants, research reveals that this is not typically the reason for the request to terminate prosecution. (Ford and Burke, 1987) Some battered women seek to terminate prosecution because the initiation of charges has affected the changes sought in defendant behavior such that victims no longer conclude that prosecution will be necessary to protect them from future abuse (Ford, 1991).

Other battered women who have found that the best protection against a perpetrator's violence has been the protection offered by the community with which the battered woman affiliates, rather than the criminal justice system, may resist prosecution if she concludes that the community will abandon her or withdraw critical support if she pursues prosecution. Women of religious, ethnic and communities of color sometimes identify community abandonment as an untenable, adverse consequence of cooperation with prosecution.

Battered women may be reluctant to expose the father of their children to public accountability because of the attitudes of their children toward the criminal justice system. Others are fearful that prosecution will wreak economic ruin on the family. Even smaller numbers of battered women oppose prosecution for political reasons; believing that the criminal justice system selectively penalizes men of color or other politically unpopular constituencies. Some believe that the exposure of batterers to the criminal justice system and its coercive controls will facilitate, rather than deter, future violence.

An understanding of victim reluctance is critical for informed decision-making about the role of the battered victim in the criminal justice system, strategies to enhance victim cooperation and, ultimately, disposition by the prosecutor or the court.

STRATEGIES TO FACILITATE VICTIM PARTICIPATION

Despite all these potential barriers to a battered woman's committed participation in criminal process, many battered women and justice system personnel have found that these hurdles can be eliminated with careful attention to the particular requirements of each battered woman.

A variety of strategies have been embraced to facilitate the informed, protected and committed participation of battered women in criminal prosecution.

Victim rights and services

With passage of the Domestic Violence Act in 1979, the legislature mandated that victims be notified of their rights by law enforcement, and that prosecutors expeditiously advise them of prosecutorial decisions. In addition, the Washington State Constitution articulates the rights of crime victims (WA. Const. art. 1, sec. 35, amend. 84 (1984)). This constitutional provision is bolstered by state statute where, among other rights, victims are entitled to the following:

To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved.

To submit a victim impact statement or report to the court.

To present a statement at the sentencing hearing for felony convictions.

To receive an order of restitution in all felony cases, even where the defendant is sentenced to confinement. (RCW 7.69)

Another strategy to enhance victim participation is the provision of adequate and appropriate services for battered women and their children. As reiterated in the Final Report of the Washington State Domestic Violence Task Force, "It has been shown that victims are more likely to follow through with a legal process they understand and from which they can gain assistance."

In 1978 the City of Seattle established the Battered Women's Project (now the Family Violence Project) in the Seattle City Attorney's Office. Advocates with the Project assist in misdemeanor domestic violence cases by:

Acting as a liaison between the criminal justice system and the victim.

Providing victims with information concerning the court process and court dates.

Providing information to prosecutors and probation services.

Making referrals for additional advocacy and services to community based domestic violence programs.

These rights and services are helpful, but are often not sufficient to engage the cooperation of victims of domestic violence. The following examine additional efforts used to engage the participation of battered women in criminal prosecution.

Outreach and investigation

Police departments in a few jurisdictions in Washington have established follow-up systems whereby patrol officers or detectives make telephone or house calls to apparent victims of domestic violence in the days immediately following the request for emergency police assistance. When contacting the battered woman, the outreach officer undertakes further investigation into criminal domestic violence, identifies the risks of batterer retaliation that may suggest particular conditions on bail or release, and offers women clarification about legal options to protect them. In completing the outreach interview, the officer gives the victim specific contact information should she have further questions or information to share. Outreach is effective only when

responding officers obtain confidential contact information from battered women at the crime scene; contact information should include a telephone number whereby a message can be left for a victim if she cannot be reached in her own home.

Some domestic violence programs have adopted outreach efforts whereby they attempt to contact battered women by phone the day following police response to an emergency domestic violence call. Communication by the domestic violence program after the immediate crisis of the criminal incident enables battered women to learn about legal options and community services in a context which is supportive, that fosters an exchange of information, and which engages a battered woman in critical thinking about safety strategies. Outreach, thus, often facilitates victim participation in and commitment to the criminal justice process.

Prosecuting attorneys prioritizing the prosecution of domestic violence cases have undertaken outreach to domestic violence victims immediately after arrest of the perpetrator or arraignment in order to provide victims with notice about charges filed, information about bail and any special conditions thereon, as well as any victim no contact order under R.C.W. 10.99.040. Outreach initiates a dialogue and relationship early in the prosecution process. It enables the victim to consider civil legal remedies and community-based services options for protecting herself and her children during the pendency of prosecution. Outreach often gives prosecutors substantial supplementary information about the crime committed.

In other jurisdictions, prosecutors have instituted victim-witness clinics wherein victims learn about the criminal justice system, their role in it and the likely dispositions upon conviction or a guilty plea. They learn how to craft victim impact statements and how to articulate the specific dangers they believe are posed by their assailants. They learn how to become more effective witnesses. Most significantly, they begin to network and bond with other victims, thereby gaining support and eliminating the isolation that domestic violence perpetrators use to dissuade battered women from participation. Clinics often provide child care and are available at times convenient to victim-witnesses.

Victim protection

Since battered women are at elevated risk of violence during the pendency of prosecution, police, prosecutors, advocates and courts should attend specifically to the safety requirements of victims. Systems should be developed to assess the potential lethality of defendants. Municipal and district court judges should carefully evaluate the continuing threat that the defendant poses to the victim and set bail and conditions thereon that will best safeguard the victim and her family during the pendency of criminal process. The prosecutor and advocate might undertake periodic reviews of victim safety with the battered woman and seek additional protections should they be required. When a victim seeks to maintain the confidentiality of an undisclosed address, the police and the prosecutor should very carefully safeguard any contact information and delete any reference to an address on materials that are disclosed to the public and defense counsel. Beyond this, all criminal justice system personnel should refer battered women to domestic violence programs so that they can carefully construct safety plans to minimize exposure to perpetrators and to engage the community in vigilance for the safety of battered women.

Victim advocacy

Victim advocacy is a key component in the prosecution of domestic violence. Battered women who find themselves abruptly thrust into the legal system because of the violence of their partners

are swamped with new information, sometimes are dislocated, and invariably are confronted with increased demands for family management in this acute crisis situation. It is critical that victims have an identified contact person within the prosecuting attorney's office who can provide information about criminal process and referral to supportive services. For other critical assistance, such as emergency shelter, counseling, safety planning, crisis management and civil legal advocacy, battered victims should be referred to local domestic violence programs.

When battered women engage in legal proceedings, it is critical that they have support from family, friends and employers so that their participation can be diligent and unclouded by anxieties that significant others do not approve of the prosecution. Therefore, domestic violence programs may seek to educate and engage those people most important to the victim so that her investment in the process of prosecution is not confounded by their concerns and so they can help her strategize for safe participation in the criminal justice system.

Specialized Prosecution

Specialization has improved the success of prosecution in domestic violence cases (Fagan, 1988). Specialized prosecution units have enhanced the relationship of the prosecutors with the victims, by improved investigation and preparation of cases against perpetrators, and have institutionalized the practice of seeking specific safeguards to protect victims from further abuse. Specialized prosecution enhances the expertise of those handling domestic violence cases and facilitates outcomes satisfactory both to the prosecution and victim witnesses.

Timely prosecution

Research suggests that timeliness is essential to victim cooperation (Ford & Burke, 1987). RCW 10.99.060 requires that the prosecuting attorney make a decision whether or not to prosecute and notify the victim within five days of receiving the incident report. Prosecutors should investigate domestic violence cases expeditiously and not seek or acquiesce in procedural delay where there is no compelling reason. Domestic violence victims grow weary of prosecution if many lengthy appearances are required; thus the prosecutor should only require victims to attend those proceedings where their testimony is critical to the case. Where feasible, the prosecutor should minimize the time victim-witnesses expend at any court appearance. In scheduling court proceedings where victim attendance is required, the prosecutor might inquire about significant demands on the time and resources of victims which may compete with court attendance; these should be accommodated whenever possible (ABA, 1986).

Victim participation and empowerment

Prosecutors seeking to upgrade efforts at domestic violence prosecution often employ other victim-engaging strategies. Victim input in plea negotiations and dispositional alternatives is a strategy believed to enhance victim cooperation (Family Violence, 1991; McGuire, 1991). Some prosecutors have developed court schools in which they enable the victim to learn how to be an effective witness. Many battered women report that prosecutors fail to adequately prepare for trial; sometimes it appears that the prosecutors are not even conversant with the documents in the prosecution file as trials are about to begin. Careful and periodic preparation in which the victim is engaged will facilitate successful prosecution and victim investment in the process. As victims understand that they have a vital and respected role in the prosecution, reluctance may subside. Data suggest that the more domestic violence victims are invested in the prosecution process, the more powerful its deterrent effect, the stronger the message to perpetrators that

their violence will not be tolerated and that the cost of persistence will far outstrip the benefits of continued violence (Goldsmith, 1991).

Victims should not be penalized for their reluctance to participate in prosecution. Policies should be developed in each prosecutor's office and within the court that limit the use of compulsion in achieving victim participation. Victims of domestic violence should not be incarcerated for refusal to serve as victim-witnesses. Battered women should not be prosecuted for filing false police reports because they seek to terminate prosecution, except in those unusual circumstances where there is independent evidence of false swearing or perjury and the interests of justice will be served thereby. While it is appropriate to issue subpoenas to compel victim appearance at trial, bench warrants should not be issued routinely when victims fail to appear. Rather, continuances should be sought and investigation should be undertaken to ascertain the whereabouts of the battered woman and the reasons for her failure to appear. If reluctance is based on fear or intimidation, strategies should be employed to protect her from the dangers anticipated. Battered women should not be threatened with refusal to prosecute perpetrators for future violence if they fail or refuse to participate in the current prosecution.

Beyond this, prosecutors and courts should be cognizant of the potential adverse ramifications of coercive process with victims of domestic violence. The repercussions of coercive process may be as far-ranging as the loss of custody, the loss of employment, the loss of reputation, eviction from leaseholds, abandonment by significant support persons, and physical assault of the victim and her family members. All efforts should be made to gain the cooperation of domestic violence victims rather than to compel participation.

The interests of justice must seriously consider the interests of victims. Their interests in safety and their reputations as law-abiding citizens should not be compromised in pursuit of prosecution unless there are overriding reasons for subordinating victim interests.

On the other hand, it may be helpful for victims that the public posture of a prosecutor's office is that the City Attorney or County Prosecuting Attorney controls the prosecution. Many in the criminal justice system believe that at least the appearance of no victim discretion on the question of whether the prosecution will proceed reduces batterer intimidation directed at getting charges dropped. This public posture may even enhance victim safety because the perpetrator understands that further violence will not affect a dismissal of the charges but will both result in incarceration during the pendency of the initial prosecution and in additional prosecution for the retaliatory violence. It is important to recognize that prosecution solely controlled by the prosecuting attorney will not universally buttress victim investment or protect victims from retaliatory violence. In those instances where termination of the prosecution is critical to protect victims, the public posture should not preclude such prosecutorial discretion.

Sentencing.

Battered women are entitled to submit a victim impact statement to advise the pre-sentence investigator and the court of the ramifications of the crime(s) for which the offender was convicted on the battered woman and her family. While investigators are usually receptive to hearing about the emotional, physical and financial losses sustained by victims, they are too often resistant to hearing of the dangers that the perpetrator continues to pose to the battered women and children and reluctant to suggest that these risks of violent recidivism should be considered aggravating circumstances supporting longer sentences or factors to be addressed in crafting

protective conditions on probation. Thus, sentencing recommendations typically do not fully inform the court of information relevant to sentencing deliberations in many jurisdictions.

Further, prosecutors frequently rely on the pre-sentence report and the statement of the victim at sentencing rather than producing testimony or evidence at a sentencing hearing to buttress arguments in favor of incarceration and victim safeguards. While this prosecutorial advocacy may not be necessary in jurisdictions where the pre-sentence investigator attends carefully to the risks of recidivism, in counties where the court is not otherwise given information about recidivism prediction and the dangers posed by many batterers long after divorce or incarceration, prosecutors should undertake to inform the court of these risks.

Unless battered women believe that sentences comport with justice and effect specific victim safeguards, they will be most reluctant to participate cooperatively in criminal process should their assailants recidivate. When courts craft sentences that clearly call batterers to account and safeguard victims, battered women, the general public and other components in the justice system become confident that criminal justice efforts are meaningful interventions in domestic violence and warrant serious attention.

Restitution and victim compensation

Advocates for battered women in Washington have reported that neither restitution nor victim compensation has been predictably awarded or achieved in a timely fashion despite the substantial losses sustained as a consequence of domestic violence. Courts should institute policies whereby victim restitution precedes the collection of other court costs and fines. Moreover, courts can impose time tables that are tight and require significant payment at the front end rather than balloon payments at the end of the payment schedule.

As to crime victims' compensation awards, battered women are eligible to receive enhanced benefits as a result of legislative amendments in 1991. However, many prosecuting attorneys offices do not afford victims clerical assistance in the preparation of compensation claims, nor do they proceed to follow up to advocate for the issuance of awards. If advocacy for compensation occurs during the pendency of prosecution, victims may invest more fully in the prosecution.

The Domestic Violence Prevention Act permits the court to order relief not compensable either through restitution or crime victims' compensation. Therefore, the prosecutor's office may alleviate some of the stress and burden imposed by victim losses if it directs domestic violence victims to the civil courts for enhanced remedies such as child custody and possession of the shared residence, as well as protection.

Particular attention to these economic matters and other remedial options renders a great service to victims and simultaneously enhances their investment in prosecution. Both crime victim compensation and protection order relief can be initiated, and sometimes awarded, early in the prosecution process, and thereby have the potential to cement victim cooperation with criminal process.

THE CHALLENGE TO THE CRIMINAL JUSTICE SYSTEM.

Domestic violence victims are increasingly turning to the criminal justice system for assistance in ending the violence that jeopardizes their lives and well-being. They often are uninformed about the criminal justice process and naive about its power to end the violence in their lives.

For battered women to be effective, committed participants in the criminal justice system, care must be taken to minimize the barriers to access and investment that have historically impeded empowered participation by battered women. The adoption of protocols attentive to victim issues by every component of the criminal justice system will greatly enhance justice-seeking efforts in domestic violence cases. The strategies outlined in this chapter can be utilized to engage and protect battered women as victim-witnesses and can also greatly advance the success of prosecution and perpetrator accountability.

REFERENCES

ABA (1986). "ABA Suggested Guidelines for Reducing Adverse Effects of Case Continuances and Delays on Crime Victims and Witnesses." Chicago, IL: American Bar Association, February.

Browne, A. (1987). **When Battered Women Kill**. New York: The Free Press.

Cannavale, F.J., J.R. and Falcon, W.D. (1976). **Witness Cooperation**. Lexington, MA: Lexington Books.

Davis, R., Smith, B., Henley, S. (1990). **Victim-Witness Intimidation in the Bronx Courts**. New York, NY: Victims Services Agency.

Fagan, J. (1988). "Contributions of Family Violence Research to Criminal Justice Policies on Wife Assault: Paradigms of Science and Social Control." **Violence and Victims**, Vol. 3, No. 3.

Family Violence Prevention Fund. (1991). **Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases**. San Francisco, CA: The Family Violence Prevention Fund.

Ford, D.A. (1991). "Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships." **Law & Society Review**, Vol. 1, No. 2.

Ford, D. A. & Burke, M. J. (1987). "Victim-Initiated Criminal Complaints for Wife Battery: An Assessment of Motives." Paper presented at the Third National Conference for Family Violence Researchers, University of New Hampshire, Durham, NH, July, 1987.

Goldsmith, S. (1991). "Taking Spouse Abuse Beyond a 'Family Affair.'" **Law Enforcement News**, Vol. XVII, No. 334.

Gwinn, C. (1991). Lecture for the National College of District Attorneys, Las Vegas, NV, October, 1991.

Hart, B. (1991). "Domestic Violence Intervention System: A Model For Response to Women Abuse." **Confronting Domestic Violence: Effective Police Response**. Harrisburg, PA: Pennsylvania Coalition Against Domestic Violence.

Hart, B. (1985). "Testify or Prison?" **AEGIS: The Magazine on Ending Violence Against Women**. Washington, DC: AEGIS.

Langen, P.A. and Innes, C.A. (1986). "Preventing Domestic Violence Against Women: Discussion Paper." **Bureau of Justice Statistics Special Reports**. Washington, D.C.: Bureau of Justice Statistics.

McGuire, L. A. (1991). **Prosecution of Domestic Violence in Iowa**. Iowa Prosecuting Attorneys Training Coordinator Council.

Sonkin, D., Martin, D., & Walker, L. E. A. (1985). **The Male Batterer: A Treatment Approach**. New York: Springer.

Barbara J. Hart, Esq., 1992.

Children of Domestic Violence: Risks and remedies

This paper will examine two issues - the risk to children posed by domestic violence and strategies for intervention to protect children from violent homes and their battered parents. It is imperative that the legal, medical and child abuse prevention communities join together to identify children at risk and to employ strategies that will both protect and heal the innocent victims of domestic violence, especially those most powerless, the children from violent homes.

Risks posed to children from violent homes.

1. **Child abuse.** Men who batter their wives are likely to assault their children. The battering of women who are mothers usually predates the infliction of child abuse (Stark & Flitcraft, 1988). At least half of all battering husbands also batter their children (Pagelow, 1989). The more severe the abuse of the mother, the worse the child abuse (Bowker, Arbitell, and McFerron, 1988).

Abuse of children by a batterer is more likely when the marriage is dissolving, the couple has separated, and the husband/father is highly committed to continued dominance and control of the mother and children (Bowker, Arbitell, and McFerron, 1988). Since woman and child abuse by husbands and fathers is instrumental, directing at subjugating, controlling, and isolating, when a woman has separated from her batterer and is seeking to establish autonomy and independence from him, his struggle to control and dominate her may increase and he may turn to abuse and subjugation of the children as a tactic of dominance and control of their mother (Stark and Flitcraft, 1988; Bowker, Arbitell, and McFerron, 1988). Older children are frequently assaulted when they intervene to defend or protect their mothers (Hilberman and Munson, 1977-78). Daughters are more likely than sons to become victims of the battering husband (Dobash and Dobash, 1979). Woman abuse is also the context for sexual abuse of female children. Where the mother is assaulted by the father, daughters are exposed to a risk of sexual abuse 6.51 times greater than girls in nonabusive families (Bowker, Arbitell, and McFerron, 1988). Where a male is the perpetrator of child abuse, one study demonstrated that there is a 70 percent chance that any injury to the child will be severe and 80 percent of child fatalities within the family are attributable to fathers or father surrogates. (Bergman, Larsen, and Mueller, 1986). Data gleaned by PCADV from newspaper clippings in 1990 reveal that every three days a woman or child is killed in the Commonwealth by a batterer/father (Yupcavage, 1991).

Mothers who are battered may be more likely to physically abuse their children than are non-battered women (Walker, 1984; Roy, 1977; Gayford, 1975).

2. **Child abduction.** Battering men use custodial access to the children as a tool to terrorize battered women or to retaliate for separation. Custodial interference is one of the few battering tactics available to an abuser after separation; thus, it is not surprising that it is used extensively.

Each year more than 350,000 children are abducted by parents in this country; that is, 40.4 children are abducted per hour. Fifty four percent of these abductions are short-term

manipulations around custody orders, but 46 percent involve concealing the whereabouts of the child or taking the child out of state. Most of these abductions are perpetrated by fathers or their agents. Fully 41 percent occur between the separation of the parents and the divorce. Yet another 41 percent happen after the parents are separated or divorced for more than two years. Three of ten of the abducted children will suffer mild to severe mental harm as result of the abductions (Finkelhor, Hotaling, and Sedlak, 1990). More than half of these abductions occur in the context of domestic violence (Greif and Heger, 1992).

- 3. Observation of violence against mothers.** The majority of the children from violent homes observe the violence inflicted by their fathers upon their mothers; most research suggests as many as 90 percent of children from violent homes witness their fathers battering their mothers (Pagelow, 1990; Walker, 1984). One study demonstrated that some fathers deliberately arrange for the children to witness the violence (Dobash and Dobash, 1979), and other empirical work suggests that the violence occurs only when the children are present (Wallerstein and Kelly, 1980). Children witnessing the violence inflicted on their mothers evidence behavioral, somatic, or emotional problems similar to those experienced by physically abused children (Jaffe, Wolfe, and Wilson, 1990). Boys become aggressive, fighting with siblings and schoolmates and having temper tantrums. Girls are more likely to become passive, clinging, and withdrawn (Hilberman and Munson, 1977-78). Male children who witness the abuse of mothers by fathers are more likely to become men who batter in adulthood than those male children from homes free of violence (Rosenbaum and O'Leary, 1981).

Research has only begun to examine the relative effects on children of witnessing parental violence as contrasted to being a victim of child abuse. It appears that children who are both witnesses of their fathers' violence toward their mothers and victims of child abuse experience the most profound adverse effects. But the children who only observe the violence perpetrated on their mothers manifest similar behavioral and emotional sequelae (Hughes et al., 1985). In comparing children not exposed to violence as contrasted to children who witness violence and children who both witness and are abused, data suggest that the latter two groups are most comparable and have heightened behavioral and emotional distress as compared to the former (Hughes et al., 1989).

- 4. Separation violence.** Many professionals believe that the most effective thing that a battered mother can do to protect her children is to leave the battering husband. As a culture, we believe that if women leave, they will be safe, as will their children. Leave-taking alone does not protect battered women and children. Safety is only assured by strong legal and community protections.

Research confirms that battering men often escalate violence to re-capture battered women and children who have sought safety in separation. Battered women seek medical attention for injuries sustained as a consequence of domestic violence significantly more often after separation than during cohabitation; as many as 75 percent of the visits to emergency rooms by battered women occur after separation (Stark and Flitcraft, 1988). One investigation demonstrated that about 75 percent of the calls to law enforcement for intervention and assistance in domestic violence occur after separation from batterers (Langen & Innes, 1986). Another study revealed that half of the homicides of female spouses and partners were committed by men after separation or divorce (Barnard, et al., 1982). A study in Philadelphia showed that one quarter of the women killed by their partners were killed after

separation and a significant number were killed while trying to separate from the assailant (Casanave & Zahn, 1986).

The following recent Pennsylvania tragedies highlight the experience of battered women and their children after separation and in their attempts to be free from life-imperiling violence.

Last year on Father's Day three children were murdered by their father as he exercised unsupervised visitation rights; rights which the surviving and grieving mother strongly resisted to no avail. The court in central Pennsylvania awarded unsupervised visitation to the father in an apparently sentimental gesture so that he could be with the children on Father's Day. He had just returned from a drug and alcohol treatment program. An order of protection had been entered against him. The father had attempted to reclaim his wife, to recapture her and bring her back into relationship. When she resisted, he took the ultimate revenge and killed their children.

In May of 1990 in Montgomery County, a man, against whom a protection order had been entered in favor of his wife and children, killed his son and stepdaughter after kidnapping them and holding them hostage the day after he learned of his wife's intention to file for divorce.

In 1992 a battered woman, her children and her mother were killed in Pennsylvania as they attempted to escape from a batterer husband. The battered woman had packed her car with the personal items of those fleeing. All were killed in or nearby the car.

The risk to children in the context of domestic violence is substantial. Yet, the risk is virtually invisible. For example, the most recent edition of the journal of the Family Law Section of the American Bar Association, which contains an annual survey of family case law across the country, is silent about the risk that domestic violence poses to children. The editors chose not to include the cases and commentary which address this issue. Similarly, medical publications, while identifying the danger of domestic violence to women, have not squarely addressed the nexus between domestic violence and child maltreatment. While the impact of domestic violence on women has "come out of the closet" over the course of the last fifteen years, the impact and risk of domestic violence for children remains a closely held secret.*

Strategies to protection children from violent homes.

Having identified the jeopardy to which children may be exposed in the context of domestic violence, it is imperative that professionals identify strategies to safeguard against these risks.

1. **Risk identification and safety planning.** A critical strategy for child protection is protocol development by the medical, legal and social service communities to help women recognize that they may be battered and that their children may be at risk for abuse. Once battered women have identified the abuse inflicted on them and the risk for child abuse, they can then design strategic plans to avert violence whether they elect to remain in residence with the batterer or separate from him. To accomplish this, professionals must consistently identify domestic violence and talk about safety planning with battered women clients/patients.** Informed battered women who are engaged with professionals in evaluating strategies to safeguard themselves and their children will best be able to make decisions that protect their children. In fact, there is strong evidence that battered women's efforts to utilize community resources to end the violence are greater when child abuse is present,

demonstrating that battered women may be most motivated to change their circumstances when they conclude that it is critical to protect their children from the risks of abuse (Bowker, 1988). Research further reveals that child abuse, whether by fathers or mothers, is likely to diminish once the battered mother has been able to access safety services and achieve separation from the violent father (Giles-Sims, 1985; Walker, 1984).

2. **Supervised visitation centers.** The second strategy is a very practical and feasible solution -- supervised visitation centers. Much of separation violence is an attempt to coerce reconciliation. Since battering husbands/fathers have limited access to battered wives to attempt to compel reconciliation, they often choose the visitation arena as a place in which to attempt coerced reconciliation or to penalize the battered partner for refusal to reconcile. As a consequence, visitation must be a very protected circumstance both for the children from violent homes and battered women.

Supervised visitation centers must be available at no cost to children from violent homes in every county in this Commonwealth. We have to look outside of Pennsylvania for a model; the Domestic Abuse Intervention Project of Duluth, Minnesota began a supervised visitation center project several years ago. The facility offers supervised exchange, on-site visits and monitored visits, as well as education and counseling for fathers on parenting and the impact of domestic violence on children. Services and education are accommodated in a spacious and attractive, but secure, environment. Participants in the program are referred by the courts or child protective services. The center is open twice a week, one weekend day and one day and evening during the week. The program safeguards battered women and children from violence and child abduction, while providing fathers access to their children in an environment where they can begin to learn and practice appropriate parenting.

3. **Safety planning for unsupervised visits.** Planning for unsupervised visits can help children not only manage fear and anxiety, but can also enable them to develop safety skills and realistic safety plans to minimize the risk of violence during visitation. The process of safety planning further allows children of battered women to understand and manage the multitude of conflicting feelings they may be experiencing associated with visiting their fathers. It is critical that professionals help children identify safety issues and build problem-solving, safety skills. Safety planning for unsupervised visits may be initiated by professionals but should always be undertaken in consultation with the non-abusing parent.

Any safety plan must be realistic. The plan should be simple. It must be age-appropriate. The child must be competent to undertake the strategies designed. Perhaps only children above 8 years of age can be active participants in safety strategies.*

Conclusion.

Too often professionals do not identify domestic violence in the lives of female clients and are uncertain about remedial strategies even if abuse is identified (Hansen & Harway, 1992). Other professionals seek to penalize and blame battered women for failing to protect their children (Erickson, 1991). The inadequacy of these professional endeavors endangers and isolates mothers and often interrupts the potential for strong alliance between mothers and children in the pursuit of safety. Professional initiatives to empower women so that they can seek lives free of violence and achieve the legal authority to protect their children and themselves from recurrent violence are preferred. Early intervention by professionals can avert the risks posed to children

and their mothers in the context of domestic violence and can assist women in establishing stable and secure households independent of battering men. Prevention efforts may offer children the best hope for violence-free and loving families.

References

Bergman, A., Larsen, R.M., and Mueller, B. (1986). "Changing spectrum of Serious Child Abuse." *Pediatrics*, 77 (1).

Bernard, G. W., Vera, H., Vera, M. I. and Newman, G. (1982). "Till Death Do Us Part: A Study of Spouse Murder." **Bulletin of the American Academy of Psychiatry and the Law**, 10, 271-280.

Bowker, L.H., Arbitell, M., & McFerron, J. R. (1988). "On the Relationship Between Wife Beating and Child Abuse." In K. Yllo and M. Bograd (Eds.), *Perspectives on Wife Abuse*. Newbury Park, CA: Sage.

Dobash, R. E. & Dobash, R. P. (1979). *Violence Against Wives*. New York: Free Press.

Erickson, N.S. (1991). "Battered Mothers of Battered Children: Using Our Knowledge of Battered Women to Defend Them Against Charges of Failure to Act." *Current Perspectives in Psychological, Legal and Ethical Issues*, Vol. 1-A. Jessica Kingsley Publishers Ltd.

Gayford, J. (1975). "Wife Battering: A Preliminary Survey of 100 Cases." *Britt. Med. J.* 1.

Giles-Sims, Jean (1985). "A Longitudinal Study of Battered Children of Battered Wives." *Family Relations* 34.

Greif, G. & Hegar, R. (1992). *When Parents Kidnap*. New York: The Free Press.

Hansen, M. & Harway, M. (1992). *Recovering From Battering: Family Therapy and Feminism*. Newbury Park, CA: Sage.

Hilberman, E. and Munson, K. (1977-78). "Sixty Battered Women." *Victimology: An International Journal*, 2 (3-4).

Hughes, H., Parkinson, D. and Vargo, M. (1989). "Witnessing Spouse Abuse and Experiencing Physical Violence: A 'Double-Whammy?'" *Journal of Family Violence* 4(2).

Hughes, H.M., Rau, T.J., Hampton, K.L., and Sablatura, B. (1985). "Effects of Family Violence on Child Victims and Witnesses." Paper presented at the 93d annual convention of the American Psychological Association in Los Angeles, August.

Jaffe, P., Wolfe, D.W., & Wilson, S. (1990). *Children of Battered Women: Issues in Child Development and Intervention Planning*. Newbury Park, CA: Sage.

Langen P.A. and Innes, C.A. (1986). *Preventing Domestic Violence Against Women*. Bureau of Justice Statistics Special Reports. Washington, DC: Department of Justice.

Pagelow, M. (1990). "Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements." *Mediation Quarterly*, Vol. 7, No. 4.

Pagelow, M. (1989). "The Forgotten Victims: Children of Domestic Violence." Paper prepared for presentation at the Domestic Violence Seminar of the Los Angeles County Domestic Violence Council.

Rosenbaum, A. and O'Leary, K.D. (1981). "Children: The Unintended Victims of Marital Violence." *American Journal of Orthopsychiatry*, 5 (14).

Roy, M. (1977). *Battered Women: A Psychosociological Study of Domestic Violence*. New York: Dan Nostrand Reinhold.

Stark, E. & Flitcraft, A. (1988). "Women and Children at Risk: A Feminist Perspective on Child Abuse." *International Journal of Health Services*, 18, (1), 97-118.

Walker, L. E. (1984). *The Battered Woman Syndrome*. Springer.

Wallerstein, J.S. and Kelly, J.B. (1980). *Surviving the Breakup: How Children and Parents Cope with Divorce*. New York: Basic Books.

Yupcavage, J. (1991). "Clippings Report on Domestic Homicide." Harrisburg: PCADV.

Barbara J. Hart, Esq., Staff Counsel, PCADV, 524 McKnight Street, Reading, PA 19601

Child Protective Services Quarterly, Pittsburgh, PA: Pittsburgh Bar Association, Winter, 1992.

Coordinated Community Approaches to Domestic Violence

Presented at the Strategic Planning Workshop on Violence Against Women, National Institute of Justice, Washington, D. C., March 31, 1995.

Introduction

Over the course of the last twenty years, communities across the country have identified domestic violence as a social problem of significant proportions and, in myriad ways, have initiated strategies to stop the violence and protect battered women and children. This social reform movement, birthed in women's centers and led by battered women and advocates, has generated profound change in public discourse, law and institutional practice. Initially, a primary emphasis of this reform effort was the development and institutionalization of community-based shelters and counseling programs for battered women and children. Thereafter, advocates expanded the work to target systemic reform. The system receiving first attention was the justice system, both civil and criminal. Efforts preliminarily sought to effect change in practice of the individual components of the justice system. Job responsibilities were modified. Policies and practice guides were developed with each component. Practitioners received training on domestic violence and on revisions in practice embodied in the new protocols. Systems to monitor or track perpetrators were established.

However, the limitations of parallel reform within discrete components soon became apparent to advocates and colleagues within the justice system. Parallel reform did not foster meaningful intervention. In fact, upgrading the response of individual components may have placed battered women in more jeopardy, encouraging them to take action in the justice system to achieve safety when systemic response was uneven or addressed to perpetrator sanctions while indifferent to victim safety. Parallel reform also appeared to exacerbate fragmentation between

the components. There was often no shared vision and no mechanism for problem identification and solution development. There was no vehicle to move recalcitrant components. Neither was there communication, coordination or interface between sectors. Public accountability by justice system sectors was also lacking. No method or authority to monitor adherence to standards or practices was adopted; nor were systems implemented to evaluate the efficacy of practice or to incorporate community input. Therefore, advocates concluded that a process must be devised to create a unified vision about the goals of reform, the fundamental principles of intervention, the roles of each component, the merit of collaboration, and the necessity for public accountability. A number of models for organizing and institutionalizing coordinated justice system response were designed. (See below, **Approaches to coordinated community response.**)

One unanticipated outcome of increased intervention by the justice system was a sharp increase in demand for individual advocacy and supportive services of domestic violence programs. Programs instituted civil and criminal advocacy components to assure that battered women are informed about participation in the justice system and able to safely and effectively participate therein. Victims may become reluctant or unable to participate in the justice system if their basic safety and survival needs are not met during the pendency of civil and criminal proceedings. Other essential supportive services include temporary housing, food, clothing, counseling, transportation, child care, safety planning, relocation resources, and employment development. Domestic violence programs are significantly underfunded in most communities, such that as many as one in five battered women are not able to access essential services.

In recent years, those engaged in reform efforts identified other essential activities for coordinated community response. It became apparent that the interventions developed were often not culturally sensitive. Issues of race, language, religion, culture, class, kinship networks, and perspectives on the efficacy of participation in legal process, all must be factored into crafting culturally sensitive practice. This work has begun. With the enactment of the Americans with Disabilities Act of 1990, P. L. 101-336, domestic violence programs began to make structural change in offices and shelters to accommodate victims with physical disabilities, to develop communications systems for advocacy with deaf or hard of hearing impaired battered women, and to create effective programs for battered women with mental disabilities. Advocates are working with colleagues in the justice system to identify the ways that the justice system can eliminate barriers to victims with disabilities. Systemic reform has just begun. In many regions of this country rural battered women confront critical barriers to safety and justice; transportation, communication and housing. Collaborative efforts continue to craft solutions to these impediments.

Few justice system personnel have been willing to grapple with the fact that some battered women are charged with crimes but are, nonetheless, victims of crime requiring the protections that the civil and criminal justice systems afford. Battered women sometimes are coerced into criminal conduct by their abusers; forced to write bad checks, purchase controlled substances, engage in prostitution, convert food stamps into cash, complete fraudulent loan applications, steal to clothe their children, etc. Other battered women who have fought back to escape from a batterer or to stop his violence have been arrested and charged with assault or homicide. In a number of communities, advocacy, counseling and legal services for battered women defendants are included in the plan for coordinated community response.

Undertakings in the health care system, in educational institutions, in religious organizations, among providers of service for the homeless, in batterer education and treatment services

programs, in the business sector, in civic groups, and in neighborhoods have also burgeoned over the last 10 years. Many of these endeavors involve partnering with domestic violence programs. However, reform again has been largely parallel within the disciplines or organizations; certainly it has been informed by the work of advocates and justice system professionals, but it often remains separate from the collaborative infrastructure. The problems arising from parallel reform are compounded by the amount of activity emanating from so many diverse organizations throughout the community. These particularly impose a heavy burden on underfunded, community-based domestic violence programs and state coalitions.

Even more recently, a number of practitioners have started dialogue about primary prevention; transforming community beliefs and norms about violence against women. Prevention strategies are being forged and implemented with a vision, not merely for managing the violence and protecting its victims, but one that anticipates an end to men's coercive and violent conduct toward their partners.

Achieving coordinated community response with this magnitude of activity can be daunting, but in many communities throughout the country coordination efforts are in process.

Approaches to coordinated community response.

Approaches to coordinated community response to domestic violence are multiple. Often several may be employed at one time in a local community or within a state. The following are examples of the most commonly utilized strategies:

Community Partnering. In many communities, the domestic violence program has elected to use the community partnering approach to build coordinated community response. In this model, the domestic violence program identifies a strategic plan for community action. Tasks are prioritized. The program partners with individuals and organizations in the community to work on the various initiatives in the plan. Work groups are established that are task specific and draw upon the expertise of members in the community. Work plans are developed and implemented. From planning through execution, the work is collaborative with selected actors in the community. The domestic violence program orchestrates and oversees the work undertaken.

As contrasted with other approaches, this one is decentralized by design. It readily works in many areas of the community contemporaneously. It is an approach that is accessible to professionals and other community actors who are interested in work but who are not necessarily the power brokers in the community. It also enables the diverse leadership within the domestic violence program to be fully employed rather than limiting participation to executive staff. Those engaged are likely to volunteer rather than being drafted. Thereby, team building among the work groups is facilitated. As the work groups are not public forums, problem-solving may be enhanced; public posturing and turf issues may be minimized. Community partnering does not require a formal infrastructure, and thus may be less costly and more manageable by grassroots organizations than other approaches.

Many domestic violence coalitions, as well as local domestic violence programs, utilize this model.

Community Intervention. Intervention projects are private sector programs designed to enhance justice system accountability to battered women. Their work includes orchestration and oversight

of coordinated community initiatives related to domestic violence. The intervention program works with all sectors of the justice system (i.e., police, jail personnel, pre-trial services, prosecutors, judges, pre-sentence investigators, probation and parole, corrections) and the mental health system to create an effective deterrent to domestic violence, to safeguard battered women and children and to align the community in efforts to end violence against women. Elements of the work include the development, implementation and monitoring of protocols and practice guides with each component; training of all staff in every component on domestic violence, the goals of the intervention approach and the changes in job responsibilities and methods entailed in the reform; outreach to batterers in the civil and criminal justice systems, as well as education or treatment groups based in the Duluth curriculum or others; training and monitoring of the educators or therapists working with perpetrators; tracking of batterers and automation of data retrieval on batterer status in both civil and criminal justice systems; outreach, information and referral to battered women to enhance safety and autonomy; and community education and media initiatives to transform public understanding and response to domestic violence.

Like the community partnering model undertaken by domestic violence programs, the intervention approach establishes the hub of coordinating activity in a grassroots organization. The intervention staff are charged with primary responsibility for interface between the components. They negotiate changes that are essential, as identified through feedback from the several components or their own monitoring efforts. They convene meetings of the whole as necessary. They undertake independent evaluation of systemic function and coordination and seek modifications. In many ways they serve as cheerleader to the system. The overarching principle of their work is accountability to battered women.

Intervention programs differ from partnering initiatives in that they provide direct services to batterers from entry through exit from the justice system. The foci of intervention work are cessation, surveillance and batterer education. Direct services and advocacy for battered women are sometimes provided by domestic violence programs, rather than the intervention program.

Task Forces or Coordinating Councils. Task forces seek to coordinate all the components of the criminal justice system to improve justice system practice and to better communicate and collaborate in work to end violence against women.

The initial work of a task force almost invariably is an assessment of the state of criminal justice (and/or human services) practice and resources in the community, followed by a report on effective practice and systemic deficits, along with a description of recommended remedies and potential resources therefor. A task force may then develop a work plan for incremental change and elevated coordination. The promulgation of compatible and definitive protocols or guidelines for practice in each component of the justice system is often the first step in a work plan. While each agency retains the exclusive authority to develop the protocol for that component, sharing of work product with a request for feedback from the other components, particularly in terms of interface of the various components, is routinely invited. Other collaboration in training and problem-solving follows. Evaluation may be undertaken and systemic reform considered in light of the results thereof. Informal systems of communication, conflict resolution and coordination among task force participants are an important outgrowth of the formal work of the task force.

Training and technical assistance projects. Training and technical assistance projects are targeted at informed, improved justice and human service system practice have produced a

plethora of training curricula and an almost equivalent amount of audiovisual materials. Legal advocacy training is offered in a number of states; some certify advocates and require continuing education to maintain certification. Police training manuals, court clerk handbooks, prosecution guides, bench books, pre-trial services seminars, probation workshops, correctional curricula on victims of domestic violence, electronic monitoring pamphlets, safety planning and survival skills workshops, guides to maximizing compensation and restitution, court audit tools, and innumerable other educational materials have been crafted and implemented. Training curricula for clergy, educators, health care providers, child protective service workers, public housing staff, private security firms, employers, civic groups, etc. have been developed. Media campaigns have been initiated. Clearinghouses have been established. Technical assistance projects to aid policy-makers and practitioners in the design of effective justice and human services systems have been instituted.

Community organizing. Community organizing initiatives are those which invite members of the general public to actively engage in work to end violence against women. Domestic violence programs and community activists have utilized organizing strategies with the goals of enhancing safety and achieving social justice for battered women and children; objectives of community organizing are expansion of the constituency of active participants in the work, articulation of a clear, universal message that each citizen can take responsibility to end this violence, and transformation of the public discourse and consciousness about the causes of violence against women and the power of the community to end it.

Many community organizing efforts originated in domestic violence programs. Sometimes organizing addresses a discrete problem and at others it attempts to transform the consciousness and practice of the entire community. However, once organized the community team often develops a mission and tasks of its own; at which time the organizing effort is passed on to the community. Among all the coordinated community approaches, organizing projects have, perhaps, best engaged communities of color and other marginalized constituencies in full partnership in the visioning and implementation of work to end violence against women and children.

Overview of the evaluation literature on coordinated community response

The evaluation literature on coordinated community approaches is largely exploratory and preliminary. It lends support to the premise that multiple and coordinated approaches to ending domestic violence are warranted.

Data on the question of when battered women will seek outside intervention suggest that the more resources and apparent options a woman has for ending the violence, the more likely she is to act to seek intervention, to achieve protection or to leave the abuser. Thus, where a community offers multiple, viable options, it appears that the safety requirements of battered women will be better met than when a singular intervention is employed. If one defines coordinated community response in terms of comprehensive, or at least multiple, options in the justice and human services systems, this appears to advance the goal of social justice for battered women.

It is critical to note, however, that there has been relatively little research on outcomes of individual justice system or human service system endeavors. The singular intervention of arrest has been investigated. A smaller amount of inquiry has been directed at prosecution, lawyers

or the courts. A comparative treasure trove of research on batterer intervention services is now available, the results of which offer some direction for policy formulation. There is a dearth of evaluation study on advocacy and domestic violence program services and the needs of battered women seeking shelter. There is an emerging body of research on the efficacy of civil protection orders and court processes. However, it is clear that the evaluation of discrete intervention strategies has barely begun. Significant additional investigation on intervention initiatives in the justice system and community is essential, and it will inform research on coordinated community response.

Measuring success

The issues of how and what to measure in evaluating the efficacy of coordinated community approaches pose interesting questions.

How to effectively measure coordinated community response. While quantitative empiricists may shudder at descriptive assessment pieces, in the field of domestic violence these practitioner inquiries have been instrumental in building theory and shaping the design of empirical work. An early, notable piece is the investigation of Finn & Colsen. The work relied on expert practitioner informants to render a broad brush picture of protection order practice. This reasoned appraisal of the intent of protection order law and the practice thereunder set the stage for significant research and policy development.

The Merryman inquiry on court, advocate and attorney practice in dedicated protection order courts may similarly inform future investigation on the design of dedicated domestic violence courts and the comparative worth of specialized, as contrasted with unified and traditional court structure and practice. There are many questions on justice system interventions in domestic violence that would also benefit from the informed reflections of expert practitioners and battered women; questions, both qualitative and quantitative, for inquiry will be clarified and expanded by this deliberative process.

Beyond this, analysis of aggregate justice system data and other data sets that may be rich, but untapped, sources of information would greatly enhance the knowledge base on domestic violence and interventions to end it. All methods of statistical data collection, federal and state, should capture gender and relationship. Technology within the justice and advocacy system must be upgraded with dispatch.

Empirical investigation is also essential. It will be enhanced both by informed reflection by practitioners and by improved statistical aggregation. Research should be retrospective, developmental and experimental. Practitioners caution that the imposition of experimental design on communities should be undertaken most judiciously. The design should foster coordinated community response rather than erect significant barriers between components and constituencies. Furthermore, since experimental design may have significant impact on the communities in which it is undertaken, examination of the environmental context of the experimental intervention both before and after its imposition should be employed.

What to measure in evaluating coordinated community response. First and foremost, every investigation should evaluate the impact of an intervention on battered women. The impact should be measured in terms of the safety, autonomy and quality of life of battered women.

Secondarily, in measuring the impact of coordinated community response on batterers, issues of recidivism should be addressed. Research should also evaluate whether a batterer has made financial restoration to the battered woman for the losses occasioned by his violence, whether he acts as a parent in ways that eschew violence and are respectful of the battered mother, whether there has been a change in perpetrator belief systems about domestic violence, and whether the abuser acts to end violence against women in his social and work life.

Issues of race, class and culture must be carefully incorporated in research on coordinated community approaches to ending domestic violence. Reporting of the results should be crafted in such a manner that informs social change rather than reinforcing cultural and institutional bias.

Evaluation of individual components of coordinated community response to domestic violence should be undertaken, as well as investigation of the effectiveness of the entire community approach. Issues of systemic readiness for the interventions proposed, change in practice and procedures, fit between the changes adopted by various components, interface or communication between the systems and with the community, availability of advocacy and support services, leadership of advocates and battered women in the design and implementation, change in public discourse, and impact on battered women, batterers and the community should be examined. Essential components of a coordinated community response in various communities, e.g. metropolitan, urban, suburban, rural and tribal communities, as well as in specific communities of color and diverse culture, class and religion, should be identified. Comparative efficacy of the various approaches might also be evaluated.

A number of additional questions should be answered. It is critical that careful study be undertaken on whether "separation assault" occurs, how it is different from domestic violence before separation and after the batterer relinquishes perceived ownership of the battered woman, the dangers it poses and the specialized interventions that may be critical to avert severe or lethal violence during the time that the battered woman is separating from the batterer.

Investigation of risk-markers for severe or lethal assault by batterers is essential. Research on the effectiveness of specialized interventions by the justice system once life-imperiling risk-markers appear should be undertaken.

Practitioners throughout justice and human services agencies have begun to engage in "safety planning" with battered women to assist them in strategically assessing danger and identifying action steps possible to avoid life-imperiling assault. Studies on the utility of "safety planning" should be initiated.

Building collaborative investigative processes

Over the course of the last 10 years significant dialogue has been forged between practitioners and researchers about interventions to end domestic violence, research questions and both short and long-term research agendas, methods of investigation, measurement issues, ethics of research and intervention, analyzing data, developing reports on the research, crafting practice modifications in light of the results, dissemination and community education strategies, and building bridges between practitioners and academe. In many of these discussions the principle of evaluating our work in light of its impact, beneficial or adverse, on safety, autonomy and social justice for battered women has been articulated. Through this process of collaborative

research many of the questions raised by advocates, practitioners and policy-makers are now being answered.

Collaborative initiatives within the justice and human services systems and between practitioners and researchers will well serve the critical social imperative to end violence against women. As we seek to institutionalize coordinated community approaches to end domestic violence, we should also endeavor to institutionalize collaboration between the practice and research communities.

People offering input and assistance, whose views may differ from the writer and whose assistance does not imply endorsement:

- Judge Ronald B. Adrine, Ohio, Cleveland Municipal Court
- Judith Armatta, Esq., Oregon, Coalition Against Sexual and Domestic Violence
- Batterer Intervention Services Network of Pennsylvania
- Richard A. Berk, Ph.D., California, Department of Environment and Society, UCLA
- Lee H. Bowker, Ph.D., California, Dean, College of Behavioral and Social Sciences, Humboldt State University
- Jill Davies, Esq., Connecticut, Legal Aid Society of Hartford County
- Sandra Dempsey, Pennsylvania, Physicians for Social Responsibility
- Jeffrey L. Edleson, Minnesota, Professor, University of Minnesota School of Social Work
- Judge Leonard Edwards, California, Superior Court of Santa Clara County
- Donna Garske, California, Marin Abused Women's Center and California Alliance
- Edward W. Gondolf, Ed. D., Pennsylvania, Professor, Indiana University of Pennsylvania & Mid-Atlantic Addiction Institute
- Scott Hampton, M. A., New Hampshire, Strafford Guidance Center & Governor's Commission on Domestic Violence
- Joanne Hessmiller-Trego, M.S.W., Pennsylvania, Messiah College and Lutheran Social Services
- Meredith Hofford, M. A., Nevada, Family Violence Project, The National Council of Juvenile and Family Court Judges
- Barbara Johnson, Minnesota, Central Minnesota Task Force on Battered Women
- Nancy Lemon, Esq., California, Clinical Professor, Boalt Law School
- Isabel Marcus, Esq., New York, Professor of Law, School of Law, SUNY Buffalo
- Linda McGuire, Esq., Iowa, Visiting Professor, College of Law, University of Iowa
- Joan Meier, Esq., Washington, D.C., Associate Professor of Law, George Washington University
- Anne Menard, Pennsylvania, National Resource Center on Domestic Violence
- Michele Olvera, Esq., Pennsylvania, Battered Women's Justice Project
- Ellen Pence, Minnesota, Domestic Abuse Intervention Project and Battered Women's Justice Project

- James Ptacek, Massachusetts, Department of Sociology and Anthropology, Tufts University
- Evan Stark, Ph.D., MSW, Connecticut, Domestic Violence Training Project
- Jane Stuehling, Pennsylvania, Pennsylvania Coalition Against Domestic Violence
- Judge Michael A. Town, Hawaii, Family Court of the First Circuit
- Oliver Williams, Ph.D., Minnesota, Assistant Professor, University of Minnesota School of Social Work
- Judge Frances Q. F. Wong, Hawaii, Circuit Court of the First Circuit

Barbara J. Hart, Esq.

Legal Director, Pennsylvania Coalition Against Domestic Violence; Associate Director, Battered Women's Justice Project; Legal Consultant to the National Resource Center on Domestic Violence.

Domestic Violence: A model protocol for police response

PENNSYLVANIA ATTORNEY GENERAL'S FAMILY VIOLENCE TASK FORCE

January, 1989

The Task Force urges the Pennsylvania State Police and each police department in Pennsylvania to adopt a written protocol establishing guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic calls. In aid of that purpose, the Task Force offers the following model protocol, which can be readily adapted to the particular needs of the state police and police departments throughout the Commonwealth.

The core feature of the model protocol is the provision that police should arrest the assailant in domestic violence cases whenever arrest is authorized. To underscore the presumption that arrest is the proper response in the overwhelming majority of domestic violence cases, the protocol requires the responding officer, if he decides not to arrest, to include in his report of the incident a detailed explanation of the reasons why an arrest was not made. The protocol further provides a list of factors that the officer should not consider in making the arrest decision.

Many other jurisdictions, either by legislation or through police department protocols, have adopted policies that mandate arrest of the assailant in domestic violence cases. The Task Force considered but rejected this absolute approach because it found problematic the concept of removing all discretion from the responding officer. However exceptional they may be, cases are certain to arise in which arrest, though authorized, is inappropriate because it does not serve the interests of justice and is not necessary to ensure the victim's safety.

Another important feature of the model protocol is the provision that police should identify the victim to a domestic violence program whenever the accused has been arrested or is the subject of an arrest warrant. The intent and expectation of this provision is that the domestic violence program will contact the victim, in the manner that the program finds most appropriate, to offer the victim support and referral to services. This aggressive outreach is designed to help overcome the fear and isolation that so often deter victims of domestic violence from pursuing needed assistance on their own initiative.

Some members expressed concern that, while the law does not require police to keep the victim's identity confidential, the identification of victims to domestic violence programs nevertheless might unduly compromise the preference of some victims for strict privacy. The majority believed, however, that the benefit to the many victims who otherwise would receive no help when they needed it most justifies the approach of affirmative referral and outreach, particularly in view of the minimal intrusion upon privacy that such referral and outreach entails. Domestic violence programs routinely observe the strictest confidentiality; no victim is required to accept assistance, and the risk of further disclosure of the victim's identity is remote.

The following protocol, in the judgment of the Task Force, combines law enforcement and victim assistance into an effective program of police response to domestic violence.

MODEL PROTOCOL FOR POLICE RESPONSE TO DOMESTIC VIOLENCE

A. Purposes

1. The principal purpose of this protocol is to establish guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic calls.
2. Other purposes and goals of this protocol are:
 - a. To reduce the incidence and severity of domestic violence by establishing arrest and prosecution, rather than mediation, as the preferred means of police response to domestic violence;
 - b. To afford maximum protection and support to victims of domestic violence through a coordinated program of law enforcement and victim assistance;
 - c. To ensure that law enforcement services are as available in domestic violence cases as they are in other criminal cases;
 - d. To reaffirm the police officer's authority and responsibility to make arrest decisions in accordance with established probable cause standards;
 - e. To promote officer safety by ensuring that officers are as fully prepared as possible to respond to domestic calls; and
 - f. To help reduce police resources consumed in responding to domestic violence by reducing the number of police interventions required for any particular household.

B. Policy Domestic violence is a crime that differs from other crimes because of the intimate relationship between the victim and the accused. Notwithstanding that difference, police should respond to domestic violence as they would respond to any crime. Police should arrest and pursue criminal remedies appropriate to the crime that the police have probable cause to believe the accused has committed. In recognition of the difference between domestic violence and other crimes, however, police also should provide victims with special assistance, including efforts to ensure that victims are informed of services available to victims of domestic violence.

C. Scope of Coverage

1. This protocol applies to any call to police reporting a disturbance between persons in a "covered relationship" to each other.
2. "Covered relationships" include: persons related by blood or marriage; persons who reside or formerly resided together; persons who are biological parents of the same child; and current or former sexual or intimate partners.

D. Dispatch

1. Dispatchers under the direct supervision of a police department should dispatch domestic calls in the same manner as any other call for police assistance, in accordance with the priority criteria prescribed by generally applicable department procedures.
2. Dispatchers who serve multiple police departments should accord domestic calls the highest priority classification. Whenever possible, the dispatcher should assign a back-up unit.
3. The dispatcher receiving a domestic call should attempt to elicit from the caller and should communicate to the responding officer as much of the following information, in the following order of importance, as time and the exigencies of the reported incident allow:
 - a. The nature of the incident;
 - b. The address of the incident, including the apartment number or the name of the business, as appropriate;
 - c. A telephone number where the caller can be called back;
 - d. Whether weapons are involved;
 - e. Whether an ambulance is needed;
 - f. Whether the suspect is present and, if not, the suspect's description, direction of flight, and mode of travel; and
 - g. Whether children are at the scene.
4. If the caller is the victim, the dispatcher should attempt to keep the caller on the telephone as long as possible and should tell the caller that help is on the way and when the caller can expect the police to arrive.
5. If the caller is a witness to a domestic incident in progress, the dispatcher should keep the caller on the telephone and should relay ongoing information provided by the caller to the responding officer.
6. If the dispatcher has ready access to police department records that indicate whether the parties involved in the incident have been involved previously in domestic incidents or that indicate whether there is a protection from abuse order involving the parties in effect, the dispatcher should consult such records and radio any relevant information to the responding officer.

E. Initial Police Officer Response

1. Approaching the scene.
 - a. The responding officer should approach the scene of a domestic dispute as one of high risk. Whenever possible, two officers will respond to a domestic call.

- b. The officer should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.
 - c. The officer should avoid the use of sirens and emergency lights in the vicinity of the scene of the incident. Sirens and lights should be employed only when speed is essential.
 - d. The officer should not park the police vehicle directly in front of the residence or other site of the disturbance. The officer should be alert for assailants leaving the scene and for the employment of weapons from doors, windows, or nearby vehicles.
 - e. The officer otherwise should employ standard precautionary measures in approaching the scene of the incident.
2. Initial contact with occupants.
 - a. The responding officer should identify himself as a police officer, explain his presence, and request entry into the home. The officer should ask to see the person who is the subject of the call. If the person who called the police is someone other than the subject of the call, the officer should not reveal the caller's name.
 - b. The officer may enter and conduct a search of the premises relevant to the incident if consent has been given to do so.
 - c. If refused entry, the officer should be persistent about seeing and speaking alone with the subject of the call. If access to the subject is refused, the officer should request the dispatcher to contact the caller if the caller is the subject of the call. If access is still refused, the officer must decide whether to leave, remain and observe, or force entry. If the officer leaves the scene, he should drive by and observe frequently. If the officer remains to observe, he should move to public property (the street) and observe the premises. In some circumstances, forced entry will be necessary and appropriate.
 3. Once inside, the responding officer should establish control by:
 - a. Identifying potential weapons in the surroundings;
 - b. Separating the victim and the assailant;
 - c. Restraining the assailant if necessary, and removing the assailant to the patrol car if immediate arrest is warranted;
 - d. Assessing the injuries (including inquiry about possible internal injuries), administering first aid, and/or notifying emergency medical services;
 - e. Inquiring about the nature of the dispute;
 - f. Identifying all occupants/witnesses on the premises; and
 - g. Separating occupants/witnesses from the victim and accused and keeping them out of hearing range (to avoid compromising their witness status).
 4. On-scene investigation:

- a. The responding officer should interview the victims and the assailant as fully as circumstances allow. The officer should be alert to possible incriminating statements.
- b. The officer should ensure the victim's safety and privacy by interviewing the victim in an area apart from the assailant, witnesses, and bystanders. In questioning the victim, the officer should use supportive interview techniques. The officer should ask the victim about previous domestic incidents, their frequency and severity. The officer should not tell the victim what action he intends to take until all available information has been collected.
- c. If the accused has been arrested prior to interview, the accused must be given *Miranda* warnings before being questioned. If the accused has fled the scene, the officer should solicit information as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.).
- d. If the dispatcher has not advised the officer of the existence of a protection from abuse order, the officer should ask the victim whether there is such an order and, if so, if the victim can produce a copy and what police department might have a copy. The officer should contact the countywide registry of protection from abuse orders, the prothonotary's office, or a local police department specified by the victim to verify the existence and effective period of the order. The officer should note carefully the restrictions imposed by the order so that the officer may determine whether there is probable cause to believe that the order has been violated.
- e. The officer should interview any witnesses as fully and as soon as circumstances allow. If witnesses provided information about prior incidents, the officer should document such incidents to establish a pattern.
- f. Children should be interviewed in a manner appropriate to the child's age. Signs of trauma and any apparent healing of abuse wounds on the child should be noted by the officer.
- g. The officer should collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene. The officer should ensure that photographs are taken of visible injuries on the victim and of the crime scene.
- h. The officer should encourage the victim to seek an emergency room examination. Emergency room pictures are excellent evidence of injuries. The officer should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. Also, because bruises may not appear for several days after an assault, the office should advise the victim to contact the police for photographs if injuries later appear and, if possible, should revisit the victim if there is reason to suspect that such evidence of injury indeed may later appear.
- i. All physical evidence should be collected, noted in reports, and vouchered as in other criminal investigations.

F. The Arrest Decision

1. *The responding officer should arrest the assailant whenever arrest is authorized.* If the officer decides not to arrest, he must include in his report of the incident a detailed explanation of the reasons why an arrest was not made.
2. Under current Pennsylvania law, arrest is authorized in the following circumstances:
 - a. When the officer has probable cause to believe that the suspect has committed a felony.
 - b. When the officer observes the commission of a felony or a misdemeanor.
 - c. When the officer has probable cause to believe that the suspect has committed a domestic violence misdemeanor as specified in 18 Pa.C.S. § 2711, which authorizes warrantless arrest when the misdemeanor is involuntary manslaughter (18 Pa.C.S. § 2504), simple assault (18 Pa.C.S. § 2701), or recklessly endangering another person (18 Pa.C.S. § 2705), *and* the officer observes recent physical injury or other corroborative evidence, *and* the victim is the spouse of the suspect or a person with whom the suspect resides or has formerly resided. The domestic violence misdemeanor need not have been committed in the officer's presence.
 - d. When the officer has probable cause to believe that the suspect has violated a valid protection from abuse order. The violation need not have occurred in the officer's presence, and no corroborative evidence is required.
 - e. When a misdemeanor not included among those in paragraphs (b) through (d) has been committed and the officer has obtained an arrest warrant.
3. The officer should not consider the following factors in making the arrest decision:
 - a. The marital status of the parties.
 - b. The ownership or tenancy rights of either party.
 - c. Verbal assurances that the violence will stop.
 - d. A claim by the accused that the victim provoked or perpetuated the violence.
 - e. Denial by either party that the abuse occurred when there is evidence of domestic violence.
 - f. Speculation that the victim will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim's hesitancy about pursuing prosecution, or any other factor).
 - g. The disposition of any previous police calls involving the same victim or accused.
 - h. Speculation that the arrest may not lead to a conviction.
 - i. The existence or not of a current protection from abuse order (except insofar as the violation of such an order might justify arrest).
 - j. The victim's emotional state.
 - k. Concern about reprisals against the victim.
 - l. Adverse financial consequences that might result from the arrest.
 - m. That the incident occurred in a private place.

- n. The racial, cultural, social, political, or professional position, or the sexual orientation, of either the victim or the accused.
4. It is the officer's responsibility to decide whether an arrest should be made. The officer, therefore, should not consider the victim's opposition to arrest and should emphasize to the victim, and to the accused as well, that the criminal action thus initiated is the Commonwealth's action, not the victim's action.
5. If the officer arrests for the commission of a crime, the officer should confiscate all weapons used or threatened to be used in the commission of the crime, and such weapons should be held as evidence for prosecution.
6. If the officer arrests for violation of a protection from abuse order, the officer is required by 35 P.S. § 10190 to confiscate all weapons used or threatened to be used in the violation, and to deliver such weapons to the office of the sheriff.
7. If there is evidence of mutual battering and the officer concludes that one party was acting in self-defense, that party should not be arrested.
8. If there is evidence of mutual battering and the officer concludes that one party was the principal aggressor, the officer should arrest only that party.

G. Effectuating the Arrest

1. The responding officer should take the accused into custody as soon as the officer determines that a warrantless arrest is appropriate. If the suspect has fled the scene, the officer should initiate procedures to pursue and apprehend the accused as promptly as possible, since the risk is high in domestic violence cases that the accused will return to the victim's residence or the scene of the violence. If a warrant is necessary, the officer should obtain and execute the warrant as soon as practical.
2. When the accused is a minor (under 18 years of age), the provisions of this protocol shall be fully applicable, except that arrest should be effectuated and the juvenile processed pursuant to the Juvenile Act.
3. If, upon examination of the accused, the responding officer determines that a voluntary or involuntary commitment to a mental health facility is required, the officer should restrain the accused and contact a MH/MR delegate. The officer should not allow the possibility of mental illness to preclude a valid criminal arrest.
4. Domestic disturbances involving prominent citizens, public officials, or police officers may present particular difficulties for the responding officer. In such circumstances, the responding officer should request that an appropriately senior officer come to the scene. The responding officer should take whatever action is necessary to protect the victim and detain the assailant, while awaiting the arrival of the senior officer. When there is probable cause to believe that the accused has committed a crime, the procedure followed upon arrival of the senior officer should be the same as it would be in any other domestic incident.

H. Procedure When Arrest Is Not Authorized or, if Authorized, Is Not Made

1. If an arrest is not authorized because the abusive act is a summary offense, the responding officer should issue a citation.

2. If arrest is not authorized because of the absence of probable cause to believe that a crime was committed, or if arrest is authorized but not made (for reasons to be detailed in the incident report), the officer should:
 - a. Explain to the victim the reasons that arrest is not being made;
 - b. Advise the victim of procedures for filing a private criminal complaint; and
 - c. Encourage the victim to contact the domestic violence program identified in the notice required by 18 Pa. C.S. § 2711 (see paragraph I.2. of this protocol) for information regarding counseling and other services available to victims of domestic violence.
3. The office should not become involved in the disposition of personal property, ownership of which is in dispute. In the absence of a warrant or probable cause to believe a crime has occurred, the officer should remain neutral and be concerned primarily with maintaining the peace and safety of those present.

I. Other On-Scene Assistance to Victims and Dependents

1. Whether or not an arrest is made, the responding officer should not leave the scene of the incident until the situation is under control and the likelihood of further violence has been eliminated. The officer should stand by while victims gather necessities for short-term absences from home, such as clothing, medication, and necessary documents.
2. Whether or not an arrest is made, the responding officer is required by 18 Pa. C.S. § 2711 to notify the victim orally or in writing of the availability of a shelter, including its telephone number, or other services in the community. The notice must include the following statement:

If you are a victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from abuse pursuant to the Act of October 7, 1976 (P.L. 1090, No. 218) , known as the Protection From Abuse Act, which could include the following:

1. An order restraining the abuser from further acts of abuse.
 2. An order directing the abuser to leave your household.
 3. An order preventing the abuser from entering your residence, school, business or place of employment.
 4. An order awarding you or the other parent temporary custody of or temporary visitation with your child or children.
 5. An order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.
3. If an arrest is made or an arrest warrant obtained, the officer should:
 - a. Advise the victim that the officer will give the victim's name, address, and telephone number to the domestic violence program and proceed to do so before the officer's shift has ended;

- b. Advise the victim that a domestic violence counselor will be asked to contact the victim to offer assistance and referrals to other available services (such as counseling, legal aid, etc.);
 - c. Advise the victim of what procedure will happen next, including the probability that the accused will be in custody for only a short period of time;
 - d. Obtain the address and telephone number where the victim can be contacted if the victim decides to leave the residence (being careful that the accused cannot overhear);
 - e. Obtain from the victim information to be included in the arrest report indicating any special conditions of bail that should be requested at the preliminary arraignment; and
 - f. Provide the victim with the police incident number (if available), the officer's name and badge number, and a follow-up telephone number.
4. If the victim does not speak English, the officer should arrange for translation of the foregoing notices and advice.
5. In circumstances in which it is necessary for the victim temporarily to leave the residence, the officer should offer the victim assistance in locating lodging with family, friends, in public accommodations, or at a domestic violence shelter.
6. The officer, upon request of the victim, should provide or help arrange transportation to emergency housing or to a medical facility.
7. Elder victims and dependents.
 - a. When a victim of domestic violence is elderly (60 or over), the accused is the sole caretaker, and an arrest is indicated, or when the victim of domestic violence is the sole caretaker of a physically dependent elder and the victim can no longer provide care (as, for example, when the victim is hospitalized), the responding officer should determine whether the elder is physically endangered, either as a result of the abuse, a pre-existing medical condition, or the removal of a caretaker. If the elder is physically endangered and mentally alert, the officer should ask the elder for the name of a relative or friend who can be contacted immediately to assist the elder.
 - b. If there is no one available to assist the elder, or if the elder appears not to be mentally alert, the officer should make an emergency referral to a local agency on aging. The officer should remain at the residence until the protective services worker arrives or should transport the elder to a medical facility or other appropriate place where the elder can wait for the worker.
 - c. In addition to providing the notification required by other provisions of this protocol, the officer should advise the elder of the availability of protective services through the local area agency on aging.
8. Child victims and dependents.
 - a. When the victim of abuse is a minor child, the officer should arrest the assailant upon probable cause to believe that a crime has been committed and should make a report to child protective services, as required by the Child Protective Services

Law. If the child is physically injured, the officer should escort the child to the nearest hospital for treatment. The officer should provide victim notification, as described in this protocol, to an adult caretaker of the child who is not the perpetrator of abuse.

- b. If the accused is arrested and was the sole caretaker of a child, and/or if the victim is the sole caretaker of a child and can no longer provide care (as, for example, when the victim is hospitalized), the officer should determine whether there is a responsible relative who can care for the child and, if so, should contact that relative and await the relative's arrival. If no responsible relative is available, the officer should contact child protective services and remain at the residence until a protective services worker arrives or should take the child into custody pursuant to the Juvenile Act and/or the Child Protective Services Law.

J. Processing the Accused

1. A person arrested without a warrant for a domestic violence misdemeanor pursuant to 18 Pa. C.S. § 2711 should be charged with any other crimes properly charged as a result of the incident. Likewise, a person arrested for violation of a protection from abuse order should be charged with any crimes properly charged as a result of the incident in which the violation occurred.
2. When arrest is made pursuant to 18 Pa. C.S. § 2711 or for violation of a protection from abuse order, the accused should be taken before a district justice for preliminary arraignment without unnecessary delay. Under no circumstances should the arresting officer release the defendant before the preliminary arraignment.
3. The officer responsible for presenting the accused for preliminary arraignment should bring to the attention of the district attorney or the court any circumstances noted in the arrest report or known to the officer that argue for special conditions of bail authorized by 18 Pa. C.S. § 2711 and Pa. R. Crim. P. 4013. Such conditions may include, but are not limited to: enjoining the defendant from abusing, harassing, or intimidating the victim; excluding the defendant from the home, school, and/or workplace of the victim; enjoining the defendant from contacting the victim in person or by telephone; and restraining the defendant from contact that will prevent the victim from performing the victim's normal daily activities.
4. All reports and other documents generated in the case should be marked "domestic incident" as an aid to processing the accused and to the identification of such cases.

K. Encouraging Follow-Through by Victims

1. The chief of police (in the jurisdiction in which the incident occurred) should designate a person to notify the victim of any conditions of bail imposed and to advise the victim of the right to request revocation of bail from the district attorney's office if the conditions are violated.
2. To the extent possible, the chief also should designate a person to make contact with victims of domestic incidents for the purpose of follow-up. The contact should be made within 30 days following the incident to determine whether subsequent violence or intimidation have occurred. If such acts have occurred, a designated officer should investigate the incident, proceeding in accordance with the provisions of this protocol.

L. Written Report and Data Collection

1. A written report clearly identified as a domestic incident report must be completed by the officer responding to any call covered by this protocol. The report should include the following information:
 - a. Names, addresses, and phone numbers of the victim, the accused, any witnesses, and the caller.
 - b. A second permanent address and telephone number for the victim (such as a close family member or a friend).
 - c. A statement of the relationship between the victim and the accused.
 - d. A narrative for the incident (including the date, time, and whether the accused appeared intoxicated or under the influence of a controlled substance).
 - e. What, if any, weapons were used or threatened to be used.
 - f. A description of any injuries observed by the officer.
 - g. A description of any injuries described by the victim but not observed by the officer and an indication that the injury was not observed.
 - h. Documentation of any evidence that would tend to establish that a crime was committed.
 - i. An indication of what arrest decision was made: a warrantless arrest; an arrest with a warrant; or no arrest.
 - j. Whether the accused actually was arrested or whether there is an outstanding arrest warrant.
 - k. The crimes with which the accused was charged.
 - l. If the accused was arrested and arraigned, whether bail was set and any conditions of bail imposed.
 - m. If the officer did not arrest or seek an arrest warrant even though arrest was authorized, a detailed explanation of the reasons for the officer's decision not to arrest.
 - n. The names and ages of any children present in the household; their address and phone number if children were relocated.
 - o. Notation of previous incidents of which the officer is personally aware.
 - p. Notation of previous incidents reported by the victim or witnesses.
 - q. If an officer was injured in the incident, the nature and circumstances of the injury.
2. Data collection.
 - a. All written reports on the same person should be kept together or cross-referenced so that repeat domestic violence can be monitored.
 - b. The written report, or another document (such as an index card) or computer entry generated from the written report, should become a domestic violence tracking report.

- c. To the extent possible, the domestic violence tracking report should be accessible to dispatchers and police officers.

REFERENCES

1. Law Enforcement Training Project, Victim Services Agency, **A State-By-State Guide to Legislation on the Law Enforcement Response to Family Violence 6** (DRAFT, April 1988), at 7-8 and National Chart.
2. See, e.g., **The Denver Domestic Violence Manual, Denver Police Dept. Procedures and Guidelines** (Dec. 16, 1986); Domestic Abuse Intervention Project of Duluth, Minnesota, **The Justice System's Response to Domestic Assault Cases: A Guide for Policy Development**, 48-57 (1985); P.R.I.D.E. Program, Newport News Police Dept', **Program Summary and Evaluative Statistics 2** (Concept Paper).

By B.J. Hart, Esq.

Domestic Violence Intervention System: A model for response to woman abuse

In the last fifteen years the citizens of Pennsylvania have begun to recognize the terrible toll that domestic violence has taken upon women and children in our communities and families. We have heard the voices of battered women, describing the indifference of our justice system to their plight. And we are now responding -- "No more!" To achieve an end to violence against women in intimate relationships, those of us who serve in the justice system and those of us who have survived domestic violence have joined together to make social change -- transforming our institutions to put an end to cultural supports for woman abuse and creating communities which are intolerant of domestic violence and which safeguard victims.

While many communities in Pennsylvania have made exemplary, preliminary changes in a number of the relevant components of the justice system, the Pennsylvania Coalition Against Domestic Violence has not identified a jurisdiction which has totally coordinated its institutions to safeguard victims and to stop domestic violence. Research and common sense persuade us that a justice system which is fully operational -- where each component has a specific protocol on domestic violence intervention and a process for consistent implementation of that protocol -- best safeguards victims and calls perpetrators to account. We are hopeful that many communities will expand their efforts in the coming year to implement comprehensive policies for intervention in domestic violence. To facilitate these efforts, we offer the following description of a model **Domestic Violence Intervention System**, which includes information on effective law enforcement, victim/witness services, prosecution, legal advocacy, judicial practice, and probation and parole activities.

LAW ENFORCEMENT.

Perhaps it seems impolitic to suggest that this first component of a comprehensive domestic violence intervention system may be more critical than others, but since law enforcement is the sector which serves as the gatekeeper for the rest of the system and is the entry point for a substantial number of victims and perpetrators, the critical role of law enforcement must be

highlighted. From the dispatcher to the Chief, the actions of law enforcement are pivotal to victim safety and perpetrator accountability.

Arrest deterrence. Research reveals that arrest is the most effective response of law enforcement to domestic violence. The leading research in the field demonstrates that where police arrest perpetrators of domestic violence rather than separating the couple or mediating between the victim and offender, the arrested perpetrators are significantly less likely to recidivate within six months than those offenders with whom the police take conciliatory action. Arrest more effectively deters perpetrators than any other law enforcement action, even if a case does not result in conviction. (Ford, 1990; Sherman and Berk, 1984) Further, victims of domestic violence who call the police appear to be less likely to be assaulted again by their partners than those who did not. There is no evidence that subsequent domestic violence crimes became more serious as a result of communication with the police. Thus, police intervention has a significant deterrent impact on domestic violence. (Sherman and Berk, 1984)

Experience also shows that officer safety is enhanced when responding officers approach a domestic violence crime scene with a preferred arrest perspective and when the decision to arrest or not is made quickly. (Pence, 1989)

Arrest policy.* Each police department from the smallest, part-time force through the largest metropolitan department should adopt a domestic violence arrest policy. A policy should either strongly encourage or mandate arrest of domestic violence perpetrators. Each police officer needs to know the philosophy of the department on domestic violence. Even more important is the procedural delineation of responsibilities and authority. While no policy is self-effectuating, that which is detailed, broadly disseminated, and conspicuously endorsed by management is the policy that provides clear guidance for law enforcement response. Carefully drafted directives on interviewing the parties, assessing probable cause, and effecting arrest can greatly facilitate effective practice by responding officers.

Dispatcher priorities and practice. Whether dispatch priorities are assigned by a computer or set at the discretion of the dispatcher, high priority should be given to domestic violence calls. (The California legislature recently mandated that dispatchers assign domestic violence calls a high response priority.)

Domestic violence injures and kills more women in this country each year than muggings, rapes, and stranger assaults. Between 31 and 50% of all female homicide victims are killed by their partners. (F.B.I. 1980-89; Browne and Williams, 1987)

Dispatchers should gather as much information as possible about the domestic violence incident and should communicate this to the responding officers. Dispatchers should check the Domestic Violence Risk File to see if there have been prior calls related to the alleged perpetrator, victim, and/or address. (See below.) The dispatcher should, likewise, check the Protection Order Registry to see if there is a current protection order. This information should be communicated to the responding officers.

Domestic Violence Risk File and Protection Order Registry. Each department should implement both data bases. The Domestic Violence Risk File should contain information about law enforcement response to domestic violence incidents catalogued by perpetrator, victim and address. It will be helpful to a responding officer to have a cursory history of domestic violence, including perpetrator use of weapons, injuries to victims, and assaults on police officers. Since

the severity of domestic violence appears to escalate over time, the responding officer will be better equipped to safely intervene when apprised of the pattern of perpetrator violence. Risk File data should be retained indefinitely.

Valuable information can also be gleaned from any protection order entered in the Protection Order Registry. The presence of an outstanding protection order suggests heightened danger to the victim and officer, and may provide law enforcement with additional authority for arrest.

Domestic Violence Incident Report. Each officer that responds to a domestic violence call should complete a detailed incident report. If an officer decides not to arrest an alleged perpetrator, he/she should specifically articulate reasons for deciding not to effect an arrest.

A copy of every Domestic Violence Incident Report should be furnished both to the prosecutor and the local domestic violence program for outreach and advocacy with victims. Incident reports should be preserved for at least 7 years.

Weapons Seizure. The responding officer has broad authority to seize weapons used or threatened to be used in domestic violence crimes in Pennsylvania. Specifically, in the Crimes Code § 2711, an arresting police officer is required to seize all weapons used by the alleged perpetrator in the commission of the offense. Further, when a responding officer concludes that a perpetrator has violated a civil protection order and arrests the defendant, the officer is again mandated to seize all weapons used or threatened to be used during the violation of the protection order *and* during prior incidents of abuse. When the weapons are seized pursuant to violation of a protection order, the arresting officer is charged with delivering the confiscated weapons to the office of the sheriff who must maintain possession of the weapons until the court issues an order directing that the weapons be relinquished and identifying the persons to whom the weapons can be released. Many departments authorize responding officers to remove all weapons perceived to pose a danger to the victim with either the permission of the alleged perpetrator or the spouse. Research reveals that firearms are used in more than 60% of spousal or partner homicides. Handguns account for almost 80% of these firearms. Even temporary removal of weapons serves to prevent life-endangering assaults, especially at times of escalated confrontation. (Saltzman et al, 1990)

Victim's Rights Notification. The responding officer should advise the victim of legal rights she may have, including a civil protection order, a restraining order against victim intimidation, and crime victim's compensation. The victim should also be given a referral to the local domestic violence program and advised of shelter and victim advocacy services. The victim should be given a free copy of the Domestic Violence Incident Report and apprised that copies will be sent to the local domestic violence program and the prosecutor.

Transportation. The responding officer should provide or arrange transportation for the battered woman or children to medical facilities or emergency shelters if the victim requires such services.

Comprehensive criminal charges. The responding officer should charge the alleged perpetrator with all of the crimes entailed in the domestic violence incident. Historically, there has been a tendency to classify domestic violence crimes as misdemeanors rather than felonies despite the presence of weapons and extensive injuries to victims. (Langan and Innes, 1986) Care should be taken not to minimize the gravity of domestic violence offenses.

Arraignment advocacy. Experience demonstrates that domestic perpetrators pose a more serious continuing threat of violence to victims during the pendency of charges than do stranger

perpetrators. Nonetheless, most domestic violence perpetrators are released on their own recognizance without any special conditions imposed on bail to afford victim safety. Officers present at arraignment should advise the court of the danger they believe the defendant may pose to the victim and suggest conditions of bail that will enhance victim safety. Requests for cash bail should be considered.

Mental health assessment. Research reveals that as many as 1/3 of the men committed to mental health institutions because of depression have homicidal fantasies focused largely on their partners and family members. (Rosenbaum & O'Leary, 1979) Furthermore, about 1/3 of the men who kill their woman partners, then commit suicide; suggesting that suicidal ideation by a batterer is a high risk-marker for partner homicide. (Johnson, 1987) However, the mental health community appears resistant to any recognition that mental illness may aggravate domestic violence. Family violence perpetrators are less likely to be admitted to mental health services than non-family perpetrators. (Gondolf et al, 1989) Therefore, law enforcement should carefully evaluate the mental health crisis of any domestic violence perpetrator and takes steps to assure victim safety. The propriety of an emergency mental health commitment should be considered if an arrest is not effected.

Follow-up. Each law enforcement agency should have a system for follow-up with victims to advise them of the charges approved, any bail conditions set, the release of the perpetrator from custody, and the availability of victim advocacy services. During follow-up, an evaluation should be made about victim safety and officers should encourage victims to engage in dangerousness assessment and safety planning with the assistance of the local domestic violence program. (See page 103.)

Training. Recruits and veterans need regular training on domestic violence with input from domestic violence programs. This should include at least an overview of domestic violence with an emphasis on its impact on women and children, as well as clear articulation of the parameters of probable cause, use of force, authority to pursue, weapons confiscation, officer safety, relevant civil and criminal law, and victim services. (Pence, 1989; VSA, 1988)

Community education. In community education and public relations materials, each law enforcement department should address domestic violence and child abuse.

Hostage-negotiation plan. National data informs us that between 75-90% of hostage-taking in this country is an outgrowth of domestic violence. Law enforcement agencies should develop specific plans for intervention in domestic hostage situations. Since batterers may take hostages at a domestic violence program, a system for coordinated efforts between law enforcement and the shelter should be implemented.

Disciplinary action and employee assistance programs. Police officers are also perpetrators of domestic violence. Safety of the public, as well as the victim, is jeopardized by officers who use violence in intimate relationships. Each department should have a procedure for response to domestic violence calls involving officer perpetrators. A system for corrective counseling and disciplinary action with officers who batter their partners and children must be implemented. The victim, a supervisor (pursuant to a domestic violence incident report of an investigating or arresting officer), or the battering officer should be able to initiate disciplinary action or corrective counseling related to domestic violence. A supervisor should notify the victim of any action contemplated so that she can make appropriate safety plans. Employee assistance programs

should be put in place to afford perpetrating officers the opportunity of specialized rehabilitation services and to support victimized officers in achieving safety from abuse.

VICTIM-WITNESS ADVOCACY.

Although many believe that victims of domestic violence are less likely to follow-through with prosecution than are victims of serious stranger violence, experience demonstrates that when there is a system of support for domestic violence victims, many are committed to the successful prosecution of batterers as long as this can be achieved in the context of victim safety.

Victim notification. Victims of domestic violence must be instructed as to the role of the victim in the criminal justice process and the stages of criminal prosecution, as well as the right to be present and heard at all crucial stages to the extent that this right does not interfere with the constitutional rights of the accused.

Each victim of domestic violence should be notified promptly about any changes in scheduling which may affect her appearance at trial or post-conviction proceedings.

The domestic violence victim also needs to be apprised of the defendant's status from arrest through parole. She needs to be informed of the arrest, bail conditions, and charges lodged against the defendant. She should be advised of the release of the defendant from imprisonment on bail and for furloughs, emergency leave, work-release, escape, or discharge.

Employer and creditor intercession. The victim-witness program should offer to intercede with employers in order to minimize the victim-employee's loss of employment, pay and other benefits while participating in prosecution. Likewise, when domestic violence subjects the victim to serious financial strain, the victim witness program should offer to advocate with creditors for consideration in management of the victim's financial obligations.

Victim assistance. The victim of domestic violence must be assisted in preparing any statements to be made at sentencing or at hearings concerning probation, pre-release plans or parole.

The victim-witness program should apprise domestic violence survivors of the right to restitution as a condition of probation or parole. The program should assist victims of domestic violence in developing a comprehensive statement of losses resulting from the crime(s) of domestic violence. Restitution claims may be made for any costs resulting from the crime, such as lost wages; expenses for relocation of residence; childcare and transportation costs associated with prosecution; medical, counseling and other treatment fees; replacement costs of any destroyed property; and shelter or advocacy costs.

Crime victim compensation advocacy. As of October 1, 1990, victims of domestic violence may not be denied crime victim compensation for losses sustained as a result of crimes committed by their spouses/partners, unless the compensation would substantially inure to the benefit of the perpetrator. Although federal regulations compel compensation to victims of domestic violence, awards may still be difficult to achieve because of several legal hurdles that domestic violence victims must overcome. Therefore, careful monitoring of these applications and the bases for denial of awards must be made by victim-witness programs to assure just compensation of battered women and children.

Victim protections. Victim witness programs must make sure that victims can participate safely in the prosecution of perpetrators. This means that victim witness programs must advocate for

weapons searches of domestic violence perpetrators at all legal proceedings, safe waiting rooms for victims, modification of bail conditions, and the imposition of protective orders against victim intimidation.

PROSECUTION.

As law enforcement adopts policies encouraging or requiring officers to arrest suspects in domestic violence incidents, there is a substantial increase in the number of domestic violence cases submitted for prosecution. To expedite the handling of these cases, changes in district attorney policy and practice are essential.

Specialization. District attorneys should establish domestic violence units in large offices or create specialists in smaller offices in order to permit vertical prosecution and the enhancement of expertise on domestic violence cases. Specialization has improved the success of prosecution. (Fagan, J., 1988)

Appropriate charging. Domestic victims are entitled to the same quality of justice as victims of stranger violence. Historically, prosecutors have been reluctant to charge alleged perpetrators of domestic violence with felonies. District attorneys have often utilized evidentiary standards that are higher in domestics. Not only is this disparity unwarranted, it is counterproductive. Domestic assailants are acutely dangerous. Therefore, efforts must be made to eliminate discrepant practice in charging crimes of domestic violence.

Outreach efforts. The prosecutor should review the Domestic Violence Incident Reports submitted by law enforcement in cases which do not result in arrest. Where the prosecutor concludes that prosecution is, nonetheless, warranted, he/she should attempt to contact the victim and consult about prosecution. Charges may thereafter be filed by the prosecutor or the victim.

Preliminary hearing prosecution. Unless law enforcement has agreed to bear the burden of prosecution at the preliminary hearing, it is critical that a deputy district attorney appear at preliminary hearings in domestic violence misdemeanor and felony cases. In many jurisdictions, the prosecutor leaves it to the victim to persuade the court that the elements of the crime charged have been committed and that the defendant is the perpetrator of these crimes. Battered women have neither knowledge of the evidentiary requirements nor of methods for producing evidence at preliminary hearings. Furthermore, even if a victim had the knowledge and skills, her fear of the batterer and the situation may be so acute that she cannot successfully prosecute the case. Prosecution will likely fail at this juncture unless the state's case is asserted by the district attorney.

Investigation. Battered women almost all claim that district attorneys never vigorously investigate their cases. The strong empirical evidence of the chronic, escalating nature of domestic violence and its acute danger to victims compels a reordering of priorities and resources to improve the prosecution of domestic violence perpetrators. (Fagan, 1988)

Victim protection. Where victims are besieged by defendants with pleas or threats to withdraw the prosecution, prosecutors must provide victim-witnesses with protection both to assure the safety of the victim and to expedite prosecution. In Pennsylvania, the district attorney can seek a temporary protective order on behalf of victims to direct defendants to cease and desist from

any conduct which would intimidate the victim or any witness and interfere with the victim's participation in prosecution. (See 18 Pa.C.S. § 4954.)

Besides temporary protective orders, the district attorney can enlist law enforcement in victim protection strategies. Victims of domestic violence should also be eligible for witness protection programs when it is apparent that their lives may be in danger as a consequence of prosecution.

Property return procedures. Law enforcement agencies and the district attorney should promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Requests should be made of the trial court for appropriate orders to expedite the return of property to victims, including permission for photographs of the victim's property to be used as evidence at trial when no substantial evidentiary issue related thereto is in dispute. However, weapons are best held until final disposition of the criminal case.

Victim consultation. The prosecutor should develop guidelines for reasonable consultation with the victim advocate and/or the victim prior to entering into any plea bargain or dismissing a case.

Victim testimony. Sometimes, even in jurisdictions where prosecutors engage in all of the above, victims are reluctant to testify. In many jurisdictions, prosecutors have developed policies whereby they subpoena victims to testify on trial dates. However, where the victim persists in resistance to testify, the practice is to proceed to prosecute without victim testimony wherever possible. These policies specify that victims are not to be penalized or prosecuted for failure to testify.

Diversion programs. The use of diversion as an alternative to prosecution should be carefully evaluated. Many in the justice system believe that pre-trial diversion is always inappropriate in domestic violence crimes. Others assert that diversion should only be available to first offense batterers charged with misdemeanors other than involuntary manslaughter. If diversion of domestic violence perpetrators is instituted, domestic violence defendants should not be eligible when victims object to this disposition. Diversion programs should be specifically tailored to assure victim safety and stop the violence. Participants in diversion programs should be compelled to attend educational programs on domestic violence. Restitution should be paid during the period of diversion. Breach of the conditions of the diversion program should result in termination of the program and immediate prosecution.

Self-defense protocol. When perpetrators of domestic violence are not deterred from continuing violence against their wives/partners, the brutality of their violence often escalates to life-threatening proportions. (Browne, 1987) National research over the past 30 years has shown that when women use lethal violence against their partners, it is almost always to protect themselves or their children. (Browne and Williams, 1987; Cazenave and Zahn, 1986) Further, in the last 10 years women have killed their partners less, particularly in those states where comprehensive legal protections and social services are available. (Browne and Williams, 1987) Pennsylvania is one such state. Men, on the other hand, have been killing wives/partners in ever increasing numbers, especially after separation and divorce. (Browne and Williams, 1987)

Therefore, prosecutors knowledgeable about domestic violence should carefully design a protocol for investigation and charging in situations where women who have been the victims of domestic violence kill batterers. Where battered women have killed to protect themselves

and prosecution does not clearly serve the interests of justice, discretion should be exercised against prosecution and the consequent re-victimization of battered women by the legal system.

LEGAL ADVOCACY.

Victim advocacy is a key component in the Domestic Violence Intervention System. Battered women who find themselves abruptly thrust into the legal system because of the violence of their partners, while often simultaneously seeking emergency shelter to protect themselves and their children, are swamped with new information and the demands for family management in these acute crisis situations. Many people who are not terrorized by violence would find it difficult to address all of the issues impinging upon a battered women dislocated and endangered by violence. (Campbell, 1990) It is not surprising that victims may appear less invested in successful prosecution than law enforcement and prosecutors. Therefore, it is critical that advocates are available to battered women to help them understand legal process and to develop effective strategies for participation in the justice system. Legal advocacy for battered women includes:

Outreach. When a battered woman has entered the legal arena, whether pursuant to police action or by her own initiation, her safety will be enhanced by discreet outreach and advocacy. Since many battered women do not know about domestic violence services, are not acquainted with the particular activities of legal advocacy, or believe that they are ineligible for services, domestic violence programs have begun to engage in outreach to battered women to provide legal advocacy.

Safety planning. Each battered woman needs to construct a safety plan. Although victims are certainly competent to design plans independently of advocates, experience often lends substantial enrichment to any plan. Safety planning is an on-going process. Batterers continue to pose risks potentially forever and certainly until they believe the consequences of their violence outweigh the benefits.

Options counseling. Victim advocacy includes informing battered women of the array of legal options and the procedures for exercising those options. Victim advocacy does not include giving legal advice. Battered women are referred to the prosecutor, legal services attorneys and the private bar for substantive legal advice.

Case investigation/preparation. Law enforcement and the district attorney are sometimes not able to devote the time and energy needed to comprehensively develop the evidence in criminal matters. The same is true for the private sector in civil matters. Therefore, it is very helpful for battered women to gather information and provide these justice system actors with a detailed chronology of events and circumstances.

Court accompaniment. Court appearances are dangerous and terribly frightening experiences for battered women. Desperate batterers may assault battered women at the courthouse. This has happened all too often. Court accompaniment by informed advocates serves to enhance the victim's physical safety, to provide emotional support, and to afford back-up consultation to justice system personnel, when necessary.

systems advocacy. Where there are inadequacies in any component of the legal system, systems advocacy may be necessary. For example, if statutory law is basically deficient on a point, advocates may draft and urge the adoption of legislation. If a prosecutor does not have the resources to provide assistant district attorneys at preliminary hearings, the victim advocate

may expose the inadequate level of funding of the district attorney's office and urge local government to increase resources. Where a judge continues to place batterers in diversion programs when they have histories of criminal violence, the advocate may be able to persuade the bench to adopt local rules to eliminate this practice. If crime victim's compensation is not awarded promptly, advocates can seek administrative change to expedite awards. Without systems advocacy the problems of the legal system may cause such discouragement of victims and resentment in other intervention system components that the system will fail. Systems advocacy is essential to improve justice system response to battered women.

JUDICIAL PARTICIPATION.

The judiciary plays a crucial role in a Domestic Violence Intervention System.* Judicial recognition of the gravity of domestic violence sends a clear and compelling message to the perpetrator, the public and to other actors in the justice system. (Goolkasian, 1986)

"The judge told him, in no uncertain terms, that the law doesn't allow him to assault me just because I'm his wife. He said that he'll send him to jail if he's brought back for another offense. Right here in the courtroom... you should have seen the look on his face. I think he knew the judge wasn't kidding, and that's when he decided to do something about it."

-- a formerly battered woman (Goolkasian, 1986, pg. 1)

When the bench is serious about domestic violence, the rest of the justice system cooperates.

Criminal matters

Pre-trial restrictions/requirements/recommendations. District justices and judges, recognizing the danger to battered women throughout the pre-trial period, during which time batterers routinely harass and threaten victims for cooperation with prosecution or retaliate with life-threatening violence, are fashioning conditions on release to safeguard the victim and compel the lawful behavior of defendants prior to trial. One important method of victim protection is limiting the defendant's access to the victim either through bail conditions or "no-contact" orders. District justices and judges should terminate the practice of releasing defendants on their own recognizance in domestic cases where they would require cash bail of perpetrators of stranger violence. Arraigning judges should require the appearance of the defendant at arraignment in those jurisdictions where an appearance might otherwise be excused; the appearance will serve as a reminder of the potential consequences of future violence and may, therefore, deter pre-trial violence directed at the victim. The most effective method of victim protection is pre-trial detention which should be imposed for specific felonies and for violations of conditions on bail, of victim intimidation § 4954 orders, or of civil protection orders.

Some batterers are receptive to judicial referrals to drug and alcohol or batterer treatment programs during the pre-trial phase when participation is recommended by the court. However, batterers sometimes enter a treatment program in order to gain leniency at sentencing in the event that they are convicted.

Expert testimony. The general public, including jurors, harbor many misconceptions about domestic violence, and this information shapes their participation on the jury. In order to fairly weigh the evidence presented to them, jurors must be educated about the false notions which they hold as truth. Expert testimony can describe the dynamics of domestic violence and the

complexities of that experience so that the jurors have the opportunity of informing their deliberations with data acquired through scientific inquiry.

Often the defense strategy in domestic violence cases is to challenge the credibility of the victim-witness by asking --"If he was so dangerous and she was so afraid, why didn't she leave?" Even when instructed by the court that the question is not relevant and must not be considered, jurors report that it is often a pivotal question. An expert can address the question of the consistency between abject terror and remaining with the batterer. For example, they could describe the phenomenon of "separation violence" and its increased potential for lethality; thus, demonstrating it may be reasonable for a battered woman to conclude that it may sometimes be more dangerous to leave or to appear to be leaving than it is to stay and accommodate the batterer. (Mahoney, 1990; Ellis, 1987)

Sentencing. Judges have been reluctant to incarcerate batterers. Men who injure and terrorize their families have not been recognized as engaging in criminal conduct nor have they been viewed as dangerous. Despite irrefutable data to the contrary, they have not been identified as recidivists. Further, with jail overcrowding, cells have been saved for offenders committing stranger violence and property crimes. (Fagan, 1988) Batterers commit upwards of 50% of all female homicides. Seventy percent of the serious child abuse is committed by fathers or father surrogates, as is 80% of child homicides. (Bergman et al, 1986) Violence unchecked, escalates in severity. (Browne and Williams, 1987)

Sentencing should be carefully tailored to enhance victim protection. If the foremost goal of an intervention system is to protect victims, then incarceration ought to be utilized. It is the best method for denying a perpetrator access to a victim and deterring his violence. It must be acknowledged that there has been no research undertaken on the efficacy of shock detention or protracted incarceration as deterrence to recidivism of batterers. However, investigation of the merits of incarceration coupled with treatment could be undertaken by the Courts of Common Pleas in the Commonwealth.* There is no reason that batterers should be exempt from incarceration, and there may be value in short-term incarceration for some.

If a batterer is addicted to alcohol or other drugs, he will need to complete detox and inpatient treatment before he is capable of consistent non-violence. Drug and alcohol treatment for batterers should be built into conditions on probation or parole.

Restitution to victims is often neglected. Courts should award generous restitution to victims and should institute systems to assure prompt collection and distribution. (See **Victim-Witness Advocacy** above, for a delineation of potential victim restoration through restitution.)

Community service might be also be an element in a comprehensive sentence. Since most batterers represent little risk to anyone other than their family members, service at a homeless shelter, at a food bank, at the children's home, on recycling projects, on landscaping crews, at youth athletic leagues, at nursing homes, etc. might provide the batterer with a reminder of the importance of refraining from his violence and perhaps even provide him with motivation for change. It should be noted that this list does not include community service to the domestic violence program. Any community service to assist programs for battered women and children should be tailored to protect the safety and confidentiality of recipients. Community service programs should be designed in consultation with the local domestic violence program. There may be work that a domestic violence program would like to undertake through community service, but often the risks outweigh the benefits.

Finally, sentencing should expose the batterer to regular and consistent monitoring by probation or parole staff. Experience across the country has demonstrated that batterers who must report regularly, often weekly, to a probation or parole agent are less likely to recidivate during a period of probation or parole than those who are under minimal scrutiny. Thus, a system for regular reporting and monitoring should be imposed. (Pence, 1985)

Protection from abuse orders

Comprehensive relief. The Protection From Abuse Act was drafted to afford victims of domestic violence the critical relief needed to escape the physical assaults and terrorism inflicted by batterers. Commonwealth legislators recognized that it was not merely enough to enjoin the perpetrator from further abuse. Batterers should be denied access to family and household members that they abuse. Eviction of the perpetrator from the family home, prohibitions against communication with the victim, provisions limiting the batterer's geographical mobility, awards of temporary custody and support, all were incorporated to minimize batterer access. Each of these access limitations is a compliment to the other and is an essential component of a protection plan authorized by the court. With all of these carefully incorporated in protection orders, the batterer has virtually no legitimate reason for communicating with or contacting the battered woman. These provisions provide victims the best protection. (Ellis, 1987)

The Protection From Abuse Act further authorizes courts to protect victims from batterer access. It specifically directs courts not to disclose the address of domestic violence programs or of victims. When battered women apprehend that their husband/partner is desperate and may be contemplating homicide, they often seek to keep the location of their residence confidential. Courts of Common Pleas can direct that court personnel, law enforcement and school districts not disclose the address of the battered woman or children to any third party. If this confidentiality is maintained, battered women will have some additional relief against batterer access.

Post-separation violence -- that which is potentially the most life-threatening -- routinely occurs when perpetrators are exercising visitation rights. Protective measures to avert this violence can include temporary suspension of visitation, protected exchanges of children, or professionally supervised visitation.

Protection orders should not be entered against the victim/plaintiff absent a cross-petition filed by the alleged batterer, with timely service made upon the plaintiff, and a finding that the victim/plaintiff has committed acts of abuse upon the defendant. Mutual orders, restraining both parties, are virtually unenforceable and thus leave those vulnerable to abuse unprotected.

Finally, protection orders should never include language directing the plaintiff not to "entice or invite" the defendant to violate the protection order. The decision to abuse (and the decision to disobey a court order) is one exclusively made by the abuser. The victim can neither make the batterer cease or commence violence. The batterer is solely responsible for his actions. Any provision in a protection order to the contrary provides a batterer with excuses and rationale for continued violation of family members.

Instructions on enforcement. Research reveals that protection orders work best in jurisdictions where police consistently enforce protection orders and arrest for violations. (Finn & Colson, 1990) In many jurisdictions it has been useful to include specific directions to police in protection orders that they arrest a batterer upon a determination that probable cause exists to believe he/she has violated a protection order and/or committed other substantive crimes. While the

authority and mandate for arrest may be in statutes, law enforcement seems to respond more uniformly to specific directions from the judiciary to enforce protection orders. Beyond this, specific instructions notify batterers of the ramifications of violation of protection orders. When consequences are certain and swift, batterers maintain better compliance with protection orders. (Pence, 1985)

PROBATION AND PAROLE.

The role of probation and parole offices in a domestic violence intervention system has yet to be fully realized. The probation or parole officer is the person in the intervention system who may have the greatest number of contacts with the batterer for the longest time period. Therefore, it is critical that probation and parole personnel are unequivocal in their intolerance for domestic violence crimes and in support of victim safety. Work undertaken by probation and parole offices might include:

Domestic violence assessment. Since the mandate of the probation and parole office is to help those on their caseload to avoid any violation of probation or parole, every participant should be assessed for a history of domestic violence. Those probationers or parolees who use domestic violence are likely to be program failures. Those who are victims may experience obstacles to successful participation because of domestic violence. Therefore, a history of domestic violence should be explored.

Sentencing investigation. When the presenting conviction is for a domestic violence crime, sentencing investigation should gather the information about the history of domestic violence. This can probably best be acquired from the victim. Screening should also obtain information from the police or the victim regarding aggravating circumstances, including the frequency and pattern of domestic violence, any criminal record for either stranger or domestic violence, injuries sustained by this or other victims, and threats directed against victims during the pendency of prosecution. During the investigation phase, the victim impact statement should be completed and the pre-sentence investigator should explore the propriety of imposing various conditions on probation or parole to enhance victim safety. These might include excluding the offender from the marital or partnership domicile; a directive against interference with the victim's use of marital property for the duration of probation/parole; a condition directing that the perpetrator refrain from harassing his wife/partner by physical force, mail, telephone or third parties; and/or a "no-contact" order. Besides considering conditions to facilitate victim safety, the officer might consider the merits of batterer education/treatment programs and community service for the offender.

Specialized Services. A specialized program for work with batterers should be set up in each office. A protocol should be designed to facilitate the rehabilitation of batterers and the safety of battered women. Staff should be particularly trained for working with this population. For example, besides batterer education/treatment programs, offenders might be subjected to close scrutiny involving regular reporting to the probation and parole office to complete reading and written assignments on domestic violence. Periodic and unannounced home visits may improve batterer compliance. Specialized staff should be trained in dangerousness assessment and crisis telephone communication with battered women. They should know about emergency mental health commitments when someone on their caseload appears to be experiencing a mental health emergency, whether it is acute depression or homicidal ideation. Officers should

not be reluctant to involve law enforcement in responding to reports of on-going domestic violence. New charges should be filed for any substantive crime committed in violation of the conditions of probation/parole. Probation and parole officers should take care for their own safety when intervening with a batterer who is alleged to be using violence again.

Revocation. Technical and substantive probation/parole revocation should be pursued where a batterer represents a clear and present danger to his partner. Wherever possible, the perpetrator should be detained prior to the revocation hearing. If the victim is not cooperative with the revocation, probation/parole might seek to proceed through independent testimony/evidence.

Victim assistance. Partners of offenders should be fully acquainted with the benefits and limitations of probation/parole services, and staff should be prepared to give informed referrals to domestic violence programs. Each time that an officer has contact with a partner of a batterer, an assessment of dangerousness should be made. Officers should encourage battered women to continue with development of safety plans throughout the period of probation/parole. Although domestic violence programs should provide the primary services for victims, officers should be prepared to provide emergency services to assist the victim to safe shelter and advocacy services.

SYSTEMS COORDINATION.

An intervention system is experimental in nature. It needs to be tested and revamped periodically. As case and statutory law are modified, policy and procedures must be modified in agencies in the intervention system. Changes cause ripple effects throughout the system and require parallel modifications. In most effective domestic violence intervention systems there is a coordinator or manager who works to maintain the efficacy of coordinated agency intervention. Without this coordinator, research informs us that systems begin to revert to prior practices, endangering battered women. (Fagan, 1988; Berk, 1982) Typically, this coordination function has been performed by the local domestic violence program.

CONCLUSION.

We have learned that the conjoint and parallel efforts of all the components of a domestic violence intervention system are essential for justice and safety to be achieved. We are hopeful that the legal system in many communities in Pennsylvania will strategically expand efforts in the coming year to implement comprehensive intervention in domestic violence situations. The Pennsylvania Coalition Against Domestic Violence welcomes feedback from justice system participants. We are willing to provide consultation upon request. Please contact Margaret Innes of PCADV, 524 McKnight Street, Reading, PA 19601, 215/373-5697.

REFERENCES

- Bergman, A., Larson, R.N., and Mueller, B. (1986) "Changing Spectrum of Serious Child Abuse." **Pediatrics**, 77(1).
- Berk, R., Rauma, D., Loseke, D., and Berk, S.F. (1982) "Throwing the Cops Back Out: The Decline of a Local Program to Make the Criminal Justice System More Responsive to Incidents of Domestic Violence." **Social Science Research**, 11.

- Browne, A. (1987) **When Battered Women Kill**. New York: The Free Press.
- Browne, A., and Williams, K.R. (1987) "Gender-Specific Effects on Patterns of Homicide Perpetration." Paper presented at the American Psychological Association, New York.
- Campbell, J. (1990) Testimony before the House Select Committee on Domestic Violence and Sexual Abuse, House of Representatives, Commonwealth of Pennsylvania; available from PCADV, 2505 N. Front St., Harrisburg, PA 17110-1111
- Cazanave, N., and Zahn, M. (1986)"Women, Murder and Male Domination: Police Reports of Domestic Homicide in Chicago and Philadelphia." Prepared for presentation at the 1986 Annual Meeting of the American Society of Criminology, Atlanta, GA.
- Ellis, D. (1987)"Post-Separation Women Abuse: The Contribution of Lawyers as 'Barracudas,' 'Advocates,' and 'Counselors'." **International Journal of Law and Psychiatry**, 10.
- Fagan, J. (1988)"Contributions of Family Violence Research to Criminal Justice Policies on Wife Assault: Paradigms of Science and Social Control." **Violence and Victims**, Vol. 3, No. 3.
- F.B.I. (1980-89) **Uniform Crime Reports**. Washington, D.C.: U.S. Department of Justice.
- Finn, P. and Colson, S. (1990) **Civil Protection Orders: Legislation, Current Court Practice, and Enforcement**. Washington, DC: National Institute of Justice.
- Ford, D. (1990)"Indianapolis Prosecution Study." (In Process.)
- Gondolf, E.W., Muldey, E.P. and Lidz, C.W. (1989)"Differentiating the Psychiatric Response to Family Violence and Non-Family Violence." Submitted to the **International Journal of Law and Psychiatry**.
- Goolkasian, G. (1986)"Confronting Domestic Violence: The Role of Criminal Court Judges." **National Institute of Justice: Research in Brief**. Washington, D.C.: U.S. Department of Justice.
- Johnson, H. (1987)"Homicide in Canada." **Canadian Social Trends**. Ottawa: Statistics Canada.
- Langan, P.A. and Innes, C.A. (1986)"Preventing Domestic Violence Against Women." **Bureau of Justice Statistics Special Reports**. Washington, D.C.: Department of Justice.
- Pence, E. (1989) **Domestic Assault: The Law Enforcement Response**. Duluth, MN: Minnesota Program Development, Inc.
- Pence E. (1985) **The Justice System's Response to Domestic Assault Cases: A Guide for Policy Development**. Duluth, MN: Minnesota Program Development, Inc.
- Rosenbaum, A. and O'Leary, K. (1979)"Marital Violence: Characteristics of Abusive Couples." A paper presented to the American Psychological Association, New York.
- Saltzman, L.E., Mercey, J.A., Rosenberg, M.L., Elsea, W.R., Napper, G., Sikes, R.K., Waxweiler, R.J. and the collaborative working group (1990)"Magnitude and Patterns of Family and Intimate Assault in Atlanta, GA, 1984." **Violence and Victims**, 5(1).
- Sherman, L.W. and Berk, R.A. (1984)"The Specific Deterrent Effect of Arrest for Domestic Assault." **American Sociological Review**, No. 49.
- Victim Service Agency (1988) **The Law Enforcement Response to Family Violence: The Training Challenge**. New York, NY: VSA.

Barbara J. Hart, Esq.

1990

Legal Advocacy Against Domestic Violence

Presentation at the JRSA Conference on State and Local Programs; Innovative Court Programs, May 11 - 13, 1995, Portland, Oregon

Barbara J. Hart, Esq., Legal Director, PA Coalition Against Domestic Violence

I. Problem Statement

Battered women and children, seeking to escape batterers and to safeguard themselves against recurring violence, are often uninformed about community and legal resources available to facilitate a cessation of the violence and to enable them to achieve protected, independent lives. Beyond this, when battered women have evaluated their options and elected the legal remedy(s) best suited to meet their needs, they confront myriad, complex legal issues and proceedings, often without the benefit counsel, as many are resourceless. Access to the courts may be constrained and outcomes may be deficient without the benefit of advocacy. Furthermore, prosecution, court and legal services staff have not been able to meet the demand of battered women for legal intervention to end the violence; demand has increased exponentially over the last decade and it has far outstripped resources.

II. Documenting the Program

A. Goals and Objectives

The Pennsylvania Coalition Against Domestic Violence (PCADV) has engaged in advocacy on behalf of battered women and their children in the Commonwealth for almost 20 years. The Coalition is committed to advocacy as a principal strategy to improve the justice system and community institutions to assure that battered women and children achieve safety, autonomy, health, well-being, restoration and justice.

Legal advocacy, as undertaken by the 60 local domestic violence programs and the statewide organization, is broadly defined. It encompasses individual advocacy and systemic advocacy. The justice system is but one arena, albeit a critical forum, in which advocacy is provided for victims of domestic violence.

The objectives of legal advocacy are several; to assure that battered women are informed about the full array of legal options available; to assist battered women in developing safety plans; to enable timely, effective access to the justice system; to provide support and accompaniment for battered women as they proceed through the justice system; to enhance the quality of representation of victims therein; and to improve the outcomes for battered women participating in all parts of the civil and criminal justice systems.

B. Program Elements/Components and Activities in Place.

Individual and systemic advocacy occur in tandem. Advocates work with individual battered women and simultaneously work to reform and upgrade the legal system.

The work may take advocates to police departments to ask for expedited intervention to a high risk household or to ask that the police devise a system for quick response to all high risk households. The work may involve advocates seeking expanded investigation by a prosecutor into a particular crime of domestic violence, including identifying additional sources of evidence, or it may seek substantial reformation of the system of investigation and preparation of cases of domestic violence for plea-negotiations or trial. It may take advocates to bail hearings to assist a battered woman in securing protective conditions on release or it may involve asking arraignment judges to establish protocols for the routine imposition of conditions of release in domestic violence cases. It may involve transporting battered women to hearings or insisting that courts provide safe, secure waiting rooms for battered women and children. It may be familiarizing an individual woman with a courtroom or court procedure or it may be persuading the courts or the district attorney to convene a court school for all victims of violent crime or applicants for protection orders.

Advocacy often includes assistance in preparation of petitions for civil relief, in enrollment in victim notification programs, in development of victim impact and risk assessment statements, as well as in fine-tuning practice guides for court, jail and prosecution personnel who are responsible for processing the documents filed by victims. It may entail verifying that a protection order has been filed correctly in the statewide protection order registry so that enforcement can be effected should an individual batterer violate an order or it may involve legislative initiatives to establish a state-wide registry that is available 24 hours/day. It may include helping an abused woman to figure out a proposed visitation schedule and protective provisions for a custody conciliation conference or it may be educating custody conciliators on the need for risk assessment and attention to protected custodial access in the context of domestic violence.

Advocates may monitor the practice of an individual judge who has been reported to be unresponsive to the applications of domestic violence victims for protective relief and offer that judge some information about the impact of domestic violence on children or advocates may devise domestic violence bench guides for dissemination to judges.

Advocates may assist an individual battered woman in sensitizing the justice and human service systems to the dangers confronting her and the requisite interventions to safeguard her and her children; or advocates may convene a multi-disciplinary county task force of justice system personnel and social and medical providers to establish protocols and interface procedures.

Invariably, advocates assist battered women in constructing and rehearsing safety plans both to assure protected participation in the legal arena and to buttress the legal protections achieved in the courts.

At the state level, the PCADV engages in many activities for systemic reform. We are currently working with the Administrative Office of the Pennsylvania Courts to develop data systems and uniform rules to fully accommodate reforms in the civil protection order statute. We recently orchestrated a CLE seminar on the amendments with the Pennsylvania Bar Institute, the bar and bench. PCADV has taken the initiative to implement the "full faith and credit" provisions of the Violence Against Women Act; this project involves advocates in consultation with courts, court administrators, the bar and advocates across the country. PCADV undertook the first statewide project to eliminate stalking in the context of domestic violence. A pamphlet for victims, a police and prosecutor protocol, a law enforcement training curriculum, and trainings of advocates and police officers across the Commonwealth were the activities of this endeavor.

PCADV developed a legal advocacy manual, entitled *Seeking Justice: Legal Advocacy and Practice*, which has been adapted for practice in several states. PCADV provides technical assistance to attorneys, judges, court administrators, prosecutors, law enforcement and others in the justice system related to practice and policy issues. PCADV participates in impact litigation to improve justice for victims of domestic violence. It regularly advises government agencies and legislators at the state and federal levels on matters of public policy.

PCADV attempts to evaluate and intervene in any systemic practice that impinges on the safety, privacy and well-being of battered women and children. A portion of the advocacy that emerges therefrom may appear to be far afield from domestic violence services, but it is public policy that significantly impinges on battered women and children.

For example:

Several years ago, PCADV concluded that the telephone technology being offered by the industry posed great risks to the privacy and safety risks of battered women. Thus, we participated in administrative hearings and two appeals in Commonwealth courts (in which we prevailed), and have been active in deliberations at the FCC on these issues (in which we have also prevailed, enabling telephone safety and privacy for all users of interstate telephone services).

PCADV first identified insurance underwriting standards and practices that discriminated against battered women, brought this to the attention of Congress and the PA legislature, and are currently working with lawmakers, insurance commissioners and health advocates across the country to put an end to these unfair insurance practices.

PCADV became concerned that power brokers in the country were advancing one strategy for coordinated justice/community intervention against domestic violence. Staff responded by authoring two papers that reflect the variety of efficacious strategies now employed; the papers were distributed broadly, encouraging communities to carefully evaluate and adopt the strategy most appropriate for their respective communities.

PCADV recently noted that many courts were interested in undertaking domestic violence death reviews in order to identify inadequacies in justice system response to victims and perpetrators of domestic violence. We, thus, prepared a paper enumerating goals, activities and processes for conducting domestic violence death reviews.

PCADV concluded that the research community across the country was not in dialogue with the domestic violence community about research questions, ethics, agendas, analysis and dissemination of results. Thus, PCADV initiated a network among researchers and practitioners to enhance collaboration in scholarly inquiries about a broad range of issues related to domestic violence. Particular attention has been paid to evaluation research related to justice system interventions. While the network is informal, it models the collaboration envisioned and enriches the dialogue about research and its application to practice and policy-making in the field.

C. Expected Results and Performance Measures.

The ultimate expected results are justice, safety, autonomy, health, restoration and well-being for battered women and children and accountability for batterers. In the more immediate future, the intent is to provide victims of domestic violence with advocacy in the justice system and in whichever human services system or community arena it is necessary.

To assure that advocacy is informed and strategic, PCADV provides advocates at the local level with extensive training and technical assistance. A core 40 hour curriculum is in the developmental stages. A comprehensive manual on legal advocacy has been provided to every domestic violence agency in the state. Every six (6) weeks advocates throughout the state are furnished with a day of in-service training and networking. Beyond this, each year, PCADV offers a statewide two (2) day conference for advocates; members of the bar and bench collaborate in this undertaking.

Evaluation of advocacy on the local and statewide level is informal. PCADV is hoping to be able to interest researchers in investigation of the efficacy of the numerous advocacy efforts in progress. Meanwhile, the apparent merit of the work of advocates can be measured by the responsiveness of courts and other justice system personnel, as well as governmental and legislative bodies. In many communities in the Commonwealth and at the state level, domestic violence advocates are sought out as partners in efforts to end domestic violence and offer remedy in its aftermath.

III. Results and Impact

A. Implementation Problems and Successes.

Problems. The lack of resources to employ the number of advocates necessary to cover all the bases listed above has created the most significant barrier to implementation. Domestic violence programs operate on very small budgets; we provide much more for less than other human services agencies. Yet, the needs for direct services, including housing, food, transportation, childcare, clothing, counseling, etc. are monumental and increase daily. Advocacy cannot be undertaken unless these vital supportive services are in place. Many battered women cannot safely seek justice unless these fundamental services are available to create a bridge to independent living and to provide shelter and protection until legal remedies can be implemented. Funding remains insufficient.

Most advocates have no formal education in the law, in community organizing, in negotiation or in policy-making. Thus, upon employment, domestic violence programs have the not insubstantial responsibility of training advocates on the fundamentals and thereafter building essential advocacy skills. This takes time and resources that are in scarce supply.

Successes. Domestic violence programs have been able to maximize resources by retaining and developing advocates. Increased state and local funding over the course of the last 20 years has enabled an expansion in the numbers of advocates engaged in legal advocacy endeavors. PCADV has assisted by availing advocates of training, both formal and informal, by providing technical assistance on practice problems and policy-development and by brokering resources and relationships with justice system personnel. PCADV and local programs have established close working relationships with legal services offices, batterer intervention services providers, justice system personnel. We have promoted coordinated, collaborative community response for more than 15 years. These serve as models in jurisdictions or arenas which may resist embracing advocacy or making the changes requisite to the safety and well-being of battered women and children.

B. Accomplishments to Date.

See above or the annual report of PCADV and local domestic violence service programs.

C. Prospects for Replication.

Much of the structure, process and accomplishments of these advocacy initiatives can be replicated elsewhere. Essential to replication is a belief in the critical role of advocacy in the justice system. Resources must be directed to advocacy initiatives in sufficient sums. To fully and effectively accomplish that which is outlined above, two full-time legal advocates would be required in a jurisdiction with a population of 250,000. Staff development and opportunity to network with other legal advocates throughout the state are necessary. Finally, there must be a statewide training and technical assistance center to support the work of local advocates and to engage in advocacy and policy-making at the state level.

Appendices

Table of Contents, Legal Advocacy, Ethics for Advocates from *Seeking Justice*.

Copy of section from NCJFCJ's *State of the Art* profiles on model court programs related to PCADV.

Jill Davies paper on Legal Advocacy.

1994 Annual Report

Flyer from 1995 Legal Advocacy Conference

For further information, contact Jane Stuehling; Legal Advocacy Coordinator, PCADV, 524 McKnight St., Reading, PA 19601; 610/373-5697 and fax 610/373-6403.

BJH; NCJA; JRSA paper; 5/6/95

The Legal Road to Freedom

Abstract

The law is a tool that can help constrain the violence of batterers and assist battered women and children in their efforts to achieve lives free of violence. Historically, this was not the case. This paper presents a brief history of the evolving law on domestic violence. It then describes how research on domestic violence has informed legal reform. Finally, it provides an overview of current law designed to end the violence, afford battered women safeguards against future abuse, mandate restitution and offer resources for independent, violence-free living.

The search for freedom from domestic violence is often a long and arduous process and it cannot occur until battering and terrorism cease. Even then, it is obstructed unless the battered woman can achieve autonomy and self-determination. The law is a tool that can facilitate the search for safety and freedom. But, historically, the law protected perpetrators. This paper first presents a brief history of the evolving law on domestic violence. It then examines the phenomenon of domestic violence and its impact on battered women and children. Finally, it provides an overview of the legal strategies now available in most states that may put an end to the violence, afford battered women safeguards against future abuse, mandate compensation for the losses imposed by the abuse, and offer resources essential for independence and safety.

HISTORY OF LAW ON DOMESTIC VIOLENCE.

Violence against wives is a right men exercised with impunity for centuries. This prerogative of men has been articulated in the precepts of religion, philosophy and law throughout the northern hemisphere. Physical violence against wives was deemed necessary for the "well-being" of women. It was couched in terms of corrective discipline and chastisement of erring wives (Davis, 1972). A medieval Christian scholar propagated *Rules of Marriage* in the late 15th Century. These specified:

When you see your wife commit an offense, don't rush at her with insults and violent blows.... Scold her sharply, bully and terrify her. And if this doesn't work...take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body.... Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good. (Davidson, 1978, at p. 99)

British common law later embraced, but limited, the husband's authority to assault wives by adopting the "rule of thumb" which permitted a man to beat his wife with a "rod not thicker than his thumb"(Davidson, 1977).

Jurists and legislators in the United States followed in the tradition of the European clergy and lawmakers and approved the use of men's violence against their wives.

In 1824 the Mississippi Supreme Court in Bradley v. State voiced approval of the husband's role as disciplinarian and stated its belief that the law should not disturb that role: Let the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehaviour, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned. *Bradley v. State*, 1 Miss. 156 (1824) (U.S. Commission on Civil Rights, 1982)

Not until 1871 did a court in this country rescind the legal right of men to beat their wives.

The privilege, ancient though it be, to beat [one's wife] with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law.... [I]n person, the wife is entitled to the same protection of the law that the husband can invoke for himself.... All stand upon the same footing before the law "as citizens of Alabama, possessing equal civil and political rights and public privileges." *Fulgham v. State*, 46 Ala. 146-47 (1871) (U.S. Commission on Civil Rights, 1982)

But the highest court of another state subsequently disagreed and endorsed a limited right of violence against wives:

If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive. *State v. Oliver*, 70 N.C. 60, 61-62 (1874) (U.S. Commission on Civil Rights, 1982)

In 1882, Maryland was the first state to pass law that made wife-beating a crime, punishable by 40 lashes or a year in jail (Davidson, 1977). Nonetheless, over the course of the ensuing century, men's use of violence went basically unfettered. Although technically no jurisdiction in this country now permits a husband to strike his wife or a man to assault his partner (U.S.

Commission on Civil Rights, 1982), the reality is that men still use violence against wives without fear of reprisal in many jurisdictions.

ISSUES ADDRESSED IN RECENT LEGAL REFORM.

It was not until the late 1970's that the law started to become an ally of battered women. The women's liberation movement of the late '60's birthed women's support centers and telephone crisis lines. Battered women quickly responded, identified their plight and sought assistance. Women's advocates and attorneys heard stories of domestic terrorism that had been unspoken (Schechter, 1982). The secret about violence against women in intimate relationships covered domestic brutality of astounding proportions. Advocates, lawyers and legislators began to look for legal solutions based in the experience of battered women; not based in common misconceptions about women's masochism, men's passion or marital dysfunction.

The task of fashioning statutory law to confront domestic violence and to sustain its victims has not been an easy one. The web of control and terror woven by batterers is not readily unraveled. It is complex and pervasive. Those crafting domestic violence law in the last two decades have recognized that the law must address several critical issues to provide effective relief. Some of these pivotal issues include:

Batterers use violence as a tool to achieve power and control over their partners and children (Bowker et al., 1988; Hart, 1988; Ellis, 1987; Pence & Paymar, 1986; Schechter, 1982; Dobash & Dobash, 1979).

Batterers believe they are entitled to the obedience, services, loyalty, and the exclusive intimacy of battered women. They fancy themselves entitled to the control of their mates and have learned they will not suffer adverse consequences if they employ violence as a tactic to achieve or sustain power over their female partners; most batterers view the subservience of women as right and good - in effect, normal (Hart, 1988; Pence & Paymar, 1986; Dobash & Dobash, 1983; Rich, 1979). The wife who disagrees with her battering husband or fails to defer to his preferences risks retaliatory violence (Adams, 1988; Ptacek, 1988; Dobash & Dobash, 1983). (Hart, 1990, p. 319)

The risk of violent assaults on battered women increases when a woman challenges the batterer's control over her, when she takes action on her own behalf that may set back his interests, and when she acts in a way that clearly advises him that she contemplates a future life without him (Ellis, 1987).

Batterers often increase the severity of violence toward partners at the time of separation. Many people, including clinicians, believe that battered women will be safe once they separate from the batterer. They also believe that women are free to leave abusers at any time. However, leaving does not usually put an end to the violence. Batterers may, in fact, escalate their violence to coerce a battered woman into "reconciliation" or to retaliate for the battered woman's abandonment of the batterer. Men, who believe they are entitled to an ongoing relationship with their partners, or that they "own" them, view their partners' departure as ultimate betrayal which justifies retaliation (Saunders & Browne, 1990; Dutton, 1988; Bernard et al., 1982).

Evidence of the gravity of separation violence is overwhelming. Up to 3/4 of domestic assaults reported to law enforcement agencies may be inflicted after separation of the couple (U.S. Dept. of Justice, 1983). One study revealed that 73% of the battered women seeking emergency

medical services sustained injuries after leaving the batterer (Stark et al., 1981). Women are most likely to be murdered when attempting to report abuse or to leave an abusive relationship (Sonkin et al., 1985; Browne, 1987).

Because leaving may be dangerous does not mean that the battered woman should stay or is safer remaining with the batterer. Cohabiting with the batterer is highly dangerous since violence usually increases in frequency and severity over time and as a batterer may engage in preemptive strikes, fearing abandonment or anticipating separation even before the battered woman reaches such a decision (Hart, 1990; Browne, 1987; Walker, 1984). Many batterers who kill their female partners acknowledge that they did so because the woman stated that she no longer loved or trusted the violent partner (Hart, 1991a). Although leaving may pose additional hazards, ultimately a battered woman may best achieve safety and freedom apart from the batterer (Bowker, 1983).

Men who batter their wives/partners often endanger and abuse their children. Most children of battered women witness the violence of their fathers against their mothers, and some experience symptoms equivalent to those of children who have, themselves, been severely abused (Pagelow, 1989).

Those boys who witness their fathers' abuse of their mothers are more likely to inflict severe violence against intimates as adults than those who grow up in homes free of abuse (Hotaling & Sugarman, 1986). Data suggest that girls who witness maternal abuse may tolerate abuse as adults more than girls who do not (Hotaling & Sugarman, 1986).

Between 50% and 70% of the men who batter their wives also abuse their children (Pagelow, 1989; Walker, 1982). Severe child abuse usually occurs in the context of domestic violence, and the onset of child abuse usually post-dates abuse of the mother (Stark & Flitcraft, 1985). The more grievous the abuse of the mother, the greater the likelihood that child abuse will be severe (Bowker, Arbitell & McFerron, 1988).

Abuse of children by batterers may be more likely when the marriage is dissolving, the couple has separated, and the husband and father is highly committed to continued dominance and control of the mother and children (Bowker, Arbitell & McFerron, 1988). Since...abuse by husbands and fathers is instrumental, directed at subjugating, controlling and isolating, when a woman has separated from her batterer and is seeking to establish autonomy and independence from him, his struggle to... dominate her may increase and he may turn to abuse and subjugation of the children as a tactic of... control of their mother (Stark & Flitcraft, 1988; Bowker, Arbitell & McFerron, 1988). (Hart, 1990, p. 322)

Battering men also use custodial interference as a tool to terrorize battered women or to retaliate for terminating the relationship (Hart, 1990). About 40.4 children are abducted by a parent each *hour* in this country. About half of the abductions are short-term manipulations around custody orders, but the other half involve concealing the whereabouts of the child for longer periods of time or taking the child out of state (Finkelhor, Hotaling & Sedlak, 1990).

Intervention to stop the violence and safeguard victims can enable children from violent homes to avoid these risks and achieve non-abusive adult relationships (Browne, 1991; Jaffe et al., 1990).

Battered women and their dependent children are often economically compelled back into relationship with batterers. Women and children suffer substantial economic loss upon separation and divorce in this country. One study discovered that the standard of living of women

plunged 73% after divorce while that of divorcing men increased by 42% in the same time-frame (Weitzman, 1985). Many women who establish households independent of battering husbands/partners find themselves in poverty. The number of female-headed households living below the poverty line has nearly doubled since 1970. Two out of three adults living in poverty are women. A recent Philadelphia study discovered that 1/3 of all children are living below the poverty level, and for black children, the poverty rate is a staggering 60% (Henninger, 1986).

In 1987, only 42.8% of all fathers ordered to pay child support fully complied with the court orders, while 21.4% made partial payment and 35.7% paid nothing. The average award was only \$2,710/year/family (Bureau of Census, 1987). The 1986 Philadelphia divorce study found that men who batter are less likely to pay support than men who do not use violence towards their intimates (45% as compared to 76%), and batterers are less likely to fully comply with child support orders (28.3% as compared to 49%) (Kurz & Coughney, 1989).

Economic viability appears to be a critical factor in the decision-making of battered women considering separation from the batterer (Aguirre, 1985; Strube & Barbour, 1983). The most likely predictor of whether a battered woman will permanently separate from her abuser is whether she has the economic resources to survive without him (Gondolf, 1988; Okun, 1986). Three critical ingredients of economic independence for battered women include income from a source other than the batterer, adequate transportation and sufficient childcare arrangements (Gondolf, 1988).

Domestic violence is costly, as are its remedies. Former Surgeon General Everett Koop identified violence against women by their partners as the number one health problem for women in the United States. Domestic violence causes more injuries to women than automobile accidents, muggings, and rapes combined (Koop, 1989). The severity of injuries sustained in domestic violence assaults is significantly greater than that sustained in stranger assaults (Finesmith, 1983). "Injuries inflicted in domestic violence incidents are as serious as, or more serious than, injuries inflicted in 90% of all violent felonies" (Attorney General's Family Violence Task Force, 1989). More than \$50 million is paid in medical costs related to abuse of intimate adult partners in the U.S. each year. Yet, the emotional and psychological abuse inflicted by batterers may be even more costly than the physical injuries (Straus, 1987).

Batterers universally destroy family property: telephones, televisions, cars, walls, children's favorite toys, and the clothing of battered women are frequently targeted by the batterer (Ganley, 1981; Fortune, 1981). The financial cost of this destruction is substantial and although national data are not available, battered women seeking shelter in domestic violence programs report that the losses sustained through batterer property destruction prior to separation average \$10,000 per perpetrator (Hart, 1991b).

Battered women's service providers report that the costs of relocation for battered women displaced by domestic violence is a minimum of \$5,000 per relocation (Hart, 1991b).

The adverse consequences of domestic violence must be substantial for perpetrators to cease their acts of terrorism. Research demonstrates that men stop battering women partners to the extent that they perceive that penalties for further violence will be both certain and severe (Carmody & Williams, 1987; Jaffe, 1986). It appears that most batterers engage in a cost/benefit analysis in electing to continue or terminate their violent assaults on wives or women partners. In those jurisdictions where the courts and the criminal justice system respond to domestic violence as serious criminal conduct and impose sanctions accordingly the cost/

benefit balance tips in favor of desistance (Hart, 1990a; Attorney General's Family Violence Task Force, 1989).

A leading study demonstrates that where police arrest perpetrators of domestic violence rather than separating the couple or mediating between the victim and offender, the arrested perpetrators are significantly less likely to recidivate within six months than those offenders with whom the police conciliate or take no action (Sherman & Berk, 1984).

Preliminary data suggest that court-mandated treatment following arrest and prosecution for domestic assaults may substantially contribute to the reduction in severe violence by batterers (Dutton, 1986; Jaffe, et al., 1986). Those completing court-mandated treatment appear less likely to recidivate than those terminating before completion (Edelson & Grusznski, 1988).

All of the above is relatively new knowledge, gleaned from the experiences of battered women, practitioners and research inquiries. Much of it differs sharply from strongly held cultural beliefs about marital relationships and about the experience of adults and children in families. It suggests a need for reformulating strategies, both legal and clinical, for intervention in domestic violence. Collectively, it gave clear direction to those setting about the task of legal reform.

RECENT DEVELOPMENTS IN THE LAW.

Hearing from divorcing women that they were not able to escape the violence even after separation -- that women were literally hostages of violent husbands -- and that current law failed to protect them from the abuse and actually impeded escape from batterers, legal services attorneys and advocates began in 1975 to fashion statutory law to remedy the problems arising from domestic violence (Fields, 1978). Drafters early recognized that statutory relief would fail to serve battered women if it merely punished batterers for their violence rather than seeking to prevent future violence and to safeguard victims (Finn & Colson, 1990). Testimony offered before legislators and public policy-makers demonstrated that batterers are resistant to change -- unwilling to stop coercive violence, to relinquish the stranglehold of control they exert over the lives of their partners, to allow battered women to establish safe and independent households, and to undertake cooperative and non-abusive parenting (U.S. Commission on Civil Rights, 1982). As a consequence, the legislatures in most states have undertaken comprehensive statutory revision about civil and criminal law to put an end to intimate violence and to enhance the recovery of its survivors. The most effective legislative initiatives forged over the last sixteen years are:

Civil protection orders. The grandmother of domestic violence law is the civil protection order. First adopted in 1976, within thirteen years all 50 states and the District of Columbia passed similar legislation. Initially, in most statutes only married people or individuals living in a committed relationship were eligible to petition for relief. But now in most jurisdictions the class of eligible victims is much broader; including the victim who is divorced, who is a current or former family or household member of the perpetrator, who is related by blood or marriage to the batterer, who is the parent of a child of the abuser, and someone who has been sexually or otherwise intimate with the abuse. Gay and lesbian people in intimate relationships are eligible for relief in about half of the states (Finn & Colson, 1990).

All the statutes authorize relief where the adult partner has been abused. More than half also permit an adult household member to seek an order on behalf of a child who alone is the target

of abuse (Finn & Colson, 1990). Abuse is usually defined as physical assault, threatened or attempted physical assault or acts of physical menace that instill fear of or risk serious bodily injury. In over half of the states abuse also includes sexual assault of the battered adult, and almost as many states define abuse to include the sexual assault of children. False imprisonment, burglary and property destruction are contained within the scope of abuse in several states (Finn & Colson, 1990).

Statutes permit broad relief. Most include restraining orders, eviction of the perpetrator from the residence of the abused, no-contact or stay-away mandates, child and spousal support awards, child custody provisions, counseling and attorney's fees and other costs. Some statutes also provide for relocation costs, restitution, mandated counseling of perpetrators and orders enjoining the abuser from disposing of the property of the abused or the couple (Finn & Colson, 1990).

Most state statutes provide that only the perpetrator can be compelled to action or restrained by the protection order. Thus, counseling, drug and alcohol treatment or other rehabilitation mandates are directed at abusers. Legislators were intentional in this limitation; they recognized that abusers are solely responsible for the violence and that battered persons should not be subject to penalties for failure to comply with the course of treatment prescribed by the judiciary (Herrell & Hofford, 1990, at p. 25; Finn & Colson, 1990).

In half the states the maximum duration of a protection order is one year. California permits orders for three years while Indiana for only five days, and there is substantial variability in the remaining states (Finn & Colson, 1990).

Civil protection orders may be the most immediate and accessible relief available to victims of crime. In almost half the states victims have access to the courts around the clock. In California, the police can obtain a protection order on behalf of the victim by telephone. Immediate relief can be awarded upon the filing of the petition in all jurisdictions. In half the states there are no filing fees and in the rest the fees may be waived for indigent victims. In almost two thirds of the states a victim need not be represented by an attorney and applicants can obtain assistance from the court in completing petitions (Finn & Colson, 1990).

Civil protection orders can be effective in eliminating or reducing domestic violence when orders are properly issued and enforced. The utility of protection orders seems to depend both on the specificity of the relief ordered and the enforcement practices of the police and the courts. Providing precise conditions of relief makes the offender aware of the specific behavior prohibited. "*A high degree of specificity* also makes it easier for police officers and other judges to determine later whether the (perpetrator) has violated the order" (Finn & Colson, 1990, at p. 2). For orders to be effective, they must be comprehensive; courts should tailor comprehensive relief to the particular safety needs of the victim in each case (Herrell & Hofford, 1990). Legal and personal safety are advanced when battered women can acquire protection orders that confront the coercive controls in violence imposed by batterers, afford battered women and children safe housing and economic support, and exact swift and certain penalties for violation of any provision.

Domestic violence arrest statutes. Police have historically had the right to make a warrantless arrest of any suspect they believe has committed a felony even though the police do not observe the commission of the crime (Goolkasian, 1986). While police in most jurisdictions also have had the power to make a warrantless arrest when they witness a misdemeanor, in some states a warrant had to be obtained if the misdemeanor did not occur in the presence of the officer. This has changed dramatically in the past ten years; now state statutes enable police to arrest

without a warrant absent observation in specific domestic violence misdemeanors, and in 15 states the codes *require* police to make an arrest when they determine a domestic violence crime has been committed (Zorza, 1991; Lerman & Livingston, 1983). Statutes in at least 25 states permit police to make a warrantless arrest if they determine that a civil protection order has been violated. Codes of another 13 states *require* police to make an arrest where they determine that the perpetrator has violated a civil protection order (Finn & Colson, 1990).

The advantages of warrantless arrests are several. It is easier to take a suspect into custody at the scene than to locate him after obtaining a warrant from the court. Police are more likely to initiate prosecution if they can arrest at the time they respond to the domestic violence call; thus, the perpetrator may be introduced into the criminal justice system earlier and begin the process of desistance before victims are irreparably harmed and perpetrators firmly committed to domestic violence. Offenders more often admit their culpability in the immediacy of an arrest at the scene of the crime. Victims are better protected by prompt arrest, arraignment, and the imposition of special bail conditions or criminal protective orders (Hart, et al., 1990).

Most domestic crimes involving injury should be classified as felonies since injuries produced by domestic violence are as serious as those inflicted in 90% of all violent felonies (Attorney General's Family Violence Task Force of Pennsylvania, 1989; Goolkasian, 1986). Nonetheless, police still identify most domestic violence assaults as misdemeanors. Thus, the expansion of arrest authority to include domestic violence crimes has given law enforcement a powerful tool for domestic violence intervention in situations in which they previously concluded (erroneously or otherwise) that they had no authority to act.

Once a police officer concludes that there is probable cause to believe that a domestic violence crime has been committed, the officer should effect an arrest. No state statute permits victims or perpetrators to compel or restrain an officer in his decision about arrest. Clinicians may find it appropriate to advise clients, whether survivors or perpetrators, of the fact that they cannot exercise control over this decision in most jurisdictions.

Litigation in the last ten years has exerted additional pressure on law enforcement to act diligently to protect the victims of domestic violence. Several police departments across the country that failed to protect battered women have been found liable and have had large damages assessed against them (Carrington, 1989).

Domestic violence custody statutes. A majority of the states have adopted statutes requiring courts to consider domestic violence as a factor in custody and visitation determinations. In Washington State if the court concludes that a parent has engaged in child abuse or domestic violence, it is precluded from awarding joint legal custody and it may limit unsupervised residential time of the offending parent with the child. In Arizona, North Dakota, Oklahoma and Wyoming, domestic violence is presumed to be contrary to the best interests of the children and any award of visitation must be designed to best protect the child and the abused parent from further harm. In California, the courts must consider awards of supervised visitation when there is a finding of domestic violence. In Pennsylvania, Montana and Minnesota statutes provide that if a parent is convicted of certain enumerated violent crimes, the court must find that the offending parent does not pose a threat of harm to the child or that it is in the best interests of the child before making an award of custody or visitation to the offending parent. The Pennsylvania custody statute requires the court to take testimony about specialized domestic violence counseling received by the offending parent and about any continuing risk of harm to the child before issuing

any order of custody to a parent convicted of specific enumerated crimes. The California Code specifies that both parents and the child may be required to participate in counseling when there is a custody dispute but that the counseling of the parent should be separate and at separate times if the abused person so requests.

Prior to the adoption of these provisions, custody judges routinely concluded that the abuse of a parent by the other was irrelevant in custody proceedings; that violence toward a spouse/partner had nothing to do with one's ability to adequately parent (New York Task Force on Women in the Courts, 1987).

Some civil protection order statutes direct courts to craft specific provisions in temporary custody awards to safeguard the battered adult and children. As a consequence, advocates for battered women have begun to engage in safety planning with battered women and children to identify the special needs of abused adults and children when the abuser is allowed custodial access (Hart, 1991c). The safety planning process coupled with the court's approval of the safety conditions recommended by the child have provided essential safeguards and have been great sources of empowerment of children.

Mandatory custody mediation. Data from the National Center for State Courts reveal that only a handful of states mandate custody mediation by statute. In about one-third of the states, various judicial districts mandate custody mediation by local court rule (Myers, et al., 1988). In several states, mediation of custody disputes may not be compelled by the courts in the context of domestic violence.

Feminist scholars and advocates for battered women strongly oppose the imposition of mediation in the resolution of custody disputes (Lefcourt, 1989; Bruch, 1988). The only research that squarely addresses the question of whether victims are better protected from future violence by adversarial rather than mediation divorce processes demonstrates that battering men inflict less post-separation violence if the divorce proceedings are based in advocacy rather than in conciliation (Ellis, 1987, 1989; Ellis & Wight-Peasley, 1986).

The process of mediation requires cooperation, honest communication, equivalent power, similar investment in the outcomes, voluntary participation, and an environment of safety. No matter how skillful the mediator, batterers cannot be quickly transformed so that the mediation process can proceed with integrity (Pagelow, 1990; Hart, 1990). Custody mediation is not a legal tool that enhances custody outcomes for battered women and children (Bruch, 1988; Sun & Thomas, 1987).

Expert testimony on the experience of battered women. Many appellate courts across the country have generated case law that permits the defense to offer expert testimony on the perceptions, beliefs and experiences of battered women defendants in criminal trials where battered women are charged with killing or assaulting their battering partners. A handful of state legislatures have revised state codes to affirmatively permit this expert testimony. Courts have been receptive to expert testimony by forensic specialists, clinicians, and, to a lesser extent, by battered women's advocates.

Law reform in this area has been partially a consequence of judicial education about the counter-intuitive realities of domestic violence. Appellate courts in a significant number of states have concluded that jurors and judges both harbor misconceptions about battering; often they hold strong beliefs that blame victims and exonerate batterers. The judiciary has concluded that

if these critical actors in the justice system are not cognizant of the terror imposed and manipulated by batterers, they cannot fairly evaluate the evidence presented at trial without assistance from an expert witness.

The governors of Ohio and Maryland recently granted clemency to battered women who were convicted without the benefit of adequate information about the phenomenon of domestic violence and the impact of batterer violence upon the battered woman defendant. In its last session, the legislature in Texas passed a resolution that requires a review of all the sentences of incarcerated persons who were victims of domestic violence.

Victim rights statutes. Since 1965 crime victim reform measures have become an important part of legislative activity in most states. Seventy-four new victim rights statutes were enacted across the country from 1981 through the first quarter of 1983 (Hudson, 1984). This paper cannot describe all of these victim protective initiatives. Those which have been most helpful to battered women include:

Victim Confidentiality Statutes. The Victims of Crime Act of 1984 (VOCA) prohibits recipients of VOCA grants from disclosing any information about any victim of crime served without the consent of the victim (42 U.S.C. § 10604(d)). More than a third of the states have enacted even broader privilege provisions providing for confidential communications between battered women and counselors in domestic violence programs. Some statutes specify that communications which occur within counseling groups in domestic violence centers are, likewise, covered by the privilege (Post, 1991; Marks, 1986). Several states have adopted statutes that provide for the confidentiality of the addresses of both domestic violence programs and of battered women who are seeking to reside at undisclosed locations (Marks, 1986). Beyond this, in California the legislature recently adopted a statute that provides similar protection to the communications between crime victims and victim/witness advocates (10.35 and 10.37 California Evidence Code). The communications privilege accorded battered women in domestic violence programs is not applicable to clinicians working with survivors in other arenas. Many states have adopted clinical privileges for psychologists and psychiatrists, and a lesser number have enacted social worker privilege statutes (Post, 1991; Marks, 1986).

Police Notification Laws. Law enforcement officers in many states are now required by statute to inform battered adults of the availability of civil and criminal protection orders, of crime victims compensation, and of domestic violence services. (See, FL. Statutes, 1987 S. 960.001; 18 Pa.C.S. § 2711)

Victim Impact Statements. Victims may submit victim impact statements to the court supporting or opposing proposed plea bargains in many jurisdictions (Hudson, 1984). Victims also have the right to submit impact statements in the sentencing phase of criminal matters, including hearings on the death penalty (*Payne v. Tennessee*, U.S. _____, June, 1991). In many states victims can provide either a statement or testimony before parole boards on the question of discharge from incarceration.

Victim Intimidation Statutes. Many states have adopted legislation to protect victims and witnesses during the pendency of criminal matters. These statutes are often called victim intimidation laws, criminal protective order statutes or criminal stay-away provisions. These orders may be issued against the defendant or any other person who attempts to interfere with a victim or a witness' participation in any stage of a criminal matter.

Research demonstrates the effectiveness of victim intimidation protective orders issued in pre-trial criminal proceedings (Goolkasian, 1986). Although these orders are typically not as broad as the civil protection order, they do usually require the defendant to stay away from the victim or witness and to refrain from any harassment or intimidation. Battered women are generally more cooperative with prosecution when they do not have to live with the defendant prior to trial. The reluctance of a battered woman to participate in the prosecution process may be reduced when she is free from the threats of her partner or those of his family and friends, attempting to dissuade her from testifying, or cooperating with prosecution.

Crime Victim Compensation. In 1988 Congress amended the Victims of Crime Act, requiring state victim compensation programs to make awards to victims of domestic violence. States no longer may deny compensation to a battered woman because of her familial relationship to the offender or because she is sharing a residence with him; the exception to this rule is made where it appears that the offender would reap unjust enrichment as a result of an award.

Most statutes permit recovery for medical and treatment costs resulting from injuries inflicted in the commission of the crime against the victim. Most also pay for loss of earnings when a victim is injured by the crime. Many compensate for replacement services, such as housekeeping and transportation, and most permit recoupment of attorneys fees. Few provide for property recovery.

However, for victims of crime to be eligible, they must report the crime promptly and thereafter cooperate with prosecution. The offender need not be convicted of a crime for the victim to be eligible for compensation (NOVA, 1987). Crime victims compensation awards are usually grants of "last resort." Thus, the crime victim must first look to health and disability insurance for restitution, and funds acquired through litigation may be attached in most jurisdictions for reimbursement of the compensation fund up to the total amount of their award.

Notice of Discharge of Offender. Homicides committed by incarcerated offenders on furlough from correctional institutions in recent years have stimulated legislative activity to assure that victims of crimes have notice that the criminal is no longer in custody. Although definitive research on the rate of violent recidivism by batterers toward partners and family or household members after release from incarceration has not been undertaken, the experience of professionals in the domestic field is that batterers are at high risk of directing post-incarceration violence at partners and children and any persons protecting them (Hart, 1991a). These new statutes require that victims be notified of the offender's discharge from custody at any time from pre-trial release to parole or escape. Few legislatures have adopted this legislation to date.

LAW REFORM IMPLEMENTATION.

The law relating to domestic violence has changed profoundly in the last fifteen years. In every state in the District of Columbia, battered adults can now seek civil protection orders to constrain the violence of abusers. In most states the police may make a warrantless arrest for misdemeanor crimes involving domestic violence. Custody statutes have been modified in about half the states to require courts to consider domestic violence in fashioning awards of visitation or custody. Several state codes now exempt the victims of domestic violence and child abuse from compulsory divorce and custody mediation. Many states, whether by case law or statute, now permit explicit expert and lay testimony on the history of domestic violence and its impact on the battered woman in criminal trials where battered women claim self-defense, duress or

necessity. Governors have begun to address the clemency requests of battered women. In virtually all states, statutes and local rules of court afford victims an array of rights and remedies that enhance victim safety and economic recovery.

Nonetheless, battered women sometimes find that the law may not be an effective tool in the search for safety and independence. The law is an imperfect tool; imperfect because of the social and cultural context in which it is embedded. It works best when all the other systems are collaborating in a concerted effort to end domestic violence. Legal strategies collapse if the consciousness of the community is not aligned against violence, if emergency services and housing are not available to battered women and children, if human service institutions are not cognizant of domestic violence and are not employing strategies to safeguard victims and hold batterers accountable, and if the family and friends of the battered woman and the batterer do not reject violence as an option in intimate relationships and offer support for safety and change. Legal safeguards work best where society embraces practices compatible with the remedies articulated in the law.

But beyond this, the law is imperfect because the application of statutory and case law may be uneven. Courts, prosecutors, police, parole boards and crime victim compensation boards all exercise a great deal of discretion in implementation of the law. Budgets are tight and priorities are often assigned elsewhere. Prestige is not typically accorded those practicing family law or protecting women and children. Backlash against the legal gains of women and children is now being orchestrated by fathers' rights groups and batterers. As a consequence, battered women in some communities may not find the legal relief and safeguards they need.

To counter any erosion of legal protections for battered women and children, professionals across the country are collaborating to make certain that legal results comport with the safeguards anticipated by law reform efforts. Many communities have developed multi-disciplinary task forces to enhance coordinated justice system intervention against domestic violence. Clinicians are active participants in many of these policy-making bodies. Battered women's programs often employ legal advocate specialists who work with the justice system, while simultaneously facilitating legal reform.

The law can be a useful tool for battered women and children seeking safety and independence. As statutory law expands and as justice system practices are tailored to afford battered women ready access to the courts, legal possibilities can become realities for battered women and children (Herrell & Hofford, 1991; Finn & Colson, 1990; Goolkasian, 1986).

REFERENCES

- Adams, D. (1988). Treatment Models of Men Who Batter: A Pro-Feminist Analysis. In K. Yllo & M. Bograd (Eds.), *Feminist Perspectives on Wife Abuse*. Newbury Park, CA: Sage.
- Aguirre, B.E. (1985). Why Do They Return? Abused Wives in Shelters. *Social Work, 30*, 350-354.
- Attorney General's Family Violence Task Force of Pennsylvania, (1989). *Domestic Violence: A Model Protocol for Police Response*. Harrisburg, PA: Office of the Attorney General, January, 1989.
- Bernard, G. W., Vera, H., Vera, M. I., & Newman, G. (1982). Till Death Do Us Part: A Study of Spouse Murder. *Bulletin of the American Academy of Psychiatry and the Law, 10*.

- Bowker, L.H., Arbitell, M., & McFerron, J. R. (1988). On the Relationship Between Wife Beating and Child Abuse. In K. Yllo and M. Bograd (Eds.), *Perspectives on Wife Abuse*. Newbury Park, CA: Sage.
- Bowker, L. (1983). *Beating Wife-Beating*. Lexington, MA: T. C. Heath.
- Browne, A. (1991). Testimony before the Senate Sub-Committee on Children, Family, Drugs and Alcoholism, July 9, 1991.
- Browne, A. (1987). *When Battered Women Kill*. New York: Free Press.
- Bruch, C.S. (1988). And How Are the Children? The Effects of Ideology and Mediation on Child Custody Law and Children's Well-Being in the United States. *International Journal of Law and the Family*, 2 (1).
- Bureau of Census, Dept. of Commerce (1987). Child Support and Alimony: 1987. *Current Population Report, Special Studies Series, P-23, No. 167, 1*.
- Carmody, D.C. & Williams, K.R. (1987). Wife Assault and Perceptions of Sanctions. *Violence and Victims*, 2.
- Carrington, F. (1989). Avoiding Liability for Police Failure to Protect, *Police Chief*, September, 1989.
- Davidson, T. (1978). *Conjugal Crime*. New York: Hawthorn Books.
- Davidson, T. (1977). Wife Beating: A Recurring Phenomenon Throughout History. In Maria Roy (Ed.), *Battered Women: A Psychological Study of Domestic Violence*. New York: Nostrand Reinhold.
- Davis, E. G. (1972). *The First Sex*. Baltimore: Penguin Books.
- Dobash, R. E. & Dobash, R. P. (1983). Unmasking the Provocation Excuse. *Aegis*, 37, 67-68.
- Dobash, R. E. & Dobash, R. P. (1979). *Violence Against Wives*. New York: Free Press.
- Dutton, D. G. (1988). *The Domestic Assault of Women: Psychological and Criminal Justice Perspective*. Boston: Allyn & Bacon.
- Dutton, D. G. (1986). The Outcome of Court-mandated Treatment for Wife Assault: A Quasi-experimental Evaluation. *Violence and Victims*, 1 (3).
- Edelson, J. & Grusznski, R. (1988). Treating Men Who Batter: Four Years of Outcome Data from the Domestic Abuse Project. *Journal of Social Service Research*, 12.
- Ellis, D. (1989). Marital Conflict Mediation and Postseparation Wife Abuse. *Law and Inequality*, 8.
- Ellis, D. (1987). Post-separation Woman Abuse: The Contribution of Lawyers as "Barracudas", "Advocates" and "Counselors." *International Journal of Law and Psychiatry*, 10.
- Ellis, D. & Wight-Peasley, L. (1986). Wife Abuse Among Separated Women: The Impact of Lawyering Styles. Paper presented at the meeting of the International Association for the Study of Aggression, Chicago.

- Fields, M. (1978). Statement to the U.S. Commission on Civil Rights. *Battered Women: Issues of Public Policy*. Washington, DC: U.S. Commission on Civil Rights.
- Finkelhor, D., Hotaling, G., & Sedlak, A. (1990). *Missing, Abducted, Runaway, and Thrownaway Children in America*. National Incidence Study. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- Finesmith (1983). Police Response to Battered Women: A Critique and Proposal for Reform. *14 Seton Hall L. Rev. 74*, Winter, 1983, note 6, at 76.
- Finn, P. and Colson, S. (1990). Civil Protection Orders: Legislation, Current Court Practice, and Enforcement. *Issues and Practices in Criminal Justice*. Washington, DC: National Institute of Justice.
- Fortune, M. (1981). *Family Violence: A Workshop Manual for Clergy and Other Service Providers, Domestic Violence Monograph Series, 6*. Rockville, MD: National Clearinghouse on Domestic Violence.
- Ganley, A. (1981). Court-Mandated Counseling for Men Who Batter: A Three-Day Workshop for Mental Health Professionals. Washington, DC: Center for Woman Policy Studies.
- Gondolf, E.W. (1988). *Battered Women as Survivors: An Alternative to Treating Learned Helplessness*. MA: Lexington Books.
- Goolkasian, G. A. (1986). *Confronting Domestic Violence: A Guide for Criminal Justice Agencies*. Washington, DC: U.S. Dept. of Justice, National Institute of Justice.
- Hart, B., Stubbling, E. & Stuehling, J. (1991). *Confronting Domestic Violence: Effective Police Response*. Harrisburg, PA: PCADV.
- Hart, B. (1991a). Clippings Research on Domestic Homicide in Pennsylvania, 1990-91. Harrisburg, PA: PCADV (in process).
- Hart, B. (1991b). Costs of Domestic Violence. Harrisburg, PA: PCADV (in process).
- Hart, B. (1991c). Safety Planning for Children: Strategizing for Unsupervised Visits With Batterers. *Battering and Addiction: Consciousness-Raising for Battered Women and Advocates*. Harrisburg, PA: PCADV.
- Hart, B. (1990). Gentle Jeopardy. *Mediation Quarterly*, 7:4, 324.
- Hart, B. (1990a). *Violent No More: Intervention Against Wife Abuse in Ohio*. Ohio Domestic Violence Network.
- Hart, B. (1988). *Safety for Women: Monitoring Batterers Programs*. Harrisburg, PA: PCADV.
- Heninger, T. (1986). The American Family. *Harrisburg Area Women's News*. Harrisburg, PA: The Women's Center, March, 1986.
- Herrell, S. B. & Hofford, M. (1991). *Family Violence: Improving Court Practice*. Reno, NV: National Council of Juvenile and Family Court Judges.
- Hotaling, G. T. & Sugarman, D. B. (1986). An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge. *Violence and Victims*, 1.

- Hudson, P. S. (1984). The Crime Victim and the Criminal Justice System: Time For a Change. *Pepperdine Law Review*, Vol. 11.
- Jaffe, P., Wolfe, D.W., & Wilson, S. (1990). *Children of Battered Women: Issues in Child Development and Intervention Planning*. Newbury Park, CA: Sage.
- Jaffe, P., Wolfe, D.W., Telford, A. and Austin, G. (1986). The Impact of Police Charges in Incidents of Wife Abuse. *Journal of Family Violence*, 1, (1).
- Koop, E. (1989). Comments to the American College of Obstetricians and Gynecologists, January 3, 1989.
- Kurz, D., & Coughy, K. (1989). The Effects of Marital Violence on the Divorce Process. Paper presented at the American Sociological Association Meeting, August 9, 1989.
- Lefcourt, C. (1989). Mediation. *Women and the Law*. New York: Clark Boardman.
- Lerman, L. G. & Livingston, F. (1983). State Legislation on Domestic Violence. *Response*, 6, September/October.
- Marks, L. (1986). *Protecting Confidentiality: A Legal Manual for Battered Women's Programs*. New York: National Center on Women and Family Law.
- Myers, S., Gelles, G., Hanson, R. & Keilitz, S. (1988). Divorce Mediation in the States: Institutionalization, Use and Assessment. *State Court Journal*, Fall, 1988, Vol. 12, No. 4.
- New York Task Force on Women in the Courts (1987). Report of the New York Task Force on Women in the Courts. *Fordham Urban Law Journal*, Vol. XV, No. 1.
- NOVA (1987). Crime Victim Compensation. *1987 NOVA Legislative Directory*. Washington, DC: NOVA.
- Okun, L. (1986). *Woman Abuse: Facts Replacing Myths*. Albany: State University of New York Press.
- Pagelow, M. (1990). Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements. *Mediation Quarterly*, Vol. 7, No. 4.
- Pagelow, M. (1989). The Forgotten Victims: Children of Domestic Violence. Paper prepared for presentation at the Domestic Violence Seminar of the Los Angeles County Domestic Violence Council.
- Pence, E. & Paymar, M. (1986). *Power and Control: Tactics of Men Who Batter*. Duluth: Minnesota Program Development.
- Post, D. (1991). Protecting Domestic Violence Shelters' Records (With Forms). *The Practical Lawyer*, Vol. 37, No. 1.
- Ptacek, J. (1988). Why Do Men Batter Their Wives? In K. Yllo & M. Bograd (Eds.), *Feminist Perspectives on Wife Abuse*. Newbury Park, CA: Sage.
- Rich, A. (1979). *On Lies, Secrets, and Silence: Selected Prose, 1966-1979*. New York: Norton.
- Saunders, D. G. & Browne, A. (1990). Domestic Homicide. In R. T. Ammerman & M. Herson (Eds.), *Case Studies in Family Violence*. New York: Plenum Press.

- Schechter, S. (1982). *Women and Male Violence*. Boston: South End Press.
- Sherman, L. W. & Berk, R. A. (1984). The Specific Deterrent Effect of Arrest for Domestic Assault. *49 American Sociological Review*.
- Sonkin, D., Martin, D., & Walker, L. E. A. (1985). *The Male Batterer: A Treatment Approach*. New York: Springer.
- Stark, E. & Flitcraft, A. (1988). Women and Children at Risk: A Feminist Perspective on Child Abuse. *International Journal of Health Services*, 18, (1), 97-118.
- Stark, E. & Flitcraft, A. (1985). Women-Battering, Child Abuse and Social Heredity: What is the Relationship? In Johnson (Ed.), *Marital Violence*. Sociological Review Monograph No. 31, Routledge and Keegan.
- Stark, E., Flitcraft, A., Zuckerman, D., Grey, A., Robison, J. & Frazier, W. (1981). *Wife Abuse in the Medical Setting: An Introduction for Health Personnel*. Rockville, MD: National Clearinghouse on Domestic Violence, Domestic Violence Monograph Series, No. 7, April, 1981.
- Straus, M. A. (1987). The Cost of Family Violence. *Public Health Reports*, Vol. 102, No. 6, 640.
- Strube, M.J., & Barbour, L.S. (1983). The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment. *Journal of Marriage and the Family* 45, 785-793.
- Sun, M. & Thomas, E. (1987). *Custody Litigation on Behalf of Battered Women*. New York: National Center on Women and Family Law.
- U.S. Commission on Civil Rights (1982). *Under the Rule of Thumb: Battered Women and the Administration of Justice*. Washington, DC: U.S. Commission on Civil Rights.
- U.S. Dept. of Justice (1983). *Report to the Nation on Crime and Justice: The Data*. Washington, DC: Govt. Printing Office.
- Walker, L. E. (1984). *The Battered Woman Syndrome*. Springer.
- Walker et al (1982). Beyond the Juror's Ken: Battered Women. *7 Vermont L. Rev.* 1.
- Weitzman, L. (1985). *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*. NY: The Free Press.
- Zorza, J. (1991). *Mandatory Arrest Summary Chart*. New York: National Center on Women and Family Law.

Barbara J. Hart, Esq., Staff Counsel

Pennsylvania Coalition Against Domestic Violence

1991

Parental Abduction and Domestic Violence

There has been a change in consciousness about domestic violence over the course of the last ten years. We no longer believe that wife/partner beating is inevitable and private. We believe it is avoidable and criminal. We have all heard statistics that nearly 6 million women will be battered by their husbands in any single year and that that 28% of all the adult women in this

country are likely to be the victims of woman abuse during an intimate relationship. We have learned that battery is the single major cause of injury to women in the U. S., more significant than auto accidents, rapes and muggings put together.

In one hour more than 200 women are battered by their husbands across the country; that's one domestic violence assault every 18 seconds. Three of four of these women may be injured in the assaults. During this seminar at least \$6,000 will be paid in medical costs related to spouse/partner abuse. More than 70 adults will face a spouse wielding a knife or gun. Almost 400 children will have witnessed their fathers assaulting their mothers. Between 40 and 100 children will be abused by fathers/mothers/caretakers. More than 40 children will be abducted by a parent. All this in one hour. And in one day as many as four women are killed in this country by their husbands or partners.

Children of Domestic Violence.

Virtually all children living in a home where one parent assaults and terrorizes the other are aware of the violence. The majority of children from violent families actually witness their fathers battering their mothers. In fact, some fathers deliberately arrange for children to witness the violence. Studies show that such role models perpetuate violence into the next generation. Boys who witness their fathers battering their mothers are three times more likely, as adults, to hit their own wives. And sons of the most violent fathers have a rate of wife-beating 1,000 times greater than sons of non-violent fathers. There is some evidence that girls from violent homes are at heightened risk of being battered as adults.

Children who witness abuse frequently evidence behavioral, somatic and emotional problems similar to those experienced by physically abused children. Pre-school children often become intensely fearful, experience insomnia, sleep walking, nightmares and bed-wetting, and suffer a variety of psychosomatic problems such as headaches, stomach aches, diarrhea, ulcers, asthma and enuresis. Older boys tend to become aggressive, fighting with siblings and schoolmates and have temper tantrums. Girls are more likely to become passive, clinging and withdrawn, and to suffer low self-esteem.

Research further reveals that more than half of men who batter their female partners also abuse their children. Child abuse usually begins after a pattern of wife abuse has been firmly established. The abuse inflicted on the child by a battering husband is likely to be serious. Seventy percent of injuries inflicted on children by male perpetrators are severe and eighty percent of child fatalities within the family have been attributed to fathers or father surrogates. The more severe the abuse of the mother, the worse the child abuse.

Older children are frequently assaulted when they intervene to defend or protect their mothers. Female children are at particular risk. Daughters are more likely than sons to become victims of the battering husband, and they are six and one-half times more likely than girls of non-abusive families to be sexually abused as well. When children both observe their mothers' beatings and are abused themselves, the risks of serious and long-lasting harm are accelerated.

While courts and the general public are often impatient with battered women for not leaving the abuser, assuming that the mother and children will be safer after separation, data reveal that leave-taking is fraught with danger. The abuse of children and the mother may sharply escalate at the time of separation and thereafter as the abusing father attempts to reclaim his family.

Men, who believe they are entitled to an on-going relationship with their partners, or that they "own" them, view their partners' departure as ultimate betrayal which justifies retaliation.

"Abuse of children by batterers may be more likely when the marriage is dissolving, the couple has separated, and the husband and father is highly committed to continued dominance and control of the mother and children. Since . . . abuse by husbands and fathers is instrumental, directed at subjugating, controlling and isolating, when a woman has separated from her batterer and is seeking to establish autonomy and independence from him, his struggle to . . . dominate her may increase and he may turn to abuse and subjugation of the children as a tactic of . . . control of their mother."

Moreover, research confirms that the post-separation adjustment of children is not facilitated by joint custody or frequent visitation arrangements when there is chronic conflict and violence between the divorced parents. The more frequent the access arrangement between children and the non-custodial parent, the greater the level of physical and emotional abuse and conflict between the parents. The more severe the parental conflict, the greater the child's distress and dysfunctional behavior. Specific parental behavior particularly associated with troubled post-divorce adjustment in children includes: "fighting in front of the children; demeaning the other parent in front of the children; asking the children to carry a hostile message to the other parent; asking intrusive questions about the other parent; and making the children feel the need to hide their feelings or some information about the other parent." On the contrary, the adjustment of children seems to be associated with a warm relationship with a sole custodian who provides a predictable routine and consistent, moderate discipline and who buffers the child against the stresses of divorce.

Too many prosecutors and courts, uninformed about family violence and the danger it poses to adult and child victims, consider the abuse of wives or mothers by male partners as largely irrelevant to parenting, concluding either that men who are violent toward their partners may, nonetheless, be very good fathers or that domestic violence has little effect on the children or that even if the father was violent during cohabitation, he will cease beating and terrorizing the mother upon separation. All of these conclusions are erroneous.*

Parental Abduction and Domestic Violence.

The research literature on parental abduction is limited. The most illuminating recent study suggests that in about half of the instances of parental abduction, the abducting parent made prior threats of abduction. Only about 15% of the abductors used force or violence in abduction; yet almost 40% of the abductions by fathers involved force or violence as contrasted with 10% when the abducting parent was a mother. About 54% of the sample identified domestic violence as occurring during or after the marriage or relationship. This is substantially larger than the general population of divorcing couples. Approximately 55% of the parents abducting children were fathers and about 55% of the children abducted were boys. Another study reveals that about 69% of parental abductors are fathers or their agents.

Mothers are more likely to abduct children to protect themselves or a child from abuse or battering than are fathers; 20% of the women abductors and only 6% of the male abductors identified flight to avoid abuse as the reason for parental abduction. It appears to be generally true that men abduct out of revenge while women do so out of a desire to be with their children.

There are also differences between non-abducting mothers and fathers. Mothers whose children were abducted were more likely to have sole custody of the children, had fewer resources to seek return of the children, were less educated, were more apt to be unemployed or employed in lower status jobs and were earning significantly less than fathers whose children were abducted. Non-abducting mothers are more likely to be the victims of domestic violence perpetrated by the abductor than were men and were more likely to identify domestic violence as the reason for the divorce than were non-abducting men.

Strategies to Protect Children and Prevent Parental Abduction.

Having identified the jeopardy to which children and battered women may be exposed in the context of domestic violence, it is imperative that professionals, including prosecutors and judges, identify strategies to safeguard against these risks.

1. **Risk identification and safety planning.** A critical strategy for child protection is risk identification. Once battered women have recognized the abuse inflicted on them and the risk for child abuse and abduction, they can then design strategic plans to avert violence or abduction whether they elect to remain in residence with the batterer or separate from him. To accomplish this, criminal justice system personnel must consistently identify domestic violence and talk about safety planning with battered women. Most domestic violence programs will assist battered women with safety planning; referrals should thus be made to local shelters and domestic violence advocacy programs.*
2. **Supervised visitation centers.** A practical and feasible strategy in most communities is the establishment of supervised visitation centers. These facilities can offer supervised exchange, on-site and monitored visits, protections against parental abduction, as well as education and counseling for abusing fathers on parenting and the impact of domestic violence on children.
3. **Custody law reform.** The Louisiana Code, amended in the summer of 1992, is likely to serve as a model for legal reform efforts. The statute is an extensive articulation of safeguards for abused parents and children. The Louisiana legislature set forth its intent as follows:

"The legislature . . . finds that the problems of family violence do not necessarily cease when the victimized family is legally separated or divorced. In fact, the violence often escalates, and child custody and visitation become the new forum for the continuation of the abuse. Because current laws relative to child custody and visitation are based on an assumption that even divorcing parents are in relatively equal positions of power and that such parents act in the children's best interest, these laws often work against the protection of the children and the abused spouse in families with a history of family violence. Consequently, laws designed to act in the children's best interest may actually effect a contrary result due to the unique dynamics of family violence."

The new statute creates a rebuttable presumption against an award of sole or joint custody of children to a parent who has perpetrated physical or sexual abuse or other "offenses against persons " upon the other parent or against any of the children. The statute directs courts to award only supervised visitation with the abusing parent and conditions that visitation on the offending parent's participation in and completion of a treatment program specifically designed for perpetrators of domestic violence.

The code further states that the presumption against sole or joint custody awards to the perpetrating parent can only be overcome by successful completion of the treatment program, by refraining from abuse of alcohol or illegal drugs and by demonstrating that the absence or incapacity of the abused parent, or other circumstances, are such that it is in the best interest of the children to award custody to the abusing parent.

The code also directs that unsupervised visitation is only permissible if the abusing parent has "successfully completed (the) treatment program, is not abusing alcohol or psychoactive drugs, poses no danger to the child, and that such visitation is in the child's best interest."

The statute provides that the court must deny any visitation or contact of a parent who has sexually abused his or her child or children with the children until the offending parent has successfully completed a program particularly designed for sexual abusers and the court subsequently concludes that supervised visitation is in the child's best interest. Beyond this, where a parent is being prosecuted for any crime against a child or the other parent, if the state or the abused parent requests, the court must prohibit all contact between the accused and the other parent and all children of the family, except that supervised visitation may be authorized if the court concludes that it is in the best interest of the child.

The code defines supervised visitation as "face to face contact between a parent and a child which occurs in the immediate presence of a supervising person approved by the court under conditions which prevent any physical abuse, threats, intimidation, abduction, or humiliation of either the abused parent or the child. The supervising person shall not be any relative, friend, therapist, or associate of the parent perpetrating family violence. With the consent of the abused parent, the supervising person may be a family member or friend of the abused parent. At the request of the abused parent, the court may order that the supervising person shall be a police officer or other competent professional... In no case shall supervised visitation be overnight, or in the home of the violent parent." The offending parent is required to pay any and all costs associated with the supervised visitation.

The code requires that an injunction against family violence be included in all divorce, separation, custody and visitation orders or judgments where family violence has been identified. The injunction must prohibit "the violent parent from in any way contacting the abused parent or the children except for specific purposes set forth in the injunction, which shall be limited to communications expressly dealing with the education, health, and welfare of the children, or for any other purpose expressly agreed to by the abused parent." It also must contain language prohibiting "the violent parent, without the express consent of the abused parent, from intentionally going within fifty yards of the home, school, place of employment, or person of the abused parent and the children, or within fifty feet of any of their automobiles, except as may otherwise be necessary for court ordered visitation or except as otherwise necessitated by circumstances considering the proximity of the parties' residence or places of employment."

Codes in about one-third of the states specifically direct the courts to protect the child and/or the abused parent from further harm in crafting custody or visitation awards.

In Pennsylvania, the courts may not award custody or visitation to a parent who has been convicted of kidnapping, unlawful restraint, and enumerated acts of child abuse or endangering the welfare of children until the court has appointed a qualified professional to provide specialized counseling to the offending parent and has taken testimony from

that professional regarding provision of counseling. Furthermore, if the court does award custody or visitation to the offending parent, it may "require subsequent periodic counseling and reports on the rehabilitation of the offending parent and the well-being of the child . . . (and) if . . . the court determines that the offending parent causes a threat of harm to the child, the court may schedule a hearing and modify the order of custody or visitation to protect the well-being of the child." In Pennsylvania's protection order statute, a court may not grant an abuser custody or unsupervised visitation when it finds that the perpetrator of domestic violence has abused the minor children or has been convicted of interference with the custody of children within two calendar years prior to the application for the protection order. The court must consider and may impose conditions on custodial access to assure the safety of the abused parent and minor children.

Certainly, even rigorous adherence to these protective custody codes will not immunize abused parents and children from parental abduction, but they are prevention strategies that merit implementation and evaluation.

4. **Child protective service reforms.** At the present time, state child abuse prevention and protection statutes do not authorize the exclusion of a child-abusing parent or a perpetrator of adult domestic violence from the family residence as one of the enumerated remedies that may be imposed to protect children. Furthermore, few squarely address parental abduction or the threat thereof as child abuse. A minority of codes direct that the abusing parent may only be given access to an abused child or a child at risk in secure and supervised visitation programs.

Child protective services agencies and prosecutors should begin to identify domestic violence against mothers as a significant risk marker for child abuse and parental abduction. They must also recognize that protection of the battered mother is an effective remedy for protecting the abused child and preventing abduction. Therefore, child abuse intervention plans (in child protection proceedings) and conditions imposed on release and in sentencing (in criminal cases) should be routinely constructed to protect battered mothers so that they can more effectively protect children and prevent abuse and abduction.

Abused mothers are frequently held accountable for the violence perpetrated by batterers and child abusers. They may be held responsible for the violence perpetrated by the father, yet are not provided with the power to avert the risks posed to children in the context of domestic violence. Research reveals that when battered women apprehend that the abuser is also violent to the children or poses a risk of abduction, they increase help-seeking efforts to escape the abuse and protect their children. In fact, there is strong evidence that battered women's efforts to utilize community resources to end the violence are greater when child abuse is present, demonstrating that battered women may be most motivated to change their circumstances when they conclude that it is critical to protect their children from the risks of abuse. Research further reveals that child abuse, whether by fathers or mothers, is likely to diminish once the battered mother has been able to access safety services and achieve separation from the violent father.

Conclusion.

Parental abduction can be prevented. Early intervention by justice system personnel can avert the risks posed to children and their mothers in the context of domestic violence, can erect barriers to parental abduction, and can assist battered women in establishing stable and secure households independent of battering men. Prevention efforts may offer children the best hope for violence-free, stable and loving families.

Barbara J. Hart, Esq., 1992. Paper presented at the American Prosecutor Research Institute, Boston, Massachusetts, November, 1992.

Personalized Safety Plan

Barbara Hart and Jane Stuehling, PCADV, 524 McKnight Street, Reading, PA 19601

PCADV, 1992

Adopted from "Personalized Safety Plan," Office of the City Attorney, City of San Diego, California, April, 1990

Name:

Date:

Review dates:

PERSONALIZED SAFETY PLAN

The following steps represent my plan for increasing my safety and preparing in advance for the possibility for further violence. Although I do not have control over my partner's violence, I do have a choice about how to respond to him/her and how to best get myself and my children to safety.

Step 1: Safety during a violent incident. Women cannot always avoid violent incidents. In order to increase safety, battered women may use a variety of strategies.

I can use some or all of the following strategies:

- A. If I decide to leave, I will. (Practice how to get out safely. What doors, windows, elevators, stairwells or fire escapes would you use?)
- B. I can keep my purse and car keys ready and put them (place) in order to leave quickly.
- C. I can tell about the violence and request they call the police if they hear suspicious noises coming from my house.
I can also tell about the violence and request they call the police if they hear suspicious noises coming from my house.
- D. I can teach my children how to use the telephone to contact the police and the fire department.
- E. I will use as my code word with my children or my friends so they can call for help.
- F. If I have to leave my home, I will go. (Decide this even if you don't think there will be a next time.)

If I cannot go to the location above, then I can go to or.

- G. I can also teach some of these strategies to some/all of my children.
- H. When I expect we are going to have an argument, I will try to move to a space that is lowest risk, such as. (Try to avoid arguments in the bathroom, garage, kitchens, near weapons or in rooms without access to an outside door.)
- I. I will use my judgement and intuition. If the situation is very serious, I can give my partner what he/she wants to calm him/her down. I have to protect myself until I/we are out of danger.

Step 2: Safety when preparing to leave. Battered women frequently leave the residence they share with the battering partner. Leaving must be done with a careful plan in order to increase safety. Batterers often strike back when they believe that a battered woman is leaving a relationship.

I can use some or all of the following safety strategies:

- A. I will leave money and an extra set of keys with _so I can leave quickly.
- B. I will keep copies of important documents or keys at.
- C. I will open a savings account by, to increase my independence.
- D. Others things I can do to increase my independence include:
- E. The domestic violence program's hotline number is. I can seek shelter by calling this hotline.
- F. I can keep change for phone calls on me at all times. I understand that if I use my telephone credit card, the following month the telephone bill will tell my batterer those numbers that I called after I left. To keep my telephone communications confidential, I must either use coins or I might get a friend to permit me to use their telephone credit card for a limited time when I first leave.
- G. I will check with and to see who would be able to let me stay with them or lend me some money.
- H. I can leave extra clothes with.
- I. I will sit down and review my safety plan every in order to plan the safest way to leave the residence. (domestic violence advocate or friend) has agreed to help me review this plan.
- J. I will rehearse my escape plan and, as appropriate, practice it with my children.

Step 3: Safety in my own residence. There are many things that a woman can do to increase her safety in her own residence. It may impossible to do everything at once, but safety measures can be added step by step.

Safety measures I can use include:

- A. I can change the locks on my doors and windows as soon as possible.
- B. I can replace wooden doors with steel/metal doors.
- C. I can install security systems including additional locks, window bars, poles to wedge against doors, an electronic system, etc.
- D. I can purchase rope ladders to be used for escape from second floor windows.

- E. I can install smoke detectors and purchase fire extinguishers for each floor in my house/ apartment.
- F. I can install an outside lighting system that lights up when a person is coming close to my house.
- G. I will teach my children how to use the telephone to make a collect call to me and to (friend/ minister/other) in the event that my partner takes the children.
- H. I will tell people who take care of my children which people have permission to pick up my children and that my partner is not permitted to do so. The people I will inform about pick-up permission include:
(school),(day care staff),(babysitter), (Sunday school teacher),(teacher), and (others).
- I. I can inform (neighbor), pastor), and (friend) that my partner no longer resides with me and they should call the police if he is observed near my residence.

Step 4: Safety with a protection order. Many batterers obey protection orders, but one can never be sure which violent partner will obey and which will violate protection orders. I recognize that I may need to ask the police and the courts to enforce my protection order.

The following are some steps that I can take to help the enforcement of my protection order:

- A. I will keep my protection order (location). (Always keep it on or near your person. If you change purses, that's the first thing that should go in.)
- B. I will give my protection order to police departments in the community where I work, in those communities where I usually visit family or friends, and in the community where I live.
- C. There should be a county registry of protection orders that all police departments can call to confirm a protection order. I can check to make sure that my order is in the registry. The telephone number for the county registry of protection orders is.
- D. For further safety, if I often visit other counties in Pennsylvania, I might file my protection order with the court in those counties. I will register my protection order in the following counties:
- E. I can call the local domestic violence program if I am not sure about B., C., or D. above or if I have some problem with my protection order.
- F. I will inform my employer, my minister, my closest friend and that I have a protection order in effect.
- G. If my partner destroys my protection order, I can get another copy from the courthouse by going to the Office of the Prothonotary located at.
- H. If my partner violates the protection order, I can call the police and report a violation, contact my attorney, call my advocate, and/or advise the court of the violation.
- I. If the police do not help, I can contact my advocate or attorney and will file a complaint with the chief of the police department.
- J. I can also file a private criminal complaint with the district justice in the jurisdiction where the violation occurred or with the district attorney. I can charge my battering partner with a violation of the protection order and all the crimes that he commits in violating the order. I can call the domestic violence advocate to help me with this.

Step 5: Safety on the job and in public. Each battered woman must decide if and when she will tell others that her partner has battered her and that she may be at continued risk. Friends, family and co-workers can help to protect women. Each woman should consider carefully which people to invite to help secure her safety.

I might do any or all of the following:

- A. I can inform my boss, the security supervisor and at work of my situation.
- B. I can ask to help screen my telephone calls at work.
- C. When leaving work, I can.
- D. When driving home if problems occur, I can.
- E. If I use public transit, I can.
- F. I can use different grocery stores and shopping malls to conduct my business and shop at hours that are different than those when residing with my battering partner.
- G. I can use a different bank and take care of my banking at hours different from those I used when residing with my battering partner.
- H. I can also.

Step 6: Safety and drug or alcohol use. Most people in this culture use alcohol. Many use mood-altering drugs. Much of this use is legal and some is not. The legal outcomes of using illegal drugs can be very hard on a battered woman, may hurt her relationship with her children and put her at a disadvantage in other legal actions with her battering partner. Therefore, women should carefully consider the potential cost of the use of illegal drugs. But beyond this, the use of any alcohol or other drugs can reduce a woman's awareness and ability to act quickly to protect herself from her battering partner. Furthermore, the use of alcohol or other drugs by the batterer may give him/her an excuse to use violence. Therefore, in the context of drug or alcohol use, a woman needs to make specific safety plans.

If drug or alcohol use has occurred in my relationship with the battering partner, I can enhance my safety by some or all of the following:

- A. If I am going to use, I can do so in a safe place and with people who understand the risk of violence and are committed to my safety.
- B. I can also.
- C. If my partner is using, I can.
- D. I might also.
- E. To safeguard my children, I might.

Step 7: Safety and my emotional health. The experience of being battered and verbally degraded by partners is usually exhausting and emotionally draining. The process of building a new life for myself takes much courage and incredible energy.

To conserve my emotional energy and resources and to avoid hard emotional times, I can do some of the following:

- A. If I feel down and ready to return to a potentially abusive situation, I can.
- B. When I have to communicate with my partner in person or by telephone, I can.

- C. I can try to use "I can . . ." statements with myself and to be assertive with others.
- D. I can tell myself -" "- whenever I feel others are trying to control or abuse me.
- E. I can read to help me feel stronger.
- F. I can call, and as other resources to be of support to me.
- G. Other things I can do to help me feel stronger are, and.
- H. I can attend workshops and support groups at the domestic violence program or, to gain support and strengthen my relationships with other people.

Step 8: Items to take when leaving. When women leave partners, it is important to take certain items with them. Beyond this, women sometimes give an extra copy of papers and an extra set of clothing to a friend just in case they have to leave quickly.

Items with asterisks on the following list are the most important to take. If there is time, the other items might be taken, or stored outside the home.

These items might best be placed in one location, so that if we have to leave in a hurry, I can grab them quickly.

When I leave, I should take:

- Identification for myself
- Children's birth certificates
- My birth certificate
- Social Security cards
- School and vaccination records
- Money
- Checkbook, ATM (Automatic Teller Machine) card
- Credit cards
- Keys - house/car/office
- Driver's license and registration
- Medications
- Welfare identification
- Work permits
- Green card
- Passport(s)
- Divorce papers
- Medical records - for all family members
- Lease/rental agreement, house deed, mortgage payment book
- Bank books
- Insurance papers
- Small saleable objects

- Address book
- Pictures
- Jewelry
- Children's favorite toys and/or blankets
- Items of special sentimental value
- **Telephone numbers I need to know:**
 - Police department - home
 - Police department - school
 - Police department - work
 - Battered women's program
 - County registry of protection orders
 - Work number
 - Supervisor's home number
 - Minister
 - Other

Recidivism Prediction and Parole Decisions

A MEMORANDUM OPPOSING THE PAROLE OF SAM AND JOE

Recidivism Prediction.

Recidivism prediction is an imprecise art but is slowly moving toward scientific rigor. New data have been generated over the last decade, and they point toward predictable benchmarks of recidivism. These should be employed in evaluating the propriety of paroling violent offenders.

National data from the Bureau of Justice Statistics demonstrate that 35.1% of the male prison population is incarcerated after conviction for violent crimes, running the gamut from homicide to assault. 62% of the violent offenders recidivate after release from incarceration. That is more than 1 out of every 2 released inmates convicted for violent crimes (Bureau of Justice Statistics, 1989). These odds bode ill for the victims of these violent offenders and for the general public.

Research suggests that criminal justice personnel can now engage in reasonably scientific recidivism prediction. To do so, they must first tighten prediction standards by eliminating false indicators of recidivism. There is a common misconception that model prison behavior is contra-indicative of recidivism. This is gravely incorrect (Carroll, et al., 1982). But beyond this, traditional guidelines for prediction -- that those offenders who use guns, are alcoholic, have prior arrests for drug crimes, have prior convictions for assaults, burglary, auto, robbery or stolen property are those most likely to recidivate -- are erroneous and must be eliminated from prediction guidelines (Chaiken & Chaiken, 1990).

Instead, the latest research suggests that clusters of specific criminal conduct can reliably predict recidivism. One such cluster includes criminal conduct where there has been a prior history of forcible rape or murder, where the most recent charge involved three separate transactions,

when a knife was used in the offense giving rise to the most recent prosecution, when the victim of the most recent crime was a female, and when the offense was committed in an outside, public location. The offender matching this profile should be recognized as a high-risk, dangerous offender who is likely to recidivate (Chaiken & Chaiken, 1990).

Sam and Joe fit this profile. Sam is commonly believed to have killed his first wife. He is also believed to have killed his brother-in-law. He battered his second wife who testified against him at the 1983 trial. During the course of their marriage, Sam raped Sarah, his third wife, weekly. He was convicted of attempted homicide, criminal conspiracy and aggravated assault in the sustained attack on Sarah for which he is presently incarcerated. The record reveals that a large portion of Sarah's scalp, about 4 or 5 inches, was cut from her head. Her throat was slashed. She was stabbed behind an ear resulting in the partial loss of hearing. Her face and hands were slashed. She lost almost her total volume of blood. A knife was the primary weapon used in this offense. The offenses were committed outside of the house in a public setting.

Sarah's description of the crimes precipitating this incarceration is as follows:

At 4:00 a.m. on June 8, 1983, Sam woke me up, faking an illness. He said he had to go to the hospital. He refused to go in an ambulance. He literally pushed me out the door. When I got to the garage, his brother, Joe was waiting. He started beating me with a billy club. Sam was holding me up. I fell on the ground. I knew they were trying to kill me, so I tried to fake unconsciousness. They put me in the trunk of the car, and Sam told his brother: "You finish her off," and he left to go back in the house. I managed to get out of the trunk and started running away. Joe started after me, slit my throat, and scalped me. I was saved because I was on a public street and passersby alerted the police.

Joe was charged with the same crimes as his brother but in addition was charged with possessing instruments of crime and prohibitive offensive weapons. He has a history of drug involvement and scrapes with the law. He was apparently indebted to his older brother, Sam, who had helped him at the time of prior criminal involvement. Not only is Joe a contract killer, willing to commit homicidal assaults for those to whom he is indebted, but he is a sadistic killer. Men who kill (or who attempt to kill) intimates typically engage in multiple, highly brutal acts that could kill the victim many times over (Wolfgang, 1958; Casanave & Zahn, 1986). Joe squarely fits the above profile.

Other research concludes that the best predictor of the post-incarceration dangerousness of offenders is a history of prior assaultive behavior (Monahan, 1981). One need not look to any history prior to the assault on Sarah to conclude that based on this measure of dangerousness, both Sam and Joe are at high risk for violent recidivism.

Data on Men Who Batter Intimates.

Violent crime is on the increase in the United States. Violent crime increased by 10% between 1989-1990. Murder was up 10%, rape was up 9% and aggravated assault was up 10% (FBI, 1991). Among white husbands, ex-husbands and boyfriends, there appears to be an increase in homicides of women partners (Browne and Williams, 1988). The precipitating event in male-perpetrated partner homicide is usually related to some type of perceived rejection on the part of the woman. In killing their wives or ex-wives, offenders believe they are responding to a previous "offense" against them -- intolerable desertion, rejection and abandonment in ending

the relationship (Barnard, et al., 1982). One national study revealed an increase in almost 3/4 of the states in the killing of women partners after separation (The comparison of homicide rates was between the years 1976-1979 vs. the years 1980-1984.) (Browne and Flewelling, 1986).

Violence against battered women may be more likely to occur after a couple has separated or divorced than during the time of cohabitation (Hart, et al., 1990). As many as 3/4 of domestic assaults reported to law enforcement agencies are inflicted after separation of the couples (U.S. Dept. of Justice, 1983). One study revealed that 73% of the battered women seeking emergency medical services sustained injuries after separation from the batterer (Stark, et al., 1981). In one study of spousal homicide, over half of the male defendants were separated from their victims (Barnard, et al., 1982).

Men who batter their wives do not do so by accident, mistake or as a result of loss of control. Domestic battery is intentional violence directed at women partners in order to gain or maintain control over them. It is systematic and repetitious. It creates an atmosphere of extreme terror (BIS, 1991).

Most fatal violence against children by parents and step-parents occurs in the context of domestic violence. Fully 80% of these fatalities are perpetrated by fathers and step-fathers (Bergman, et al., 1986). There was a 36% increase in homicide of children in the family between 1985 and 1989 (Mitchel, 1989). Data suggest that fathers and step-fathers begin to target children with abuse only after they have established a pattern of abusing mothers (Stark & Flitcraft, 1988) and when they conclude that assaults on children will enable them to gain control over their wives/female partners or will provide a vehicle for retaliation against wives/mothers who have resisted the demands of perpetrators or who are seeking to terminate relationships with perpetrators.

Batterers are facile manipulators and can easily give the appearance of cooperation and rehabilitation. "The batterer's ability to charm and con selected important people . . . stands him in good stead in [legal proceedings] . . . The batterer [appears] . . . genuine and sincere" (Walker, 1987).*

Research on men who assault their wives/partners suggests high rates of recidivism. The landmark police study on police response in domestic violence cases showed that 59% of the suspects in misdemeanor domestic violence cases had prior criminal histories (Sherman & Berk, 1984). The leading study on prosecution of domestic violence crimes found that almost 30% of the defendants committed new acts of violence during the pre-disposition phase and that a substantial number recidivated within 6 months of disposition (Ford & Regoli, 1990).

Recidivism Across the Country.

Documented cases of batterer homicides, terrorism and recidivism across the country are powerful illustrations of batterer recidivism:

In April, 1991 Donell Young of Scranton, Pennsylvania, knifed his second wife in the chest and abdomen numerous times. She died. He was separated from her at the time that he killed her. He was free on bail for allegedly attempting to shoot her previously. He had been arrested in August, 1989 for firing two blasts from a sawed-off shotgun at the deceased and her daughter. At that time he was charged with two counts each of attempted murder, terroristic threats, simple and aggravated assault, and recklessly endangering another person. Furthermore, Donell Young

had been incarcerated in the early 80's for aggravated and brutal assaults on his first wife. He had attacked her with a fishing line and grievously injured her. Mr. Young is known by the police as a person who has made numerous threats against several other women with whom he had been involved.

Susan Donahue left her battering husband many times. He tracked her down every time she attempted to make a new life for herself and their two children. He was arrested and convicted six times for threatening her, including incidents in which he held a knife to her head, threatened to shoot her with a shotgun and drove his car into hers while she was driving their two children. Susan Donahue has moved five times since separating from her husband. She now lives in the northeast U.S. As of October, 1990 her battering husband had found Susan four times and attempted to kill her each time. Susan fears that, unless the community protects her from her husband, she will be a homicide statistic if he finds her the fifth time.

In May of 1990 Richard Shaw of Montgomery County, Pennsylvania, against whom a protection order had been entered in favor of his wife and children, killed his son and stepdaughter after kidnapping them and holding them hostage the day after he learned of his wife's intention to file for divorce. Shaw made repeated demands for his wife to come to his residence to pick up the kidnapped children. Police resisted this demand, recognizing that the woman would have been placed in grave danger had she gone to her estranged husband's home.

On March 25, 1990 Julio Gonzalez torched the Happy Land Social Club in the Bronx and killed 87 people. He had gone to the club to try to kill his former partner, Ms. Feliciano. When he was denied access to her, he set fire to the club. This may be the worst domestic violence-related mass murder.

James Reed killed his wife in Lackawanna County, Pennsylvania in 1989. At the time of the homicide, he was on bail awaiting a hearing on charges of criminal and defiant trespass for entering the residence of his estranged wife. The couple had separated a year before the first incident.

In a two week period immediately following Christmas of 1988, three Long Island women who had obtained court orders for protection from their estranged or former husbands were shot to death by those men.

In 1988, Alfonse David shot and killed his ex-wife, Margot Melville, his daughter and her almost full-term unborn child. He then killed himself. His homicidal actions occurred two months after he was released from prison. He had spent those two months carefully stalking Margot, who, with her new husband, had gone into hiding in another part of Washington State. She was a pharmacist. He found her by watching virtually every pharmacy in the community. He had no prior record. The whole time he was in prison, he plotted her death. He received no counseling. Prison records show that he was an exemplary inmate.

In spring of 1988 a battered woman sought refuge in a Minnesota shelter to protect her 16 year old son who had been beaten by his father. Five days after she went to shelter, the batterer kidnapped her at her place of employment, took her at gunpoint to his home and dragged her into the bedroom. He held her at gunpoint for three hours, pleading with her to come back to him. She convinced him she would return to the shelter to pack and then reconcile. She did not return to him. Two days later the batterer followed the son to the shelter. The mother got a protection order. Two days later the batterer came to the front door of the shelter. Three days

thereafter he took the battered woman and her son hostage. Her son managed to escape and went back to the shelter. Charges were filed against the batterer and the next morning he was released on \$10,000 bail. A week later he filed for divorce. Two days later he found her at work again, pulled out a sawed-off 30-30 rifle, shot her and committed suicide.

In Indiana in 1988 Alan Matheney, who was serving time in prison for assaulting his ex-wife, Lisa Marie Bianco, was granted a short-term furlough during which he traveled 120 miles north from the prison to his ex-wife's home where he bludgeoned her to death with the butt of a shotgun.

In California in 1973 Napoleon Johnson murdered his wife. In 1974 he was convicted of the crime and sentenced to prison. In August, 1985 he was released on parole. Johnson began a romantic relationship with Grace Morales and cohabited with her. In March, 1986 Morales moved out of Johnson's residence. He began a campaign of violence and harassment directed at her, which included forced sexual relations at knife-point, repeated death threats and false imprisonment. His parole officer told Grace Morales that she had nothing to fear because Johnson loved her. Subsequently he kidnapped her from in front of her house, shot and killed her.

Ruby Whyllly Powell was subpoenaed as a witness for a July 1981 hearing to determine whether her estranged husband, Jerome Whyllly, had violated his parole on an aggravated assault conviction by abusing the couple's six-month-old son. As she waited in the courthouse hallway, her husband approached and hustled her outside. When she resisted his demand for her not to testify, he doused her with gasoline and set her ablaze, causing second- and third-degree burns over nearly 50 percent of her body. Whyllly is now serving a 114-year sentence in Florida for attempted first-degree murder and witness tampering.

Rehabilitation and Recidivism.

Batterers quickly claim rehabilitation upon receiving treatment services. However, many, and perhaps most, men who have the benefit of participation in batterer treatment programs recidivate. One study which tracked batterers longest after treatment shows that 47% of the men recidivated within the four years after discharge from treatment (Tolman, et al., 1987). Another study showed that 48% of convicted batterers not in treatment recidivated within six months of conviction while 37% of batterers completing treatment were not using violence six months thereafter (Edelson & Grusznski, 1988). A third study found that 50% of the men who had participated in treatment acted with violence toward their partners within six weeks following treatment and that six months after treatment, virtually all participants were again using violence toward their wives/partners (Taylor, 1984). A more optimistic study showed that 30% of battering men who completed specialized treatment for batterers were using violence against their partners one year post-treatment (Shepard, 1987). Most of these evaluation studies are based on a population of batterers who are mandated into treatment pursuant to pre-trial diversion and misdemeanor convictions or pleas. Batterers successfully completing these specialized batterer treatment programs, thus, routinely recidivate. Their claims of rehabilitation are specious. There is no clinical reason to believe that men committing more serious, injurious, and life-imperiling assaults are more susceptible to successful treatment; to the contrary (BIS, 1991).

Parole Decision-Making and Recidivism.

Research on decision making in parole matters has revealed that prison personnel and parole interviewers appear to make subjective or intuitive predictions of post-incarceration violence based heavily on prison conduct as a predictor of parole performance. Prison conduct does not predict actual future violent crime and should not be the basis on which parole decisions are made. Rather, actuarial data are significantly better predictors of recidivism than are subjective data. Actuarial predictions are more accurate, equitable and consistent than intuitive judgments (Carroll, et al., 1982).

Parole Should Be Denied.

The information articulated in this memo offers actuarial and objective, not subjective, individual or personal, data that compel a conclusion that Sam and Joe are highly dangerous offenders who are at high-risk for recidivating against Sarah and her daughters, Sandy and Jane, and any other past or present women partners of either man. For this reason, alone, Sam and Joe should not be paroled at this time.

Sam and Joe should be held until their full terms have expired. Otherwise, Sarah and her daughters will have to go into hiding now, searching for some underground sanctuary where they can be free from the terror of being stalked and from the retaliatory violence almost certain to be sought by Sam and Joe. Releasing Sam and Joe at this time will surely jeopardize the fragile adjustment and well-being of Sarah and her daughters who have worked diligently to pull their lives back together since the near-fatal bludgeoning of Sarah by Sam and Joe. Immediately after the unsuccessful homicide attempt, Sarah and her daughters were emotionally paralyzed with fear and chronic, undifferentiated anxiety. It took 3 years for them to get to a place where they could manage night terrors and begin to re-invest in life in the community. However, these women live in constant, acute fear that Sarah will be killed by Sam (or a third party at his direction) because he has a reputation for killing those who cross him. Beyond this, Jane and Sandy live in terror that Sam or his agent will execute either or both of them to punish Sarah for cooperating in the prosecution that resulted in their incarceration. Relocation at the present time to avoid such a homicide would greatly disrupt their lives and might destroy the fragile thread that keeps these women moving through recovery from the impact of the mutilating and homicidal assaults of Sam and Joe.

Justice requires a balancing of the interests both of these victims and of the general public against the interests of these men in parole release. Incapacitation of these high-risk offenders should be the continuing mandate of the correctional system in Anywhere, USA until Joe and Sam can no longer be lawfully incarcerated.

The criminal justice system, as now embodied in the Parole Board, should not abandon Sarah. She has cooperated consistently and completely. She has left no stone unturned in attempting to achieve safety for herself and her children. If Sam and Joe are released at this time, it will send a message to Sarah and her daughters that even fully and diligently cooperative victims are not able to acquire the full measure of protection that the state can afford them. Beyond this private message to Sarah and her family, release of Sam and Joe before the expiration of their full sentence conveys a strong message to the general public that those people most vulnerable to criminal recidivism -- to retaliatory violence -- are expendable; that these victims are only deserving of an ounce of protection when the state could provide much more. Neither

of these messages is acceptable in a society committed to ending violence against women and children in the family and holding perpetrators of domestic violence accountable.

For all of the above reasons, it is imperative that the Parole Board deny parole to Sam and Joe until the expiration of their full sentences.

References

Barnard, G. W., Vera, H., Vera, M. I. and Newman, G. (1982). "Till Death Do Us Part: A Study of Spouse Murder." **Bulletin of the American Academy of Psychiatry and the Law**, 10, 271-280.

Batterer Intervention Services (1991). **Accountability: Program Standards for Batterer Intervention Services**. Harrisburg, PA: PCADV.

Bergman, A., Larsen, R. M. & Mueller, B. (1986). " Changing Spectrum of Serious Child Abuse." **Pediatrics**, 77 (1).

Browne, A. and Flewelling, R. (1986). " Women as Victims or Perpetrators of Homicide?" Paper presented at the Annual Meeting of the American Society of Criminology, Atlanta.

Browne, A. and Williams, K. R. (1988). " Race, Resources and the Reduction of Partner Homicide." Paper presented at the annual meeting of the American Society of Criminology, Chicago.

Bureau of Justice Statistics (1989). **Recidivism Rates of State Prisoners: 1983**. Washington DC: U.S. Dept. of Justice, Table 1.

Carroll, J.S., Wiener, R. L., Coates, D., Galegher, J. and Alibrio, J. (1982). " Evaluation, Diagnosis and Prediction in Parole Decision Making." **Law and Society Review**, Vol. 17, No. 1.

Casanave, N. & Zahn, M. (1986). " Women, Murder and Male Domination: Police Reports of Domestic Homicide in Chicago and Philadelphia." Paper presented at the Annual Meeting of the American Society of Criminology, Atlanta.

Chaiken, J and Chaiken, M (1990). " Redefining the Career Criminal: Priority Prosecution of High-Rate Dangerous Offenders." Issues and Practices Washington, DC: National Institute of Justice, April.

Edelson, J. and Grusznski, R. (1988). " Treating Men Who Batter: Four Years of Outcome Data from the Domestic Abuse Project." **Journal of Social Service Research**, 12.

Ford, D. A. and Regoli, M. J. (1990). " The Preventive Impacts of Policies for Prosecuting Wife Batterers." Paper prepared under grant #86-IJ-CX-0012 from the National Institute of Justice.

Gondolf, E. W. & Foster, R. (1991). " Wife Assault Among Rehab Patients." **Hospital Comm. Psychiatry Journal**.

Hart, B. J., Stuehling, J., Reese, M., and Stubbing, E. (1990). **Confronting Domestic Violence: Effective Police Response**. Reading, PA: Pennsylvania Coalition Against Domestic Violence.

Mitchel, L. (1989). " Report on Fatalities from NCPA." **Protecting Children**, Spring.

Monahan, J. (1981). **Predicting Violent Behavior: An Assessment of Clinical Techniques**. Beverly Hills, CA: Sage.

Ptacek, J. (1988). "Why Do Men Batter Their Wives?" **Feminist Perspectives on Wife Abuse**. Newberry Park, CA: Sage.

Shepard, M. (1987). "Intervention With Men Who Batter: An Evaluation of a Domestic Abuse Program." Third Conference on Domestic Violence, Sponsored by Family Violence Research Lab, Durham, NH.

Sherman, L. W. and Berk, R. A. (1984). "The Specific Deterrent Effect of Arrest for Domestic Assault." **American Sociological Review**, 49.

Stark E. & Flitcraft A. (1988). "Women and Children at Risk: A Feminist Perspective on Child Abuse." **International Journal of Health Services**, 18 (1).

Stark, E., Flitcraft, A., Zuckerman, D., Grey, A., Robison, J. and Frazier, W. (1981). **Wife Abuse in the Medical Setting: An Introduction for Health Personnel**. Rockville, MD: National Clearinghouse on Domestic Violence, Domestic Violence Monograph Series, No. 7, April, 1981.

Taylor, J. W. (1984). "Structured Conjoint Therapy for Spouse Abuse Cases." **Social Case Work**, 1965.

Tolman, R. M., Beeman, S. and Mandoza, C. (1987). "The Effectiveness of a Shelter-Sponsored Program for Men Who Batter: Preliminary Results." Paper presented at the Third National Family Violence Research Conference, Durham, NH.

U.S. Dept. of Justice (1983). **Report to the Nation on Crime and Justice: The Data**. Washington, DC: Govt. Printing Office.

Walker, L. E. A. (1987). "Divorce Mediation: Is It a Better Way?" In **Role of Mediation in Divorce Proceedings: A Comparative Perspective**. Vermont Law School Dispute Resolution Project, p. 141.

Wolfgang, M. E. (1958). **Patterns in Criminal Homicide**. Philadelphia: University of Pennsylvania Press.

B.J. Hart justproj@aol.com

Safety Planning for Children: Strategizing for unsupervised visits with batterers

The PennFree Training Committee strongly believes that children should not have to visit with their battering fathers until such time that the children want interaction with the father and visitation can be safe for both the children and the battered mother. Where a batterer is potentially lethal, we believe he should not be accorded any access to the children. Where he has been violent to the children or continues to intimidate or coerce the mother, but is not thought to present a danger of death or injury to the woman or children, we suggest that supervised visitation is the most that should be awarded. And in the situation where the batterer no longer poses a substantial risk of danger to either the child or the mother, then unsupervised visitation may be appropriate. However, we would assert that the custody court should impose specific provisions on awards of supervised and unsupervised visitation to protect the child and the

mother against anticipated dangers. We would also commend safety planning with the child. This paper addresses only safety planning for unsupervised visitation. The PennFree Training Committee suggests that safety planning should occur with all children related to risks of violence posed by battering fathers.

Children of battered women who have witnessed their father's violence toward their mother or who have been abused themselves may be quite fearful or anxious about unsupervised visits with their fathers. Children may fear that the father will attack their mother when they are being picked up or dropped off. They may fear that their father will beat them if their mother is not around to protect them or to be the target of his violence. They may fear the unknown. They may fear that they cannot protect their mother against homicidal violence during the night if they sleep at their father's house. They may experience torn loyalties between the parents and may struggle with anger at the mother for leaving or for not having the power to stop the violence. Or they may be caught in a fantasy of family reconciliation while recognizing that their mothers cannot be safe from abuse except through separation. They may have strong feelings of love for their fathers. Even if children are only conflicted, and not fearful, this conflict may create a lot of anxiety.

Planning for unsupervised visits can help children not only manage fear or anxiety, but can also help them develop safety skills and realistic safety plans to minimize the risk of violence during visitation. The goal of safety planning is the empowerment of children. It is critical that safety planning help children identify safety issues and build problem-solving, safety skills. Safety planning can help the children of battered women understand the multitude of conflicted feelings they may be experiencing associated with visiting their father.

Skillful advocates must be careful not to aggravate the fear or anxiety that children of battered women are experiencing in anticipation of unsupervised visits. Identifying and discussing fear is not, in and of itself, beneficial to children. Once identified, children need to have skills for managing these feelings and creating safety strategies to avoid the incidents or interactions feared. Therefore, people helping children of battered women must be committed to assisting the children without frightening them.

Neither should advocates insist on safety planning with children. The child who engages in safety planning should be a volunteer who is interested in learning about how to manage fear or anger and how to act to protect herself from violence perpetrated by the father. Persons assisting children should know the child well and have adequate information about the battered mother and the abuser. If several children are visiting with the father at the same time, a group plan as well as individual safety planning may be helpful.

Any safety plan must be realistic. It must be age appropriate. The child must be competent to undertake the strategies designed. The plan should be simple. Perhaps only children above 8 years of age can be active participants in safety strategies. For younger children, the mother and the child's advocate may have to map out safety plans that rely little on the child for implementation.

Battered women must be clear that safety planning is an option, not a requirement; an option that either the child or the mother can exercise when it seems necessary to do so.

Disclaimer - No guarantees.

Safety planning does not make unsupervised visitation with batterers safe. It may reduce the risks. It may empower children to act to protect themselves. It may make visitation safer by invoking community systems to protect the battered mother and children in the context of visitation. However, safety planning is no guarantee of safety.

And safety planning could potentially increase the risk to the child or the mother. The father who concludes that the child is exposing his violence to the mother or advocate may retaliate. The father who learns that a child is concerned about her own safety may emotionally badger the child about her lack of trust and love for the father. Thus, any safety planning must help a child deal with the possible adversity that may arise if safety planning is revealed to the batterer.

Children need to hear that the plan is no guarantee of safety and that failure of the plan is not the fault of the child. When a particular safety strategy fails, the child must clearly understand that the violence is solely and exclusively the responsibility of the battering father. However, the child needs to be aware that a safety plan can be re-designed if any component fails and that the process of safety planning involves continuing evaluation and revision.

Process of safety planning.

Meeting with mother. Before meeting with the child an advocate should talk with the battered mother. The mother can help the advocate identify critical background information, including a history of the batterer's violence towards the mother and the children, an assessment of the amount of woman abuse witnessed by the child, the child's feelings about forthcoming visitation (hopes and fears), the competence of the child to develop and execute safety plans, the safety facilitators in the context of the visitation (people, places and things that might enhance the child's safety), the mother's own feelings about visitation (hopes and fears), anticipated batterer manipulation around visitation and potential elements for a visitation contract relating to child safety and comfort.

The advocate might encourage the mother to begin a journal about visitation issues to help her in assisting the child in designing, implementing, evaluating and revising safety plans.

The advocate should be both a colleague and an educator of the mother - teaching her safety planning and involving her in safety planning and contract development throughout. She may not want to meet with the mother with the child at all times, but should encourage both the mother's independent and interactive thinking about the child's safety. An atmosphere of compassion, support and collaboration is essential. It is important not to diminish the mother's role in the protection of her child in any way. Our goal is to facilitate the mother's empowerment and to build an alliance between the mother and child in safety planning. Since we are still learning how to do safety planning with children, mothers must be told that this is new work for us and that it requires her critical thinking and feedback to us so that we can improve the quality of our advocacy.

Meeting with child. Then at the first meeting with the child, the advocate should explain that the goal is to help the child develop a safety plan that meets her very special and individual needs during visitation. The child should be told that adults and children often remember important things after they leave a meeting, so the child should be aware that there will be several meetings in developing a safety plan and that at each meeting issues can be discussed several times. It

will never be too late to add something to a safety plan. The first interview with the child probably should focus on the child's feelings about visitation and her father - What is she looking forward to in visitation? What has her afraid of the visit? What does she love about her father? What about her father makes her afraid?

At the second meeting with the child, the advocate might want to introduce the concept of journaling. If the child is too young to write, she can draw pictures in a notebook and describe the pictures to the advocate who can make titles or commentary under the picture. Older children who can write should also be encouraged to draw if it is an expressive medium preferred by the child. The purpose of journaling is to identify feelings, safety issues, and proposed strategies for safety. The child can share the journal with the advocate or her mother or it can be confidential. It is a means for developing the child's own critical thinking.

Further, the child might be asked to describe the patterns of abuse the batterer has inflicted upon the mother and herself or the other children. The listing might include times, places, context and the acts of violence.

In a third meeting, the advocate could help the child identify when she fears for her own safety or the safety of her mother and siblings in relation to the batterer. She should think about the particular things that her father does that make her nervous. It may be shouting or driving recklessly or drinking or holiday depressions or sports events where his team loses, etc. The advocate can pull out how often these events occur and how dangerous the batterer is when they occur. The advocate then should ask the child to identify strategies that she has used successfully and unsuccessfully in the past to divert, minimize, or stop the father's violence toward herself or others. Some assessment about what strategies still seem useful should be made.

The next strategy session might help the child identify her particular feelings (again, hopes and fears) about the visit with the batterer. The advocate should help the child identify a plan for handling the interactions/situations feared. For example, the child might say that she does not want her father to drink during her visit, that she wants weapons out of the house, that she would like to have someone other than her father drive during the visit, that she will not be forced to eat during the visit, that she will not be required to talk about her mother, that anything she takes to the visit will not be withheld by the father upon her return to the mother, or that the father will not come into her bedroom or the bathroom.

The advocate should discuss the various options that the child raises to help the child consider the advantages and disadvantages of each and how to best implement the selected options. The advocate must continue to evaluate the child's competence to implement whatever safety strategies are designed. In times of great stress, the simplest strategy may be the best.

Advocates should focus on what the child thinks she could do to keep herself safe. It is important that the advocate not quickly offer adult suggestions for safety plans. Silence is okay for a while. The advocate must give the child time to come up with solutions of her own. It is important for the advocate to go at the pace of the child. Adults may think of a zillion strategies. The child will probably best incorporate the one she identifies. If the child is blocked, the advocate can carefully measure out suggestions - one or two a session, assuming that there is plenty of time for development of the safety plan. The child must recognize that the planning is an on-going process and that she can engage in planning anywhere, including in the home of the batterer.

The child might also want to think of things that she could do to avoid confrontation with the batterer. Perhaps if he insists upon her attending his church, she can do so. Or if he hates her makeup or clothes, that she will dress in a way that does not irritate him. In thinking about ways that she could change her behavior in order to avoid conflict with the batterer, it is critical that she understand that it is not her obligation to do so, that these avoidance strategies may not immunize her from disputes with batterer, and that any violence used by her father is solely his responsibility.

At the next meeting, the advocate might want to meet with the mother and the child together to think about the components of a safety contract with the batterer. These components then could be the subject of negotiation with the batterer, either directly or through his attorney. If negotiations fail to achieve bottom-line results, then the mother might want to forward the proposed safety conditions to the court and ask the court to impose them upon the perpetrator.*

Thereafter, once the mother and child know whether their contract for safety during the visit has been accepted or the court has imposed specific conditions, they can begin to make a plan about the first visit.

After the first visit, there should be another meeting to evaluate the safety issues related to the visit. Perhaps the contract needs to be modified or the plan needs to be supplemented.

Since the building of safety skills and plans is never completed, advocates must help children identify others outside of the domestic violence program who can assist the child in this continuing endeavor. The fundamentals of safety planning cannot be learned in one lesson. Thus, advocates need to help mothers or other committed adults learn how to assist children in the continuing process of design, implementation and evaluation of safety plans.

Possible Safety Strategies.

Information. Children need to have information to act in an empowered way. Issues likely to arise during visitation should be identified and discussed beforehand. Problem-solving about anticipated interactions or events can help the child respond with clarity about issues she has examined and thought through.

For example, batterers often use visitation to gather information about their battered partners. A father may subject a child to extensive inquiry about the activities and friends of the mother. The child is often caught in an untenable position. If she tells, she fears that the mother's safety may be jeopardized, but if she doesn't tell, she may be beaten or penalized. This interrogation about the mother is virtually certain. The child should have information that questions may be directed at her about the mother and should have the opportunity to think about how she will respond to pressure for disclosure. It is critical that she understands that it is important to put her safety first. This probably means answering her father's questions. But it can also mean that once she comes home, she may share the line of inquiry with her mother.

If the battered mother is an alcoholic or an addict, the batterer is certain to query the child about the mother's consumption and/or her participation in treatment. The child's dilemma is compounded in these circumstances. In Al-Anon she is told that she need not keep the "family secret" about drug or alcohol consumption. On the other hand, she knows that the world and her father find fault with her mother for consumption. Thus, she may believe that to expedite her mother's recovery she should honestly talk about her consumption and/or treatment. Yet,

to protect her mother from the violence or manipulation that the batterer may inflict upon learning of her consumption or failure in treatment, the child may feel that she must not disclose any information to the father. Children in this position are often confused. Again, it is important to help the child to understand that her safety is first. On the other hand, if she has the opportunity to strategically plan for response to her father's questioning, she may find a way to avoid the duplicity of hiding her mother's consumption and the danger in disclosing it. Advocates working with children whose mothers are addicted to alcohol or other drugs must be well-informed about the complications involved in integrating safety and recovery strategies for battered women and children. Advocates must be able to help children ferret out the apparent contradictions and develop strategies that have integrity for kids.

Children whose fathers have problems with drugs or alcohol need information about the likely conduct of the addicted parent during visitation. The father may be morose and tell the child that he cannot make it without her. The father may blame the child for his drinking/drugging problem. The father may make grandiose and convincing promises of sobriety if the mother will reconcile. The father may deny any problem and blame the mother for fabrication of the drug or alcohol problem and the violence. The father may threaten suicide unless his specific demands are met. The uninformed child is in an intolerable position in the face of these manipulations.

Education of the child around predictable drug or alcohol behavior may be specifically drawn around the father and his likely conduct, but it should also be about alcoholism/addiction in general so that the child has a broad base of knowledge about typical behaviors of addicted/alcoholic parents. Further, the child might be taught skills to enhance her critical thinking in crisis or emotionally-laden situations. "Self-talk" is a critical skill. "I am not responsible for my dad's drinking....I am not responsible for his violence....I cannot make life better for him....I can and should put my safety first....I can call for help if there is an emergency....I can talk about how confused I feel later with my advocate....I can weather this storm."

Another example of information that children need in order to strategize for unsupervised visits is an understanding of their own conflict resolution around the issue of loyalty. During a visit a father may raise and test the child's loyalty to the father. Even if he doesn't, the child may find herself struggling with feelings of guilt and ambivalence about "betrayal" of the father. The confused child will surely begin to blame herself/himself for the violence inflicted by the batterer and the break-up of the family. Thus, safety planning must squarely address the issue of torn loyalties. Safety planning should also help children figure out that their father has exclusive responsibility for the violence and that the parents are the only ones responsible for making decisions to separate or divorce.

If there is a risk of medical emergency, e.g. the father or the child might have an insulin reaction, the child should be acquainted with emergency medical procedures that are age-appropriate. If the father has a history of mental illness or suicide attempts, the child should be taught crisis intervention skills, both to protect herself and her parent.

Each child's need for information related to unsupervised visitation will be different. Information and skills should be taught in an atmosphere of warmth and respect, encouraging the child's creativity and participation. It is critical that the learning environment does not evoke fear or despair and does not mislead the child into believing she has power or control over the batterer or his violence. Creating a balanced and empowering learning environment for children at risk is very difficult.

Avoidance. The child can attempt to avoid a situation (place, time, circumstance) of prior violence. Avoidance can be covert or overt. For example, if the batterer has typically assaulted the child in circumstances where the child has failed to meet his expectations for excellence at video games, the child might enthusiastically suggest other activities or even fake a temporary disability. [A word of caution - faking injury involves the child in lying to the father, a strategy which may put the child at greater risk. Thus, avoidance through lying is usually ill-advised.] However, if the father insists upon his own plans, perhaps the child could enlist someone in the father's extended family to share the occasion with them. The goal is to maximize safety by building a context that creates disincentives and adverse consequences for the father's violence.

Phoning Home. Children need to know how to use a phone, which includes learning how to call long distance, how to make a credit card call, and how to achieve operator assistance. What with the recent changes in the telephone system, it is particularly important for the child to learn how to be persistent and clear with telephone operators.

The child should be taught the phone number where the mother can be reached at all times during the visit. This may or may not be her home phone as the mother may choose not to disclose her residence phone to the batterer. The child may not be able to safeguard the privacy of this number, but may want to think about ways to protect the confidentiality of the number.

On the other hand, the mother may not be able to be available at a telephone during the entire visit. It might be helpful if she obtains an answering machine so that the child could leave messages about her safety and well-being. The child needs to know how to talk to an answering machine to indicate whether she is calling just to say hello and to hear her mother's reassuring voice or to report an emergency related to abuse. The child should practice making telephone calls, dealing with operators, and talking to answering machines.

Emergency Assistance. If there is a 911 emergency number in the community, the child could be taught to dial that number and ask for assistance from the police or the emergency medical team. The child will need to be able to give the location of the place to which she is calling emergency personnel. She will also need to use language which will convince the police that she is in an emergency situation. Where a father has been criminally convicted of domestic violence and there is an outstanding protection order or the child has been found to be abused by the father by the juvenile court and the police have notice of the visit, perhaps the child will be able to persuade the police to intervene quickly and protectively.

This strategy requires fairly substantial preparatory work by the advocate or the mother. They need to know if the police will respond quickly to a 911 call from a child and whether the police will take the child into protective custody rather than just writing a report and leaving the child with the batterer. Many 911 numbers now record the phone number and location of incoming calls to assist police and other emergency workers to find the location of the emergency even if there is a disconnection. It is important to find out if this display of the child's phone number occurs in the jurisdiction where she will be visiting with the father.

Group Safety. If there are several siblings visiting at the same time, safety planning may be at least partially a group effort. However, it is possible that a child may reject any responsibility for safety planning other than for himself and should not be cajoled into cooperation. Even the cooperative sibling may want to be minimally engaged in the protection of others. All the children in the family need to understand that they do not have the power to stop the abuse, are not responsible for the violence and that the failure of a safety plan can only be charged to the

batterer. If one child has been physically, sexually or emotionally abused by the battering father, particular strategies might be articulated to protect that child. The other kids will then need to know how to "check in" with the abused child in both visible and invisible ways. They will need to know at least portions of the safety plan of the abused child.

Escape Logistics. A child will want to identify all of the potential escape route from the father's house - doors and windows that the child can open, herself. She should locate all of the telephones in the home of her father and perhaps attempt to keep any cordless phone in her immediate vicinity. She might want to also locate pay telephones and fire alarms near the father's home. If there is a nearby church, she might want to learn the office hours, meet the minister and learn how to gain entrance to the church for refuge. Other escape routes should be evaluated with the child.

Managing the intoxicated father. When a father becomes intoxicated during the visit, it is helpful if the child has strategized for handling the father during intoxication. Safety is paramount. Therefore, the child should try to keep herself between the father and routes of escape. The child should also try to remove all potential weapons from the immediate location of the intoxicated father. If there is a lot of noise from a stereo or television in the house, the child might try to turn down the noise and eliminate other stimulation such as lights, visitors, disputes with siblings, etc. The child should attempt to remain calm and speak in quiet, soothing tones. The child should try to maximize predictability and tell the father exactly what she is doing in quiet, slow speech - such as, "I'm going to walk back to the desk now and sit down."

Cooperation with an intoxicated father is generally a useful strategy except when the child's life is placed at enhanced risk by the cooperation. If the child believes that the father is not able to operate a vehicle, she could ask that they use other means of transportation. If the father insists, the child could choose to run.

It is critical that the child understand that she is not responsible for taking care of the father during his intoxication. Intoxicated people are hard to predict. He may be happy at one moment and violent the next. Therefore, it is absolutely legitimate for the child to put her life and well-being ahead of her father's if she believes that he is becoming erratic, paranoid and potentially violent. Escape must always be seen by the child as an effective option in a situation where her father is intoxicated.

Contract. It may be helpful to draw up a contract between the child and the battering father or have the court enter an order describing the parameters of unsupervised visitation. The contract might include the rights of the child, including the right to contact the mother or advocate by telephone at any time during the visit. The contract should also set forth the responsibilities of the father and any limitations on his liberties. These might include, an agreement not to consume drugs or alcohol during the visit, to make no inquiry about the mother and her life, to take the child to planned activities, to return all the child's clothing and personal possessions brought with her on the visit, to remove weapons from the house during the visit, to pick up the child at a specified location other than the mother's house, to refrain from forcing a child to eat, etc. The contract should reflect the child's preferences and incorporate safety measures.

The contract might include some back-up clauses that describe the child's rights in the event of the father's violation. For example, if the father becomes drunk, the child might have the right to leave and return to the mother. If this component was in a custody order, the mother might be able to enlist the police in helping her pick up the child should the child report the father's

intoxication. It would also be helpful in subsequent litigation to have this paragraph in place. The batterer might oppose this element and insist that the child should, instead, go to his mother's. If the fall-back plan with the grandmother is acceptable to the child and the mother, it might be preferable to agree to this provision for the safety of the child and then litigate on the violation of the agreement not to drink or consumer drugs. Contract issues certainly will involve negotiation back and forth. The final product will not guarantee the child's safety but may both enhance safety and avoid future disputes between the parents regarding the visitation.

Kidnapping. Few battering fathers will take children and flee with them. However, if there is any notion that this might happen, the child should probably learn additional safety strategies relating to kidnapping. The child should be helped to identify her surroundings - the names of towns, restaurants, roads, schools - all those things that would help the child understand where she is. Certainly, if she is old enough to read a map, teaching the child how to use the map as a means of locating the abduction route will enable her to help those attempting to rescue her.

Children can learn to tell people dressed in police or military uniforms their names, home phone number, and how to ask for help. Children can leave notes on napkins in restrooms not likely to be used by the perpetrator. There are many ways that the child can get a message out that she is being kidnapped without disclosing her efforts to the batterer. Secrecy in communication may be necessary for her own safety.

Since many fathers who snatch their children tell them that the mother is dead or doesn't care, the mother might tell the child that she is not to believe that the mother is dead unless a certain person (named by the mother) confirms that the mother has died. A child needs to hear that the mother loves her and will search for her diligently if there is an abduction. Abducting fathers also threaten children that they will kill the mother if the child reveals her whereabouts. The child should be told that this is not a meaningful threat, that the mother is acting to safeguard her own life and that the child should put her own safety first. The child needs to understand that the mother will be very clear with the police that both the mother and the child need protection.

Kidnapping a child against her will is a pretty desperate act by the perpetrator. This desperation may result in a hostage situation if the perpetrator is found. Thus, the child should understand that escape is the preferred strategy prior to a hostage situation, but if there is a hostage-taking, the child should carefully evaluate whether placating the father may be a safer strategy than resisting him. Placation may be more helpful if the police are attempting to intervene in the hostage situation.

Rehearsal.

Children will need rehearsal of safety plans. Much of the rehearsal should occur as an ordinary event of daily life rather than as emergency safety measures related to visiting the father. Children learn better in situations where they are not anxious. An excess of focused rehearsal will make the child more anxious about the visit and diminish her ability to implement a safety plan. [Furthermore, mothers will be blamed for prejudicing children against fathers if most safety rehearsals are focused on visitation.]

Rehearsal can be done in journals whether the child draws pictures or writes her strategy. The battered woman might drive the child through the neighborhood where she is going to visit in

order to identify pay phones and fire alarms. If, for example, it is decided that the child should call her therapist if frightened or abused during the visit, the child needs to talk with the therapist about how to make contact. Again, rehearsal should be done in a way that builds the child's skills without increasing her fears. This is a difficult undertaking, at best.

Mother's Supplemental Safety Planning.

The battered mother may want to consider things that she can do independent of the child to protect both the child and herself. (See section on Safety Planning for Battered Women.) However, as the child is developing her own safety skills and strategizing for visitation, the mother might want to think of supplementary safeguards. For example, if the mother thinks that confrontation and potential assault on her is more likely in her home, she may want to arrange for pick up and delivery of the child in a safer place - at the police station, at her brother's home, etc.

If the father changes residences or cars or license tags or promises the children magical vacations, the mother might begin to gather information about these changes and promises in order to prevent a kidnapping or to locate the children quickly. It might be helpful to obtain periodic pictures of the child and father together. These will greatly enhance the efforts of law enforcement should there be a snatch.

To evaluate the child's safety during the visit, she might enlist the aid of some friends who could monitor the visit. For example, a friend could attend the batterer's church to check out the child's well-being. Another friend could do an educational canvass through the batterer's neighborhood, going door to door to talk about children of battered women to neighbors and child abuse to the perpetrator; thereby somewhat subtly enlisting the aid of the neighbors in responding to any request by the child for help, observing the child to assess her safety and enlightening the perpetrator about the long-term consequences of abusing children and terrorizing mothers.

The possibilities of supplemental safety strategies by mothers related to visitation are endless. However, first some assessment needs to be made of the potential danger for the child during visitation. If it seems minimal, safety planning and skills development may not be essential. If there is great risk, more extensive work is warranted. Thus, dangerousness assessment is a fundamental part of safety planning. (See section on Dangerousness Assessment.)

Risks of Safety Planning.

Several serious risks emerge from safety planning. The first is that the child will become fearful beyond the reality of danger and become immobilized by that fear. Another risk is that the child will feel she can stop the abuse or that she will believe she is at fault if the safety plan fails. Still another risk is that the battered mother who engages in this safety planning with the child will be seen by the court as an unfriendly parent for "interfering" with any reconciliation between the child and the father.

Since courts, family and friends who view the batterer as a bad partner but a good father may retaliate against the mother for encouraging safety planning, it might be better that the child engage in safety planning with an advocate or therapist in consultation with the mother. If safety planning is seen as a professional activity rather than maternal resistance, hostile attitudes from the court and community may be minimized. If domestic violence programs begin to routinely

engage in safety planning with kids, the service might be viewed by the courts as essential for children of battered women, so much so that safety planning could become an integral part of every visitation order entered in favor of a battering parent.*

Another risk is that the batterer's breach of a visitation order or a safety contract will be ignored by the court; the court may choose continued batterer access over child safety. Not only is there the danger that children will become angry and disillusioned with their protecting mothers and advocates in these circumstances, but the children may despair of hope for safety and autonomy, concluding that they and their protectors are powerless and that survival will best be served by carefully accommodating and deferring to the abuser. But perhaps the child who is engaged in safety planning is in a better place than the child who has not engaged in this problem-solving process because the safety-planning child has a supportive community in which to revise planning, approach safety from a different angle, and examine justice-seeking as a lifetime pursuit.

Another risk which must be emphasized is that the battered women's movement does not have a great deal of experience in formulating safety plans for children of battered women. Certainly, we have been doing this work informally for many years, but as we formalize our practice, it may come under closer scrutiny. Therefore, safety planning should be done meticulously with the goals of teaching children safety skills and critical thinking, assisting the mother in protecting her child, and building an empowering relationship between the mother and child. Advocates should periodically consult with child development experts to evaluate whether safety planning activities adequately account for the cognitive and moral developmental capabilities of children of various ages.

Tasks confronting battered women separating from their partners are monumental. So much must be done and so quickly. Therefore, it is essential that advocates help battered women assess the need for immediate, extensive safety planning relating to children's visits with their fathers. If careful assessment of danger to the child reveals that the batterer is not likely to assault or kidnap her, much of what appears in this paper may be unnecessary. It may actually aggravate a situation in which the child can act with adequate safety and some comfort. The greater the risk to the child, the more important these deliberations.

Barbara J. Hart

PCADV, 1990

ISSUES FOR ADVOCATES

This is new work for battered women's and children's advocates. We must evaluate the efficacy of safety planning with children routinely.

Questions to be answered are:

What is age-appropriate safety planning?

To what extent should children participate in the process of safety planning?

How do we create learning environments for children that do not foster false promises of safety, exacerbate the fears of children or facilitate the father's retaliation?

Is safety planning more hazardous than helpful? More time-consuming than productive?

The PennFree trainers hope that advocates will be able to share our experiences and evaluations about the efficacy of child safety planning as PCADV programs network on D & A issues over the course of the next several years.

B.J. Hart justproj@aol.com

Sandy & Jane; the invisible and imperiled victims of Sam & Joe

Sandy, age 22, and Jane, age 19, were 13 and 10 when Sam and Joe mutilated their mother and attempted to take her life. These children were also the intended victims of Sam and Joe; the brothers intended to leave them without a mother. This was a planned, symbolic homicide attempt.

On one of the happiest days of her childhood, the day of Sandy's graduation from 8th grade, Sam and Joe assaulted her mother, Sarah. Sarah was listed as dead on arrival at the hospital; that she survived was a medical miracle. Sarah had asked Sam for a divorce, and he had promised to leave the family home immediately after graduation. His departure was eagerly anticipated by mother and daughters because Sam had terrorized the entire family over the course of the marriage and had attempted to isolate the children from their mother. This day was to have been a day of family restoration and healing. Instead, it turned into the worst nightmare of any child's life.

The children were asleep in their beds at the time the assault occurred. Although the children did not witness the scalping and stabbing, they were profoundly and permanently effected by the attack. They were not allowed to visit their mother for more than a week after the assault because of her grave medical condition and because the disfigurement from the assault would have been too terrifying for the children.

The impact of this homicide attempt -- a horrific assault to penalize their mother for seeking to end a marriage that had brutalized her -- is profound. Immediately after the unsuccessful homicide attempt, the girls were emotionally paralyzed with fear and chronic, undifferentiated anxiety. It took 3 years for them to get to a place where they could manage night terrors and begin to resume childhood. After years of anguish and insecurity about being even temporarily outside of their mother's presence, the only setting where they could safely manage their anxiety and fear, the girls have begun to re-invest in life in the community. To this day, however, Sandy is very afraid of the dark and becomes faint and ill when hearing unidentified sounds in the night.

Moreover, these young women live in constant, acute fear that their mother will be killed by Sam (or a third party at his direction) because he has a reputation for killing those who cross him. It is commonly believed that Sam killed his first wife and his brother-in-law when he concluded that their conduct had grievously wronged him. Beyond this, Jane and Sandy live in terror that Sam or his agent will execute either or both of them to punish Sarah for cooperating in the prosecution that resulted in their incarceration.

The adjustment and well-being of these young women is fragile. Sandy is now finishing her work for a teaching certificate, having completed college last year. Jane is in her second year of college. Sandy lives with her mother. Jane lives in a dormitory at a local college and spends significant time with her mother and sister. Both girls remain very close to their mother. They need security, stability and safety. They cannot achieve these without their mother. The attempted

homicide arrested their emotional and personal development for several years. Thus, they require the nurturing of their mother to a much greater extent than their peers. The loss of their mother to a successful homicide attempt would devastate them. Relocation at the present time to avoid such a homicide would greatly disrupt their lives and might destroy the fragile thread that keeps these young women moving through recovery from the impact of the mutilating and homicidal assaults of Sam and Joe.

Research data on children of battered women reveal that the responses of these girls to the assault on their mother and the previous criminal conduct inflicted upon her by Sam is predictable and appropriate. They need time and safety to consolidate the gains they have made and to finish maturation to adulthood free of the paralyzing fear that their mother will be taken from them.

Data also reveal that their fears are reasonable. Most fatal violence against children by parents and step-parents occurs in the context of domestic violence. Data suggest that fathers and stepfathers begin to target children with abuse only after they have established a pattern of abusing mothers and when they conclude that assaults on children will enable them to gain control over their wives/female partners or will provide a vehicle for retaliation against wives/mothers who have resisted the demands of perpetrators or who are seeking to terminate relationships with perpetrators. 80% of child fatalities are perpetrated by fathers and step-fathers. There was a 36% increase in homicides of children in the family between 1985 and 1989.

Paroling Sam and Joe at this time will inflict irreparable harm on these young women even if Sam does not pursue homicidal retaliation against their mother. Time is the greatest gift that can be given to these girls. They need at least 3 more years. Then they can relocate. They will have established professions and families. They can proceed with life outside of Anywhere, USA. To leave now would disrupt their whole social network which is vital to their continued recovery and movement towards independent, competent adulthood.

The interests of these young women must be considered in evaluating whether Sam and Joe should be paroled. Both men have inflicted irreparable harm upon these young women and that harm can only be mitigated by continuing their incarceration until Sandy and Jane have finished or completed the transition to adulthood. The interests of these young women must be considered above and beyond, but in concert with, the interests of their mother, Sarah, in assessing whether the interests of justice would be served by keeping Sam and Joe incarcerated by denying parole at this time. It is our position that justice will only be served by denying parole to Sam and Joe at this time.

(Citation for the research cited in this paper will be furnished upon request.)

B.J. Hart justproj@aol.com

Victim Issues

Domestic violence victims are both similar to and strikingly different from other victims of violent crime. Thus, they require all the information, assistance and input that facilitates the committed, informed participation of other victims and witnesses, but beyond these, they require enhanced protection and advocacy.

Battered women are often similar to other victims of violent crime in that they want perpetrators to stop their conduct, to pay dues for the crimes committed and to compensate victims for the losses sustained as a result of their criminal conduct. They are also similar to other crime victims in that they have interests in justice that may differ from the interests of the justice system. They may want privacy or anonymity in the prosecution process while the criminal justice system values public accountability. They may want speedy disposition while the justice system labors at a snail's pace. They may want input in decisions about plea negotiations and sentencing while the justice system concludes that this inclusiveness precludes the expeditious handling of criminal cases, unduly interferes with prosecutorial discretion or intrudes upon the rights of defendants.

What is also true about battered women, as it is of other victims of violent crime, is that they are not all cut from the same cloth and do not all want the same outcomes. Battered women have varied interests in participation in prosecution process and in outcomes. There is no profile of a battered woman witness that fits all or most battered women.

BARRIERS TO VICTIM PARTICIPATION IN PROSECUTION.

While each battered woman's experience should be recognized as unique, there are many commonalities among battered women victim-witnesses. Perhaps most significantly from the perspective of prosecutors is that battered women confront significant barriers to safe and effective participation as victim-witnesses in the criminal justice process.

Recidivism and retaliation.

Like other victims of violent crime, battered women fear retaliation. Fully 50% of all victims of violent crime report they are fearful that perpetrators will seek reprisal for their participation in prosecution. And like other victim-witnesses who are threatened by the perpetrator (or his agent) during the pendency of prosecution, they are twice as likely to resist participation in prosecution as those not threatened (Davis et al., 1990).

The National Crime Survey from 1978 to 1982 showed that an estimated 32% of battered women were re-victimized within six months after the assault giving rise to criminal justice intervention. They were victimized an average of three times each. In contrast, the 1982 NCS data on stranger violence showed that only 13% of the victims of stranger crimes were subsequently assaulted during a six month period. Unlike domestic violence victims, victims of stranger crime were assaulted only once during that year (Langan and Innes, 1986).

There are many reasons why battered women appear to be at elevated risk for retaliatory violence. Most other victims of violent crime are not in relationship with the defendant and are not living with (or did not formerly reside with) the defendant. Most have not previously suffered attacks or sustained injury at the hands of the defendant. Most have not been held hostage by the defendant or experienced his terroristic threats, targeted graphically at the victim or members of her family. Most other victim-witnesses are not economically dependent upon the defendant during the pendency of prosecution and, potentially, thereafter. Most will not be compelled into continuing contact with the defendant during the criminal process and after disposition because of shared parenthood. Most other victims of crime are not integrally interconnected with the criminal assailant. Most other victims of crime are not at elevated risk of violent assault after intervention by the criminal justice system. However, battered women are most often killed when

attempting to seek legal redress or when leaving an abusive relationship (Browne, 1987; Sonkin et al., 1985).

Prosecutors too often believe that battered women will be safer and less exposed to life-jeopardizing violence once they are separated from the offender; once prosecution has commenced. Quite to the contrary, evidence of the gravity of violence inflicted after separation of the couple is substantial. Batterers may, in fact, escalate their violence to coerce a battered woman into "reconciliation," to retaliate for the battered woman's participation in the prosecution process, or to coerce her into seeking termination of the prosecution. If the batterer cannot "recapture" the battered woman as his ally, he may seek retribution for her desertion and for her disloyalty in exposing him to criminal consequences. Although not all batterers engage in escalated violence during the pendency of prosecution, as many as half threaten retaliatory violence (Davis et al., 1990) and at least 30% of batterers may inflict further assaults during the pre-disposition phase of prosecution (Goldsmith, 1991).

A battered woman whose prior attempts to seek prosecution or civil protection orders, only to have the perpetrator escalate his violence, may be unwilling to face the risk that prosecution will further endanger, rather than protect her (Family Violence, 1991). Men who batter have kidnapped victims or seriously injured and even killed battered women to prevent their participation as witnesses (Gwinn, 1991; Hart, 1985).

Battered women may, thus, be much more concerned about preventing future violence than about vindicating the state's interest in penalizing the defendant for the crimes previously committed. This orientation of the battered woman toward future safety may create a tension with those prosecutors singularly focused on winning criminal convictions.

Victim-blaming attitudes.

Unlike other victims of violent crime, battered women are often viewed by the prosecutor, judges and jurors as responsible for the crimes committed against them; responsible either because battered women are believed to "provoke" the perpetrator into violence or because they are believed to have the power to avoid the criminal assault through accommodating the perpetrator's demands. Other victims of violent crime are not seen by the prosecution as culpable for the crimes inflicted upon them, but battered women frequently report that prosecutors appear to consider them "unworthy victims" who are clogging up the courts with unimportant family matters. Some prosecutors, therefore, impose barriers to a battered woman's use of the criminal justice system. These may include delayed charging, the requirement of substantial corroboration, or the imposition of fees upon the victim (Ford, 1991). The reluctance of prosecutors to vigorously proceed with domestic violence cases quickly erodes victim confidence in the prosecutor's alliance with the victim.

Even though prosecutors may eschew victim-blaming attitudes, the prosecution may be confounded by similar attitudes embraced by either the defendant or the battered woman, herself. Uniformly, the perpetrator of domestic violence blames the victim for his conduct, claiming that she provoked him so profoundly that his crimes are excusable, if not justifiable. Batterers often persuade battered women of the correctness of this perspective. Beyond this, the battered woman may also blame herself, feeling she should have been smarter and figured out a way to prevent the violence or she should have been more courageous and found a way to safely leave the relationship. This self-blame may go as far as believing that it is not fair to prosecute the perpetrator.

Systemic resistance to the prosecution of batterers.

Unlike many victims of stranger assault, but like other victims known to defendants, victims of domestic violence may be reluctant witnesses or may be assumed to be so (Cannavale and Falcon, 1976). There are many reasons for this. Many battered women who earnestly seek prosecution find substantial resistance to the appropriate charging of defendants. National data reveal that law enforcement routinely classify domestic assault as misdemeanors even though the criminal conduct involved actually included bodily injury as serious or more serious than 90% of all rapes, robberies and aggravated assaults (Langan and Innes, 1986). When serious assaults are trivialized and charged as misdemeanors or cited as summary offenses, victims of domestic violence may conclude that the costs and risks of prosecution outweigh the potential consequences for assailants. Thus, battered women may lose interest in criminal prosecution.

Further, some battered women, initially committed to prosecution, become discouraged with the criminal process; discouraged because of delays (Ford and Burke, 1987), lack of witness protection (Family Violence, 1991), or because of prosecutor indifference or insensitivity (McGuire, 1991; Hart, 1991).

Victim reluctance. Similar to other victims of crime, when battered women are poor, have few personal or financial resources or find participation in prosecution costly, they may be reluctant to proceed. Rural battered women may not have transportation and may find it impossible to arrange for multiple trips to the court-house. Women with school age children may have to find expensive and inconvenient childcare for all court appearances outside of school hours. Seriously injured battered women may find employers unwilling to accommodate court appearances after they have been considerate about many medical appointments. Those battered women who have resided in a rental unit leased from the defendant's parents may face eviction if they cooperate.

Although it is commonly believed that battered women withdraw cooperation because of decisions to reconcile with defendants, research reveals that this is not typically the reason for the request to terminate prosecution. (Ford and Burke, 1987) Some battered women seek to terminate prosecution because the initiation of charges has affected the changes sought in defendant behavior such that victims no longer conclude that prosecution will be necessary to protect them from future abuse (Ford, 1991).

Other battered women who have found that the best protection against a perpetrator's violence has been the protection offered by the community with which the battered woman affiliates, rather than the criminal justice system, may resist prosecution if she concludes that the community will abandon her or withdraw critical support if she pursues prosecution. Women of religious, ethnic and communities of color sometimes identify community abandonment as an untenable, adverse consequence of cooperation with prosecution.

Battered women may be reluctant to expose the father of their children to public accountability because of the attitudes of their children toward prosecution. Others are fearful that prosecution will wreak economic ruin on the family. Even smaller numbers of battered women oppose prosecution for political reasons; believing that the criminal justice system selectively penalizes men of color or other politically unpopular constituencies. Some believe that the exposure of batterers to the criminal justice system and its coercive controls will facilitate, rather than deter, future violence.

An understanding of victim reluctance is critical for informed decision-making about the role of the battered victim in prosecution, strategies to enhance victim cooperation and, ultimately, disposition by the prosecutor or the court.

STRATEGIES TO FACILITATE VICTIM PARTICIPATION.

Despite all these potential barriers to a battered woman's committed participation in prosecution, many battered women and prosecutors have found that these hurdles can be eliminated with careful attention to the particular requirements of each battered woman victim-witness. A variety of strategies have been embraced to facilitate the informed, protected and committed participation of battered women in criminal prosecution.

Victim rights and services.

One strategy adopted to enhance victim participation was the statutory articulation of victim rights. Pennsylvania's Crime Victims Bill of Rights specifies that victims of crime have the right:

To have included in any pre-sentence report information concerning the effect that the crime committed by the defendant has upon the victim, including any physical or psychological harm or financial loss suffered by the victim, to the extent that such information is available from the victim or other sources.

To have restitution ordered as a condition of probation whenever feasible.

Upon request of the victim of a feloniously assaultive crime, to be promptly informed by the district attorney whenever the assailant is to be released on parole, furlough, or any other form of supervised or unsupervised release from full incarceration. (Section 479.3, Act 96 of 1984.)

Another strategy is the statutory mandate for victim-witness service funding. The Pennsylvania Commission on Crime and Delinquency is required to provide technical assistance and to make grants to district attorneys and other criminal justice agencies to provide crime victims with notification and protection services which include:

Information concerning financial assistance and other social services available as a result of being a victim of crime;

Notification that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the victim an unnecessary trip to court;

Notification of the final disposition of the case;

Protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;

A secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;

Procedures for the expedited return by law enforcement officials of that personal property of victims which is held for prosecutorial purposes;

Services related to the rights of victims;

And other services as defined by PCCD. (Section 479.4 of Act 96 of 1984.)

These rights and services are helpful, but are often not sufficient to engage the cooperation of victims of domestic violence. Additional efforts that have engaged the participation of battered women in criminal prosecution of perpetrators include:

Outreach.

District attorneys prioritizing the prosecution of domestic violence cases have undertaken outreach to domestic violence victims immediately after preliminary arraignment in order to provide victims with notice about charges filed, information about bail and any special conditions thereon, as well as any victim intimidation order under 18 Pa. C.S. § 4954, and notice of the defendant's release from custody. Outreach initiates a dialogue and relationship early in the prosecution process. It enables the victim to consider civil legal remedies and human services options for protecting herself and her children during the pendency of prosecution.

Some prosecutors have instituted victim-witness clinics that provide childcare and are available at times convenient to victim-witnesses. At these seminars, victims learn about the criminal justice system, their role in it and the likely dispositions upon conviction or a guilty plea. They learn how to craft victim impact statements and how to articulate the specific dangers they believe are posed by their assailants. They learn how to become more effective witnesses. Most significantly, they begin to network and bond with other victims, thereby gaining support and eliminating the isolation that domestic violence perpetrators use to dissuade battered women from participation.

Victim protection.

Since battered women are at elevated risk of violence during the pendency of prosecution, prosecutors should attend specifically to the safety requirements of victims. Systems should be developed in each prosecutor's office to assess the potential lethality of defendants. The prosecutor might undertake a periodic review of victim safety with the battered woman and seek additional protections should they be required. Should a victim seek to maintain the confidentiality of an undisclosed address, the office should very carefully safeguard any contact information and delete any reference to an address on materials that are disclosed to the court and defense counsel. Beyond this, prosecutors should refer battered women to domestic violence programs so that they can carefully construct safety plans to minimize exposure to perpetrators and to engage the community in vigilance for the safety of battered women.

Victim advocacy.

Victim advocacy is a key component in the prosecution of domestic violence. Battered women who find themselves abruptly thrust into the legal system because of the violence of their partners are swamped with new information, sometimes are dislocated, and invariably are confronted with increased demands for family management in this acute crisis situation. It is critical that victims have an identified contact person within the district attorney's office who can provide support, as well as information and referral, to assist battered victims both to effectively participate in the justice system. Often those providing victim assistance in the office of the district attorney focus on technical assistance to victims that focuses on the logistics of participation in the criminal justice system. For other critical issues such as emergency shelter, counseling, safety planning, crisis management and civil legal advocacy, battered victims are referred to local domestic violence programs.

When battered women engage in legal proceedings, it is critical that they have support from family, friends and employers so that their participation can be diligent and unclouded by anxieties that significant others do not approve of the prosecution. Therefore, domestic violence programs may seek to educate and engage those people most important to the victim so that her investment in the process of prosecution is not confounded by their concerns and so they can help her strategize for safe participation in the criminal justice system.

Specialized Prosecution

Specialization has improved the success of prosecution in domestic violence cases (Fagan, 1988). District attorneys might establish domestic violence units in large offices or create specialists in smaller offices in order to enhance the relationship of the prosecution with the victim, to better investigate and prepare a case against the perpetrator and to specifically tailor safeguards to protect the victim from further abuse. Specialized prosecution enhances the expertise of those handling domestic violence cases and facilitates outcomes satisfactory both to the prosecution and victim witnesses.

In many jurisdictions in the Commonwealth, the victim of domestic violence must undertake prosecution at the preliminary hearing if the case is to proceed. Crime victims are uninformed prosecutors; often incapable of presenting the evidence of the criminal conduct of the suspect and invariably intimidated by defense counsel and the perpetrator. Thus, many domestic crimes fall through the cracks and are dismissed. The success of prosecution at the preliminary hearing phase sometimes improves when police officers carry the burden, but issues of victim safety are routinely ignored. If district attorneys are to upgrade efforts to prosecute domestic violence crimes, preliminary hearing prosecution is essential.

Timely prosecution.

Victims of crime are not entitled to timely prosecution under the current statutory scheme; however, research suggests that timeliness is essential to victim cooperation (Ford & Burke, 1987). Prosecutors should investigate domestic violence cases expeditiously and not seek or acquiesce in procedural delay where there is no compelling reason. Domestic violence victims grow weary of prosecution if many lengthy appearances are required; thus the district attorney should only require victims to attend those proceedings where their testimony is critical to the case. Where feasible, the prosecutor should minimize the time victim-witnesses expend at any court appearance. In scheduling court proceedings where victim attendance is required, the prosecutor might inquire about significant demands on the time and resources of victims which may compete with court attendance; these should be accommodated whenever possible (ABA, 1986).

Victim participation and empowerment.

District attorneys seeking to upgrade efforts at domestic violence prosecution often employ other victim-engaging strategies. Victim input in plea negotiations and dispositional alternatives is a strategy believed to enhance victim cooperation (Family Violence, 1991; McGuire, 1991). Some prosecutors have developed court schools in which they enable the victim to learn how to be an effective witness. Many battered women report that prosecutors fail to adequately prepare for trial; sometimes it appears that the prosecutors are not even conversant with the documents in the prosecution file as trials are about to begin. Careful and periodic preparation in which the victim is engaged will facilitate successful prosecution and victim empowerment

and investment in the process. As victims understand that they have a vital and respected role in the prosecution, reluctance may subside. Data suggest that the more domestic violence victims are invested in the prosecution process, the more powerful its deterrent effect, the stronger the message to perpetrators that their violence will not be tolerated and that the cost of persistence will far outstrip the benefits of continued violence (Goldsmith, 1991).

OTHER VICTIM ISSUES.

Limits on victim compulsion.

Victims should not be penalized for their reluctance to participate in prosecution. Policies should be developed in each prosecutor's office that limit the use of compulsion in achieving victim participation. Victims of domestic violence should not be incarcerated for refusal to serve as victim-witnesses. Battered women should not be prosecuted for filing false police reports because they seek to terminate prosecution, except in those unusual circumstances where there is independent evidence of false swearing or perjury. While it is appropriate to routinely issue subpoenas to compel victim appearance at trial, bench warrants should not be issued routinely when victims fail to appear. Rather, continuances should be sought and investigation should be undertaken to ascertain the whereabouts of the battered woman and the reasons for her failure to appear. If reluctance is based on fear or intimidation, strategies should be employed to protect her from the dangers anticipated. Battered women should not be threatened with refusal to prosecute perpetrators for future violence if they fail or refuse to participate in the current prosecution.

Prosecutors should be cognizant of the potential adverse ramifications of coercive process with victims of domestic violence. The repercussions of coercive process may be as far-ranging as the loss of custody, the loss of employment, the loss of reputation, eviction from leaseholds, and abandonment by significant support persons. All efforts should be made to gain the cooperation of domestic violence victims rather than to compel participation.

The interests of justice must seriously consider the interests of victims. Their interests in safety and their reputations as law-abiding citizens should not be compromised in pursuit of prosecution unless there are overriding reasons for subordinating victim interests.

On the other hand, it may be helpful for victims that the public posture of a prosecutor's office is that the Commonwealth controls prosecution. Many in the criminal justice system believe that at least the appearance of no victim discretion on the question of whether the prosecution will proceed reduces batterer intimidation directed at getting charges dropped. This public posture may even enhance victim safety because the perpetrator understands that further violence will not affect a dismissal of the charges but will both result in incarceration during the pendency of the initial prosecution and in additional prosecution for the retaliatory violence. It is important to recognize that prosecution solely controlled by the district attorney will not universally buttress victim investment or protect victims from retaliatory violence. In those instances where termination of the prosecution is critical to protect victims, the public posture should not preclude such prosecutorial discretion.

Restitution and victim compensation.

Battered women in Pennsylvania have reported that neither restitution nor victim compensation has been predictably achieved or achieved in a timely fashion despite the substantial losses

sustained as a consequence of domestic violence. Prosecutors might seek to institute a policy whereby victim restitution would precede the collection of other court costs and fines. Beyond this they might request time tables that are tight and require significant payment at the front end rather than balloon payments at the end of the payment schedule.

As to crime victims' compensation awards, battered women have received few, even though they are eligible. The lack of awards appears to be a failure of advocacy. Although many district attorneys offices afford victims clerical assistance in the preparation of compensation complaints, they do not proceed to advocate for the issuance of awards. If advocacy in this arena occurs during the pendency of prosecution, victims may invest more fully in the prosecution.

The Protection From Abuse Act permits the court to order payment for many losses that may not be compensable either through restitution or crime victims' compensation. Therefore, the office of the district attorney may alleviate some of the stress and burden imposed by the losses sustained by the victim if they direct domestic violence victims to the civil courts for economic awards as well as protection. Meanwhile, when all else fails, if there are losses that affect a victim's capacity to work, payment might be forthcoming from the Bureau of Vocational Rehabilitation. Particular attention to these economic matters renders a great service to victims and simultaneously enhances their investment in prosecution.

Post-disposition issues.

Victims of crime have articulated concerns that prosecutors seem to lose interest once a conviction or plea has been achieved and sentencing imposed. The only statutory obligations of district attorneys after disposition are notice to victims of feloniously assaultive crimes of parole hearings and the right to participate therein, notice of furloughs, notice of transfer to community facilities and notice of discharge from incarceration. Actually, victims are only entitled to this information if they request it from the district attorney and provide that office with current contact information. Crime victims may not appreciate the importance of providing the district attorney with this information, and few prosecutors have developed systems that expedite timely notification. These systems may be particularly crucial in domestic violence cases as domestic violence perpetrators frequently engage in further assaults after incarceration. It is important that contact information be kept confidential so the perpetrators cannot access it to discover the whereabouts of battered women upon release.

Domestic violence programs have engaged in legal advocacy on behalf of crime victims in parole hearings. Where domestic violence victims believe that their safety is jeopardized by early parole of perpetrators, coordinated efforts by the office of the district attorney and the local domestic violence program can provide the Parole Board with information essential for their informed decision-making, both as to whether parole should be granted and as to conditions that might be imposed on any parole.

Where a prosecutor is convinced that a crime victim continues to be at risk of lethal retaliation from a perpetrator upon parole or at the expiration of his sentence, the office might assist the victim in relocation and in legal process to change the victim's identity. Victims of domestic violence are among those most likely to need this type of assistance.

THE CHALLENGE TO PROSECUTION.

Domestic violence victims are increasingly turning to the criminal justice system for assistance in ending the violence that jeopardizes their lives and well-being. They often are uninformed about the criminal justice process and naive about the power of prosecution to end the violence in their lives. For battered women to be effective, committed participants in the criminal justice system, care must be taken to minimize the barriers to access and investment that have historically impeded empowered participation by battered women in the prosecution of domestic violence. The strategies outlined in this chapter have been utilized to engage and protect battered women as victim-witnesses and thus have greatly advanced the success of prosecution in this arena. While it may be impossible for every district attorney to engage in all of the activities suggested, it is believed that the adoption of a prosecutor protocol attentive to victim issues will greatly enhance justice-seeking in domestic violence cases.

Barbara J. Hart, Esq., PCADV, *Domestic Violence: A Manual for Pennsylvania Prosecutors*, Harrisburg: Pennsylvania District Attorneys Institute, 1992.

ABA (1986). "ABA Suggested Guidelines for Reducing Adverse Effects of Case Continuances and Delays on Crime Victims and Witnesses." Chicago, IL: American Bar Association, February.

Browne, A. (1987). *When Battered Women Kill*. New York: The Free Press.

Cannavale, F.J., J.R. and Falcon, W.D. (1976). *Witness Cooperation*. Lexington, MA: Lexington Books.

Davis, R., Smith, B., Henley, S. (1990). *Victim-Witness Intimidation in the Bronx Courts*. New York, NY: Victims Services Agency.

Fagan, J. (1988). "Contributions of Family Violence Research to Criminal Justice Policies on Wife Assault: Paradigms of Science and Social Control." *Violence and Victims*, Vol. 3, No. 3.

Family Violence Prevention Fund. (1991). *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases*. San Francisco, CA: The Family Violence Prevention Fund.

Ford, D.A. (1991). "Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships." *Law & Society Review*, Vol. 1, No. 2.

Ford, D. A. & Burke, M. J. (1987). "Victim-Initiated Criminal Complaints for Wife Battery: An Assessment of Motives." Paper presented at the Third National Conference for Family Violence Researchers, University of New Hampshire, Durham, NH, July, 1987.

Goldsmith, S. (1991). "Taking Spouse Abuse Beyond a 'Family Affair.'" *Law Enforcement News*, Vol. XVII, No. 334.

Gwinn, C. (1991). Lecture for the National College of District Attorneys, Las Vegas, NV, October, 1991.

Hart, B. (1991). "Domestic Violence Intervention System: A Model For Response to Women Abuse." *Confronting Domestic Violence: Effective Police Response*. Harrisburg, PA: Pennsylvania Coalition Against Domestic Violence.

Hart, B. (1985) "Testify or Prison?" *AEGIS: The Magazine on Ending Violence Against Women*. Washington, DC: AEGIS.

Langen, P.A. and Innes, C.A. (1986). "Preventing Domestic Violence Against Women: Discussion Paper." *Bureau of Justice Statistics Special Reports*. Washington, D.C.: Bureau of Justice Statistics.

McGuire, L. A. (1991). *Prosecution of Domestic Violence in Iowa*. Iowa Prosecuting Attorneys Training Coordinator Council.

Sonkin, D., Martin, D., & Walker, L. E. A. (1985). *The Male Batterer: A Treatment Approach*. New York: Springer.

B.J. Hart justproj@aol.com

Violence Against Women Act: Identifying projects for law enforcement and prosecution grants

This paper is designed to assist advocates in the domestic violence and sexual assault communities identify and evaluate the array of potential programs that may be funded under the "Law Enforcement and Prosecution Grants," otherwise known as T-Grants, of the Violence Against Women Act. The paper first offers an overview of six (6) core programs currently employed by sexual assault and domestic violence organizations for advocacy in the justice arena. It then describes an array of supplemental advocacy strategies utilized by these victim services. Next it briefly identifies law enforcement and prosecution programs designed to end violence against women. Then it discusses other interventions that could be funded under VAWA. Finally, it suggests a process for critical evaluation in establishing priorities for funding initiatives under the T-Grants.

I. Core Advocacy Programs

Over the course of the last twenty (20) years, battered women's programs, sexual assault centers and statewide coalitions of both groups have designed and implemented a range of successful, community-based advocacy projects related to the justice system's mandate to end violence against women. The six (6) most commonly employed are: civil protection order projects, criminal justice advocacy projects, intervention projects, local task forces, training and technical assistance projects and community-organizing projects.

Civil protection order projects. Legal advocates engage in a broad range of activity in civil protection order projects. These include: community education about civil protection order law and practice; safety planning both general and related to participation in the legal system; assistance in the preparation of petitions and identification of evidence; support during attorney interviews, if any; court accompaniment; assistance in filing, serving and registering petitions and orders; court preparation clinics; advocacy for enforcement with police, prosecutors, probation and the courts; assistance with crime victim compensation claims; advocacy with employers regarding workplace safety plans and retention of employment; identification of practice problems in the justice system from police intervention to court administration, procedures and rules, to judicial practice, to enforcement mechanisms, to statutory deficits and remediation of these problems; policy and protocol development; construction and training of curricula for justice system personnel; media advocacy to assure timely, accurate, victim-affirmative, perpetrator-accountable coverage; networking with other civil protection order advocates in the

state to upgrade skills and exchange information about practice; and staffing of justice system task forces to end violence against women.

Typically, legal advocacy for civil protection order proceedings is undertaken by an individual advocate (or a part-time worker) employed by the battered women's program or the sexual assault center. In large urban areas, civil protection order advocacy is accomplished by legal centers based in victim services agencies. Less frequently, this work is court-based, and when it located in the courts, particularly when advocates are court employees, the range of activity is curtailed to assistance in court proceedings from application through enforcement.

Criminal justice advocacy projects. Legal advocates engage in a similar range of activity in criminal justice advocacy projects. These include: community education about criminal law and practice related to sexual assault and domestic violence; safety planning both general and related to participation in the legal system; advocacy with law enforcement for timely and effective intervention and investigation; victim notification of rights, of custodial status of perpetrator, of charges lodged, and of conditions of release; pre-trial services advocacy for victims, including risk assessment and identification of specific, individually-tailored release conditions; advocacy with prosecutors regarding victim participation in criminal proceedings and plea negotiations; advocacy for sentencing hearings and victim-protective outcomes; advocacy with probation, corrections and parole related to revocation, continued custody and protective modifications; assistance with crime victim compensation claims; certification, monitoring and training of batterer intervention services; advocacy with employers regarding workplace safety plans and retention of employment; identification of practice problems in the justice system from police intervention to prosecution practice, to court administration, procedures and rules, to judicial conduct, to probation and parole, to statutory deficits and remediation of these problems; policy and protocol development; training and construction of curricula for justice system personnel; media advocacy to assure timely, accurate, victim-affirmative, perpetrator-accountable coverage; networking with other criminal justice advocates in the state to upgrade skills and exchange information about practice; and staffing of justice system task forces to end violence against women.

While community-based criminal justice programs often engage in the full panoply of advocacy described above, work with victims located in the office of the prosecutor, court services or probation frequently is limited to supporting the functions of those justice system offices. Work located in public agencies is most typically victim assistance as distinguished from advocacy; victim assistance is typically designed to help the victim effectively participate in the criminal proceedings and to acquire compensation. It appears that a majority of criminal justice victim service programs are those housed in public agencies.

Intervention projects. Intervention projects are private sector programs designed to enhance justice system accountability to battered women. Their work includes orchestration of coordinated community initiatives related to domestic violence, education and negotiation for improved criminal justice system policy and practice, establishment of systems for tracking and monitoring perpetrators, pre-trial information and accountability services for all defendants in domestic violence criminal proceedings, educational or counseling programs for adjudicated and socially mandated batterers, supervised visitation centers to protect the children and victims of domestic violence during custodial access, and community organizing initiatives to end violence against women.

Advocacy, education and support for victim partners is sometimes undertaken by intervention projects, but more often the local battered women's shelter or counseling service engages in the criminal justice advocacy work, see above.

Intervention programs were birthed in Minnesota almost 15 years ago. The Domestic Abuse Intervention Project of Duluth (DAIP) is the model most replicated. DAIP undertakes all of the enumerated activities above, but many intervention projects are somewhat less comprehensive, while still centrally focused on systemic reform and services for batterers.

Task Forces to End Violence Against Women. Task Forces on Domestic Violence or Sexual Assault have been established in many communities. Task forces seek to coordinate all the components of the criminal justice system and the victim services community to improve justice system practice, to better communicate and collaborate in further justice work to end violence against women, to avert sexual and domestic assaults and homicides and to evaluate the efficacy of current and experimental practice in fostering coordination and an end to violence against women. Task forces frequently have an executive or core group of organizers/decision-makers; often including representatives from the judiciary, prosecution, law enforcement, court administration, pre-trial services, probation and parole, and domestic violence or sexual assault programs.

The initial work of a task force almost invariably is an assessment of the state of criminal justice practice and resources in the community, followed by a report on effective practice and systemic deficits, along with a description of recommended remedies and potential resources therefor. A task force may then develop a work plan for incremental change and elevated coordination. The promulgation of compatible and definitive protocols or guidelines for practice in each component of the justice system is often the first step in a work plan. While each agency retains the exclusive authority to develop the protocol for that component, sharing of work product with a request for feedback from the other components, particularly in terms of interface of the various components, is routinely invited. Other collaboration in training and problem-solving follows. Thereafter, evaluation is undertaken and systemic reform considered in light of the results thereof. Informal systems of communication, conflict resolution and coordination among task force participants are an outgrowth of the formal work of the task force.

Some of the earliest criminal justice initiatives to end violence against women were funded by the Law Enforcement Assistance Agency in the U. S. Department of Justice. Many of the funded programs undertook to establish local criminal justice task forces to facilitate communication and coordination among the various components of the criminal justice system and the civil protection order system. Early in the history of task force development, most were organized and staffed by domestic violence and sexual assault program personnel, working collaboratively with key professionals in the justice system both in leadership and development of coordinating task forces. Some have endured since inception, while others have been established for specific, time-limited purposes. While a significant number of the older task forces continue to be staffed and lead by victim services programs, those of more recent vintage are often organized and lead by judges, prosecutors or law enforcement executives with sharply limited participation from advocates in the formulation and execution of task force work. Although advocates are ambivalent about the shift of power to criminal justice system actors as principal convenors (citing a loss of vision, an absence of primary focus on safety for victims, discounting of the leadership and expertise of advocates, exclusion of victims and delimited task identification), they note that in communities where leadership has shifted to justice system professionals, but

where the above deficits have not followed, the changes effected may be significantly greater than previously achieved. This type of coordinated justice system response has expanded to include other components of the human services systems and community organizations. Often, instead of task forces, these more extensive initiatives are called coordinating councils.

Training and technical assistance projects. Training and technical assistance projects, initiated by domestic violence and sexual assault programs, are burgeoning. Projects targeted at informed, improved justice system practice have produced reams of training curricula and an almost equivalent amount of audiovisual materials. Legal advocacy training is offered in many states; some certify advocates and require continuing education to maintain certification. Police training manuals, court clerk handbooks, prosecution guides, bench books, pre-trial services seminars, probation workshops, correctional curricula on victims of domestic violence and sexual assault, electronic monitoring pamphlets, safety planning and survival skills workshops, guides to maximizing compensation and restitution, court audit tools, and innumerable other educational materials have been crafted and implemented.

Technical assistance is offered to justice system professionals encountering difficulties in achieving consistent, effective, expedited response to violence against women. Consultation is offered to lawyers representing individual battered women in complex litigation. Advocates organize and maintain supportive networks for peer supervision and consultation. Victim services organizations undertake amicus briefs in cases of impact litigation to inform the courts of the public policy and victim interests at issue. These programs engage in policy-formulation and legislative drafting at the invitation of the public sector, including executives at the local, state and federal levels of government, the courts, legislators. Advocates offer consultation on court and law enforcement automation systems and the interface requisite between these electronic systems. Victim services programs work with the private bar to develop and fund pro bono legal services for battered women and children.

The training and technical assistance activity of battered women's programs and rape crisis centers goes well beyond that enumerated above. Training is offered by local programs, state coalitions and national organizations in the victim services community. Technical assistance is by no means the exclusive province of state coalitions and national advocacy organizations, but it is a fundamental function of these organizations. As the funds afforded by VAWA are distributed throughout the justice community, demand for additional training and technical assistance from the advocacy community will undoubtedly mushroom.

Community organizing projects. Community organizing initiatives are those which invite members of the general public to actively engage in work to end violence against women. Victim services programs that have utilized organizing strategies have done so with the goals of enhancing safety and achieving social justice for battered women and sexual assault survivors; objectives of community organizing are expansion of the constituency of active participants in the work, articulation of a clear, universal message that each citizen can take responsibility to end this violence, and transformation of the public discourse and consciousness about the causes of violence against women and the power of the community to end it.

The early histories of the battered women's and rape crisis movements are replete with community organizing. Currently, there is little community organizing work undertaken by victim services programs. The exceptions are notable.

The Family Violence Prevention Fund is now working with Filipina women in the Bay Area to assist that community in organizing to identify the unique needs of Filipina battered women and their children, to design programs and advocacy strategies to meet those needs, to seek changes in the dominant culture, particularly the justice and victim services systems, to institutionalize the strategies and interventions required and to create a voice for Filipinos at the Coordinating Council, within the Domestic Violence Consortium and in public discourse.

In one community where the victim services program could not persuade a prosecutor to vigorously pursue criminal charges against perpetrators of violence against women, the program organized women in the faith community to review charges and report on outcomes of all criminal cases involving violence against women, thereafter exposing the failed practices of the prosecutor to the media and thereby creating public outcry for change, which the prosecutor then effected.

In several communities in CA neighborhood watch projects are enlarging specifically to intervene against domestic and sexual violence.

In one small town in the midwest where a serial rapist had escaped apprehension, the victim services organization organized women in the neighborhoods where the rapes had occurred to watch and protect all residences and to monitor police activity until the perpetrator was identified and charged.

In another community where a plea bargain was struck for a sentence of community service for a man who plead nolo contendere to a charge of killing his wife, the domestic violence program organized a court watch at the sentencing hearing; the judge refused to accept the plea and set the case down for trial.

In one metropolitan area the victim services agency which serves both sexual assault survivors and battered women organized the women's clubs to write letters to the editor of the local newspaper weekly, demanding that all public agencies prioritize work to end violence against women.

In several communities advocates are organizing co-workers to intervene to protect victims of domestic violence against stalking and assault at the workplace.

In another city, a victim services agency organized tenants of a landlord who was known for sexual harassment and violence against women tenants to demand administrative hearings and to facilitate evidence presentation both on housing code violations and on the landlord's application for a liquor license; the actions were successful in creating significant public awareness of the landlord's practices and economic disincentives to violence.

Space constraints preclude further enumeration of organizing activities.

II. Other Victim Services Initiatives

A. Essential components of core advocacy initiatives

Back-up direct services. For each victim who participates in either the civil or criminal justice system, services offered by sexual assault centers and domestic violence programs are frequently critical. Victims sometimes become reluctant or unable to participate in the justice-seeking efforts of the community if their basic needs are not met during the pendency of civil and criminal proceedings. These essential supportive services include temporary housing, food, clothing,

counseling, transportation, child care, safety planning, relocation/displacement resources, employment development, etc.

As the justice system upgrades intervention against violence against women as a consequence of VAWA and Crime Control Act funding, the need for both advocacy and back-up supportive services will increase exponentially.

Culturally sensitive advocacy. Culturally sensitive practice should be woven into every advocacy initiative and justice system intervention. Advocates in many communities are just beginning to design program guides for enhancing sensitivity to cultural diversity and for constructing effective responses to domestic and sexual violence for victims of diverse cultural identities. Issues of race, language, religion, cultural norms, class, kinship networks, and perspectives on state intervention and the efficacy of participation in legal process, all must be factored into crafting culturally sensitive practice in advocacy and justice system work.

This work is regularly confounded in the justice system because many assailants exploit cultural stereotypes that glorify the subordination of women and use arguments of cultural relativism as justification for their violence. They seek deferral to so-called cultural imperatives in attempting to avoid legal and social sanctions for their violence against women. Advocates and justice system personnel must eliminate practices that embrace notions of cultural relativism.

Beyond this, advocacy and justice system interventions should furnish all critical written material in the language of the victim and should also make educational/instructional material available by audiocassette in the victim's first language. Translation services must be available and both culturally sensitive and informed about domestic and sexual violence and its impact on victims. These translation initiatives are sorely limited in scope and sophistication in most jurisdictions.

Advocacy for immigrant and refugee women is a critical component of culturally sensitive practice. Legal issues related to immigration or achieving refuge in the United States are significant for battered women. Welfare reform proposals being considered in Congress bode ill for battered women who are immigrants or refugees. Few local victim services programs are expert enough to assist these battered women through the complicated morass of immigration law and practice. Specialist advocacy projects are strained beyond their resources. Training and technical assistance projects should be launched to assist advocates across the country to meet the safety and justice needs of immigrant and refuge battered women.

Advocacy with disabled/challenged victims. With the enactment of the Americans with Disabilities Act of 1990, P. L. 101-336, victim services programs began to make structural change in offices and shelters to accommodate victims with physical disabilities, to develop communications systems for advocacy with the deaf or hearing impaired clients, to create effective programs for mentally ill and retarded victims, etc. Many victim services programs are still in the process of becoming knowledgeable about disabled/challenged victims and the best methods for delivering services and advocacy. The justice system in many communities has similarly undertaken to eliminate barriers to access. Yet, few actors in the justice system and victim services are clear about the ways that the disability may have exacerbated the danger to victims who are disabled and almost invariably has impeded access to justice and safety. Protocol or practice guidelines are not in place. Training is limited. Resources are few. And consciousness about disability and domestic or sexual violence is attenuated. Advocacy projects can reverse this picture; facilitating justice and restoration for victims who are disabled.

Rural advocacy projects. Rural advocacy projects have frequently targeted three critical barriers to justice for victims of domestic and sexual assault; transportation, communication and housing. Survivors often must travel enormous distances to access justice, services and safe housing. In some rural communities, advocates have organized transportation relay networks, sometimes where law enforcement conveys victims through their jurisdiction to the next where another department picks up the victim, etc. and sometimes the networks have been composed of volunteer advocates who similarly relay survivors. There are costs associated with this transportation: recruitment, training, insurance, gasoline allotments and coordination. Relocation costs for victims who elect to separate from the batterer or leave the community where the sexual assault occurred can be high in rural communities.

Communication is also complicated in rural communities. Victims who are resource poor cannot afford to use the telephone to conduct the business of getting safe and participating fully in the justice system. 800# access to victim services, courts and justice system actors is essential and phone cards with units of service can be a useful supplement for rural victims. Telephone privacy is more difficult in rural communities because of the limited number of pay phones and locations where victims can seek refuge. Thus, education and resources to exercise telephone privacy are helpful. Organizing a pool of volunteers in rural areas may also rely more heavily on telephone communication than in urban settings. Call forwarding to hotline volunteers in remote areas may be costly.

Training and networking among advocates on the law, practice and advocacy is expensive in rural parts of the country. It is sometimes less expensive to use satellite conferencing at local public schools than to bring advocates across large distances for monthly meetings on practice problems and legal updates. But this bears a significant price tag. Rural advocacy projects may encounter justice system personnel who are less informed about law and intervention against violence against women than their urban counterparts due to lack of access to information. Rural justice system personnel may likewise prefer to upgrade their knowledge base and skills through informal sharing; therefore it is incumbent upon advocates to access state-of-the-art materials and facilitate improved practices by providing information in individual encounters with key professionals in the justice community, which is a significant drain on advocate resources because this method is labor-intensive and time-consuming.

Advertising of available crisis services is also a problem in rural communities, requiring the purchase of print and broadcast notice of services when the media has exhausted its public service generosity.

Emergency housing in confidential, protected locations is also difficult in rural communities where everyone knows everyone. Thus, rural programs may have difficulty identifying safehouses in home communities because of the elevated risk to the host family. Recruiting, training and sustaining a network of safehomes can be costly. Furthermore, rural victims may have responsibilities to farm animals and crops which preclude relocation. Strategies must be devised to create safety in their own homes or with nearby families.

Advocacy in custody and child protective services proceedings. Many battered women and parents of children who have been sexually abused are unable to afford counsel and must represent themselves in custody and visitation disputes. Custody proceedings may be the most acrimonious in family law. And the stakes are very high for battered women and protecting parents who understand that limiting access of the perpetrator to the child is essential for the

safety and well-being of the child, as well as for the abused or protecting parent. Custody evaluators, guardians ad litem, mediators, judges and attorneys are often ignorant about the nexus between domestic violence or sexual assault of the mother and the risk posed to the child by the same perpetrator. Few understand that unless the child is protected by the custody award, the risks of parental abduction by either parent or hostage-taking by the perpetrator are elevated. They frequently do not screen for abuse, disbelieve the accusing parent, are not aware of specialized practices for professionals in these cases, have not considered the breadth of protective provisions that might be imposed on a custody order and conclude that the "friendly parent" and "continuing contact" presumptions in the law are to be weighed more heavily than violence when crafting custody awards. Advocacy is critical to assist abused and protecting parents in critical thinking and strategic planning about the process and desired outcomes of custody disputes. Advocacy also is vital both to inform and persuade the actors in the custody arena about domestic and sexual violence, the risk posed to children and parents, and effective protective measures that can avert future violence and assure custodial care in a nurturing, stable, protective environment. Advocates may also assist the courts in developing protocols for custody practice and abduction prevention in the context of domestic and sexual violence.

Because the numbers of abused and protecting mothers unable to access representation are so high, victim services agencies in some locales have not been able to meet the demand to provide individual advocacy for each woman. To assure justice, advocates have organized custody clinics in which trained volunteers, law students, pro bono attorneys and advocates have educated groups of custody-seeking victims and assisted them in filing and preparing for dispute resolution.

While achieving a custody order tailored to the specific protection needs of the adult victim and children does not guarantee that the abuser will refrain from criminal conduct, both anecdotal and empirical data suggest a reduction in violence and abduction in those cases where careful attention has been paid to safeguarding the abused adults and children.

Similarly, when child protective services is involved, protecting parents without resources find themselves unrepresented in neglect, dependency and abuse proceedings, while the child abusers are entitled to representation. And when the battered woman is charged with abuse, herself, or with failure to protect, she often finds that appointed counsel is unaware of the relationship between the domestic violence and her conduct. In whichever circumstance the battered woman is in when she is brought into the child protective services arena, advocacy is essential to assist the battered mother in assessing her situation and creating feasible plans to protect the abused child or to stop any abuse she may have been inflicting. Otherwise, she and the children may face long periods of separation or return to a family life fraught with great peril for both the mother and child. Commentators and advocates agree that the best way to protect abused children is to protect their abused mothers; by availing battered mothers access to legal protections and supportive services in the human and victim services communities, the risks posed to the abused children of continuing maltreatment are significantly reduced.

Advocacy for battered women charged with crimes. Battered women are also defendants in the criminal justice system, charged with a wide range of crimes from shoplifting to homicide. Battered women sometimes are coerced into criminal conduct by their abusers; forced to write bad checks, purchase controlled substances, engage in prostitution, convert food stamps into cash, complete fraudulent loan applications, steal to clothe their children, etc. Other battered women who have fought back to escape from a batterer or to stop his violence have been

arrested and charged with assault or homicide. Still others are charged with failure to protect their children from the sexual and physical violence of the batterer. Yet others are charged with the crime of falsely reporting to law enforcement when they refuse to testify against the perpetrator or recant. Battered women defendants require both advocacy and representation. Some victim services programs have undertaken advocacy for these defendants during the pendency of prosecution, during incarceration and through post-dispositional proceedings. Since many battered women defendants are mothers, advocates also work in the family law sector, particularly to assure custodial access and to prevent the abuse and neglect of dependent children while the mother is incarcerated.

Research and evaluation. There has been little research on the efficacy of victim services work in the justice arena. Each undertaking should include an evaluation component, measuring whether the safety, autonomy and restoration (or quality of life) of victims has been improved by advocacy and whether perpetrators have stopped their violence, divested themselves of their perceived "ownership" of victims and acted accountably in light of the sanctions or restraints imposed by the courts.

B. Supplemental advocacy initiatives

Full faith and credit initiatives. Historically, civil and criminal protection orders have been enforceable in the state where the order was issued. The full faith and credit provisions of VAWA require change in law enforcement and court practice. Although there is no requirement that orders issued from other states be entered into a registry to be enforceable, state law may require registration prior to enforcement. Advocates may elect to work with law enforcement and the courts to establish a registry for out-of-state protection orders. This may entail local registries in each judicial district or a statewide registry. BWJP has prepared a certification form to be attached to the front of protection orders sought to be enforced in a foreign state; the plan is to achieve universal usage of the form so that law enforcement and courts in the non-issuing state will readily be able to ascertain the validity and enforceability of an order. Advocates may wish to persuade courts of the utility of incorporating this form on the cover of all issued orders. Beyond this, advocates may decide to develop training packets for police, prosecutors and courts on the complexities of enforcing an order from another state, particularly when orders from the home state are much narrower in scope, consistent with more limited remedies in the law of the enforcing state. Since violation of a protection order may now also give rise to federal criminal prosecution, advocates may choose to work with federal and state prosecutors to develop procedures to avert double jeopardy and to avoid litigation relating to conflicts of law. Once practice agreements are in place in the local jurisdiction and with the appropriate federal district court, these problems with full faith and credit implementation may disappear. Thus, this initiative may accomplish its purpose and require minimal on-going advocacy within two (2) years.

Advocates working with law enforcement. Some victim services programs place advocates in local precincts to advise battered women about legal options and community resources, to advise officers about safety concerns of victims and the development of safety plans, to ride along during domestic calls, to conduct follow-up with victims in the days immediately afterwards, to provide translation services, to upgrade culturally sensitive practice by law enforcement, to monitor police practice, to advocate for victims who might not otherwise be served and to offer suggestions for systemic reform. Often advocacy staff are not housed in police stations but engage in many of the same activities as their on-site counterparts.

Advocates working with prosecutors. Similar community-based advocacy projects have been established in prosecutors' offices across the country. Whereas advocates employed by the prosecutor often engage in case management and investigation, community-based advocates act on behalf of victims to seek systemic reform and to remove those roadblocks to justice that current practice may be erected.

Victim advocates within probation and parole offices. Few probation and parole offices in the country employ staff to undertake victim advocacy for the partners and victims of those serving probation or parole. Officers report their frustration with victims or partners who call the probation or parole worker and complain about or report recidivism by the supervised perpetrator but ask that the officer not disclose that the call was made and not take any action to revoke the offender's status. If the officer does not act and the victim or partner is injured, that officer may find him or herself without a job and personally liable for failure to act. However, they are also aware that when they disregard the request for confidential communications, victims may not call back and have the opportunity to strategize about their safety and otherwise benefit from the information and referral that officers can give. Community-based victim advocates, working with probation and parole offices, can remedy this conflict by offering confidential services to victims and assisting victims in reporting recidivism by offenders in a manner and with a plan that safeguards the victims against retaliation. Officers learn of violations without compromising victims or their relationships with probationers or parolees.

III. Law Enforcement and Prosecution Initiatives

Law enforcement and prosecution initiatives are each prioritized for 25% of the state's funding under VAWA each year. The state may subcontract with law enforcement or prosecutors for individual agency initiatives or for collaborative work with other sectors of the justice system and victim services. VAWA specifies that Law Enforcement and Prosecution Grants may be used for any of the following seven purposes (See Proposed Regulations, Section 90.12):

training law enforcement officers and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault and domestic violence;

developing, training, or expanding units of law enforcement officers and prosecutors specifically targeting violent crimes against women;

developing and implementing more effective police and prosecution policies, protocols, orders, and services specifically devoted to preventing, identifying and responding to violent crimes against women;

developing, installing, or expanding data collection and communication systems, including computerized systems, linking police, prosecutors, and courts, or for the purpose of identifying and tracking arrests, protection orders, violations of protective orders, prosecutions, and convictions for the crimes of sexual assault and domestic violence;

developing, enlarging, or strengthening victim services programs, including sexual assault and domestic violence programs, developing or improving delivery of victim services to racial, cultural, ethnic, and language minorities, providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted, and increasing reporting and reducing attrition rates for cases involving violent crimes against women;

developing, enlarging, or strengthening programs addressing stalking; and

developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian Tribes in dealing with violent crimes against women, including the crimes of sexual assault and domestic violence.

Police departments might look to innovative law enforcement initiatives in Chicago (tracking and internal discipline), Philadelphia (specialized officers, tracking, electronic systems, follow up teams, protocol, leadership), Seattle (electronic systems, training, community policing, culturally sensitive and disability-friendly work, leadership), Denver (tracking, training, culturally sensitive practice, leadership), San Diego (specialized unit, training, community-organizing, investigation, follow up, leadership), Duluth (tracking, training, culturally sensitive practice, leadership), Nashville (specialized unit, training, investigation and follow up), Dallas (specialized unit, training, policy, investigation), Alexandria, VA (tracking, monitoring, investigation), Massachusetts (statewide registry), and National Organization of Black Law Enforcement Executives, NOBLE (policy directives).

Prosecutors may look to innovative prosecution practice in the following communities for effective intervention against domestic and sexual violence: Philadelphia (specialized unit, court school, training, investigation, victim-affirmative, leadership, stalking), City of San Diego (largest specialized unit in the country, training, investigation, prosecution without victim testimony, victim-affirmative, policy, leadership, media work, coordination, sentencing stalking, research), Duluth (specialists, training, investigation, tracking, policy, culturally sensitive, victim-affirmative, sentencing), Dade County (specialists, training, investigation, tracking, culturally sensitive), Louisville (pre-trial services, specialized unit, leadership), Baltimore (specialized, training, investigation, tracking, leadership), ND Attorney General (training, policy, leadership), City of Los Angeles (specialized unit, training, investigation, policy, victim-affirmative, culturally sensitive, coordination, community organizing, stalking), Quincy, MA (specialized staff, training, sentencing, policy, leadership), DC (specialized staff, training, policy-making, leadership), Honolulu (specialized staff, training, culturally sensitive, coordination), and San Jose (specialized unit, training, policy-making, culturally sensitive practice, coordination, leadership).

Whatever the initiative undertaken by law enforcement and prosecutors, a careful assessment should evaluate whether victim safety is the overriding purpose of all interventions. Victim safety, more than perpetrator accountability, more than improved arrest rates, and more than successful prosecution, must be the guiding principle in every policy, practice guide, decision, strategy, publication, training, and media contact of these justice agencies in their efforts to end violence against women.

Areas in which victim safety initiatives are weakest in the justice system are: the lack of victim notification regarding charges, bail and conditions thereon, the release or escape of the assailant from custody, victim rights and remedies; the absence of safety planning at every encounter with justice system personnel; the release of violent perpetrators ROR instead of setting cash bail and affixing conditions to mitigate the continuing risk posed by the offender; the failure to charge the offender with all crimes committed against the victim; foregoing sentencing hearings and making recommendations that do not include protective provisions to maximize victim safety; the practice of sending perpetrators to treatment instead of evaluating whether incarceration might be necessary to protect foreseeable victims; the failure to identify the indicia of lethality and then to revise victim protection provisions in light thereof; and the relegation of

victim restitution to lowest priority work. Projects funded under VAWA should squarely address these safety issues.

IV. Non-prioritized Initiatives

VAWA directs that 75% of the funds to be allocated by states for T-Grants must be directed, without duplication, to victim services, law enforcement and prosecution, in equal shares. However, the remaining 25% of the funds available for subgrants are not specifically earmarked.

- All of this quarter could be allocated to additional victim services;
- All could be directed to the Supreme Court to underwrite the costs of a staff position to coordinate court systems related to violence against women;
- All could be earmarked for judicial, prosecutor, law enforcement, advocate training;
- All could be distributed for legal representation;
- All could be allocated to local or state coordinating councils;
- All could be targeted at a domestic and sexual violence death review technical assistance project that would offer hands-on technical assistance to local jurisdictions investigating system changes to reduce the death rate of victims;
- All could be devoted to establishment of statewide registries for civil and criminal protection orders;
- All could be dedicated to automation of court records or electronic interface between courts and law enforcement;
- All could be allocated to statewide coalitions and criminal justice associations for training and technical assistance projects;
- All could be directed toward development of statewide policies on domestic violence and sexual assault;
- Or this quarter could be divided between and among all components of the civil and criminal justice systems to bring about a cessation of violence against women.

VI. Critical Evaluation and Priority-Setting for VAWA Funding

This paper has offered an abundance of information about possible initiatives that might be funded by VAWA T-Grants. Having been inundated by this recitation, the reader might fairly ask -- "So how does one choose? How does one prioritize? How does one strategically identify a 5 year plan?"

Possibly the first step for victim services agencies is to conduct an audit of victim advocacy services now available in the state.

What's in place? Which of the core advocacy initiatives are operational? Which are less available? What is the demand for these services? What are the funding sources and are they stable? Are each of the core initiatives uniformly available in all geographic regions in the state? Which not? And are core advocacy initiatives available to underserved populations? With the broad few that emerges, where are the gaps in service?

The second inquiry might be -- Are there compelling circumstances that suggest a particular type of victim advocacy should be prioritized? How compelling? Does your organization believe that it must address whatever externally-driven circumstance confronts you or can you ignore it without adverse impact?

Has there been significant statutory reform within the past year related to violence against women? And does this change require concerted implementation effort?

Has the newly-elected governor identified particular sectors of the justice community for improvement?

Have battered women sought one type of advocacy rather than another? What is the unmet need expressed by battered women?

Has the board of your state coalition prioritized the establishment of a statewide legal advocacy training and technical assistance project?

Have the judges in your state adopted a one year plan to modify all criminal and civil legal process to assure access and justice to battered women and they want your organization to partner with them in this work?

Is there a public outcry to remedy deficiencies in certain justice practices? Is the media insistent upon change?

Has there been a law suit against a police department, compelling change in law enforcement practice?

Has it become apparent that advocates working in the justice system require significantly more training, skills and resources to effectively perform their jobs?

The third question might be -- Does this initiative materially advance the safety of battered and sexually assaulted women and their access to justice? More so than others? Additional questions arise from this threshold question about the impact of the initiative on battered women or on sexual assault survivors.

Might battered women and their children be put at greater risk by implementation of this initiative?

What have survivors said about the initiative?

What is the risk that this project can be used against battered and sexually abused women? Can these risks be mitigated? How?

Weighing the benefits and risks of one initiative among other possibilities, where does this initiative fall in the range of risk to benefit?

Does this work expand the capacity of our movement to end domestic and sexual violence against women?

Does this initiative facilitate the public leadership of battered women and advocates in statewide work to end violence against women?

A fourth question is -- Does this initiative fit with our vision about the direction that domestic violence and sexual assault advocacy services should take over the course of the next five years?

A fifth set of questions might be -- How achievable is success and will success broker more funding to sustain this work? Will accomplishments be measurable? Will they be well-received? Is this project replicable? Will Congress want to appropriate full funding of VAWA to continue or expand upon this work?

Taking all of the above into consideration, a state coalition should then establish several priorities for victim services funding at the local level, several priorities for state coalition projects, and several priorities for other statewide policy-making activities.

Thereafter, time permitting, the coalition should similarly engage in critical thinking about law enforcement, prosecution and other potential projects that could be funded by VAWA.

The coalition might wish to exam the "fit" between the priorities it has identified for victim services, law enforcement, prosecution and other justice system intervention projects. In all likelihood, the more that they look like a package of funding possibilities that complement each other and that enhance coordinated response to domestic and sexual violence in the state, the more persuasive they will be and the greater the chances that the coalition plan will be embraced by the state agency and the other sectors of the justice community. But where "fit" is not apparent and the coalition's priorities are otherwise compelling, the coalition should be prepared to demonstrate the efficacy of its proposals.

The last task may be to develop a marketing plan.

Conclusion

Time is of the essence. State application kits for VAWA T-Grants will likely be distributed in March, 1995. The time-frame for development of the state plan and submission of the grant application will be brief. State coalitions and local domestic violence and sexual assault programs must immediately commence the process of identifying and prioritizing projects for funding in FY '95. While the state plan may be modified in coming grant years, the decisions made this first grant year will likely have significant ramifications for patterns of distribution over the next 5 years. It's time to start visioning, identifying priority justice work and constructing marketing strategies.

B.J. Hart justproj@aol.com

Custody & Visitation Decision-Making When There Are Allegations of Domestic Violence

Domestic violence law; emerging mandates for judicial deliberation in custody and visitation matters.

By early 1995, 44 states and the District of Columbia had enacted custody statutes requiring courts to consider domestic violence when crafting custody and visitation awards. (Hofford et al, 1995; Lemon et al, 1995; Zorza, 1994) Most of the codes have been amended within the last 6 years; in some jurisdictions there may be a lag between statutory mandates and practice. (Hofford et al, 1995) Thirty-five states include domestic violence among the "best interest" factors to be evaluated by courts in determining custody and access awards. Twenty-eight states and the District of Columbia incorporate provisions directing courts to craft custody awards to protect

the child (or the child and the abused parent) from future harm. (See *An Analysis of Provisions Concerning Domestic Violence In State Custody Statutes*. at p. [hereinafter *Chart*.]; Hart, 1992) Forty-two states have included custody provisions in civil protection or restraining orders. (See BAR GRAPH *Child Custody Provisions Related to Domestic Violence*, at p.).

Purpose of statutory reform.

Safety for abused adults and children is the overriding purpose for statutory reform related to custody and visitation issues. To the extent that the imposition of safeguards limit contact and delay relationship-building with the battering parent, the domestic violence-relevant codes direct that the "contact" and "relationship" objectives of custody and visitation awards be deferred until they can be undertaken safely for both parents and children. The safety and well-being of the child and abused parent are paramount. (See *Commentary of Model Code on Domestic and Family Violence* § 401 & 402 [hereinafter "Model Code"]; LA Code, statement of legislative intent. LA REV. STAT. ANN. § 9:361; Lemon et al, 1995; Saunders, 1994)

Sole custody (v. joint/shared parenting) in the context of domestic violence.

Erosion of the statutory preference for joint custody, based on the danger posed by batterers to children and battered women has occurred. (Model Code § 401; see also ABA Model Joint Custody Statute, 15 Fam. L. R. (BNA) 1494 at 1495, 1989; Hofford et al, 1995; Klein & Orloff, 1993)

There is an emergence of a presumption against or a bar to an award of sole custody to battering parent. (Model Code § 401 & 403; See *Chart* at p.)

Best interest factors expanded to include domestic violence.

The elements of the "best interest of the child" factor have been expanded in 35 jurisdictions to include a consideration of domestic violence as a factor that is contrary to the best interest of the child. (Model Code § 401 & 402 (b); See *Chart* at p.)

Statutory presumptions.

Various rebuttable presumptions related to domestic violence have been created in statutory and case law (Model Code § 401 & 402; accord, House Concurrent Resolution 172 (10/25/90) Rep. Constance Morella), but few offer guidance on the type and weight of evidence that may be required to successfully rebut the presumption (*Cf.* AZ, LA, ND, PA, WI)

Presumption requirements.

Some codes delineate the standard of proof (ND, LA) or the type of evidence that must be adduced (DE, LA, ND & WI) to overcome the presumption or to obtain modification of an order entered pursuant to the presumption.

Weight of presumptions and best interest factors relating to domestic violence.

However, guidance as to how the domestic violence best interest element and the various presumptions are to be weighed against the traditional "best interest" elements is rarely offered by statutes or case law. (*Cf.* Model Code § 402; FL, ID, LA, ND)

Mandates to consider domestic violence and prohibitions of awards.

Many state codes compel state courts to hear evidence and make findings on domestic violence. (Lemon et al, 1995; Klein & Orloff, 1993) Several prohibit awards to perpetrators when there has been a determination of domestic violence. (Hofford et al, 1995; Lemon et al, 1995)

Relationship between protection order custody provisions and subsequent custodial awards; is the former binding or even/merely advisory in custody proceedings? And vice versa.

Statutes are silent on the weight that custody judges must accord previously- issued custody awards in civil restraining/protection orders. Case law has only begun to emerge on this issue. Most reported decisions conclude that the protection order provisions are advisory, but not binding. (*Cf. Dye v. McCoy* - 423 Pa. Super. 334, 621 A. 2d 144 (1993).) However, some protection order statutes do give explicit direction to the protection order judge on the weight of previously-issued custody orders. (Model Code § 404; NJ, PA)

Protective provisions in custody orders tailored to safeguard abused parent and children from recurring violence; safety plans, protected access provisions, supervised visitation centers, court contracts with third-party supervisors and denial of custodial access to battering parents.

Codes in more than half of the states specifically direct the courts to protect the child and/or the abused adult from further harm in crafting custody or visitation awards. (See *Chart* at p. Model Code § 405 and 406; Hofford et al, 1995) The ABA report *The Impact of Domestic Violence on Children* recommends, "Where there is proof of domestic violence, the court should issue very specific, highly structured custody and visitation orders. The court should leave no room for ambiguity or negotiation."(Davidson, 1994)

Custody mediation, evaluation and guardian ad litem procedures related to domestic violence.

A limited number of custody mediation codes explicitly address domestic violence and provide safeguards for abused adults and children therein. (Model Code § 407 & 408; CA, NJ) However, mediation programs and associations throughout the country have initiated guidelines to assure safeguard abused adults and the authenticity of the mediation process in the context of domestic violence. (Academy of Family Mediators, 1995; Salem & Milne, 1995; Maine Court Mediation, 1992) Custody evaluators and guardians ad litem have begun to develop guidelines to better inform their practice in the context of domestic violence (FL & MN draft GAL guidelines; Garrity & Baris, 1995; Superior Ct., Santa Clara Cty, 1993; Hofford et al, 1995)

Requirements to notify courts of all other actions related to children in the context of domestic violence.

Significant risks to children in the context of domestic violence arise when courts issue orders that impinge on the safety and well-being of children and their abused parents without the benefit of knowledge of current or pending matters related to the custody and protection of these victims. Therefore, court practice guides and policy statements (Davidson, 1994; NCJFCJ Model Code § 304) have emerged that place the burden on the parties to inform courts of any matter related to domestic violence or impinging on the minor children so that judicial decisions can be informed.

Statutory requirements for supervised visitation and visitation centers.

In recent years, state legislatures, policy-makers and numerous local courts have provided for supervised visitation by responsible third parties and supervised visitation centers to protect abused parents and children of domestic violence from the risks posed by batterers during custodial access. (CA, DE, IL, LA, MA, MI, MN, MO, NJ, PA; Model Code § § 405.2.b & 406; Lemon et al, 1995; Davidson, 1994; Klein & Orloff, 1993; and guidelines for visitation centers in the context of domestic violence are now being drafted by the MA Governor's Commission on Domestic Violence.)

Change of circumstances, relocation by abused parent and other post-dispositional issues.

The occurrence or recurrence of domestic violence should be deemed a material change of circumstance giving rise to modification of an existing custody order. (Lemon et al, 1995; Davidson, 1994, NCJFCJ Model Code § 404.) Case law and policy has begun to consider domestic violence as a factor that may be weighed in favor of the battered custodial parent seeking to relocate out of the issuing jurisdiction. (Gruber v. Gruber, 583 A. 2d 434 (PA, 1990); Desmond v. Desmond, 509 N.Y.S. 2d 979 (NY, 1986); Jacoby v. Carter, 563 N.Y.S. 2d 344 (NY, 1990); NCJFCJ Model Code § § 402.3 & 403) A number of statutes provide for expedited review of custody and visitation awards when the child's or the abused parent's safety and well-being are jeopardized by the battering parent. (AZ, MN, NJ) By statute, case law and court practice in a few jurisdictions, judges have begun periodic review of custody orders to facilitate compliance with the protective provisions enumerated in orders. (OJG v. GWG, 770 S. W. 2d 372, (MO, 1989); NJ, PA; Lemon et al, 1995)

Parental abduction; UCCJA, PKPA, and change of custody

The nexus between domestic violence and parental abduction has been empirically confirmed in recent years. (Johnston, 1994; Grief & Hegar, 1992) Both battered and battering parents abduct their minor children, albeit for different reasons, the former to deprive the other parent of the child and the latter to protect the child or abused parent from further abuse. Statutes and court practice to prevent abduction and to mitigate against the danger posed to children by the battering parent and the abduction, itself, should be universally adopted. (Lemon et al, 1995; Davidson, 1994) Among these, state UCCJA codes should designate that domestic violence provide a basis for emergency jurisdiction, should be a defense to "unclean hands charges" and should create an exception to the affidavit requirement which includes the disclosure of past and current addresses of the child to the abusing parent. (Davidson, 1994; also see CA, Family Code § 3409)

Pro se parties in the context of domestic violence

Increasingly, parents are seeking resolution of custody disputes without the benefit of counsel. This is particularly problematic in the context of domestic violence since the level of conflict and the concomitant risk of violence is so high. In these circumstances, it has become necessary for judges to engage in fact-finding and case management activities, and some have begun to tailor court practices to more effectively and efficiently deliberate on orders designed to protect the party and children at risk of recurring abuse. (Hofford et al, 1995; Lemon et al, 1995, ME Court Mediation Service, 1992) Other communities have undertaken specialized domestic violence legal programs, pro bono projects or law school clinics to offer limited legal assistance and representation to abused adults seeking custody awards. (Hofford et al, 1995; Lemon et al, 1995; Davidson, 1994; Governor's Task Force, 1994)

Reference Materials

Academy of Family Mediators. "Mediation of Family Disputes Involving Domestic Violence." Report of the AFM Task Force on Spousal and Child Abuse (1995).

Davidson, H. **The Impact of Domestic Violence on Children: A Report to the President of the American Bar Association.** Washington, DC: American Bar Association (1994).

Garrity, C. & Baris, M.A. "Custody and Visitation: Is It Safe?" *Family Advocate*, Vol. 17, No. 3 (Winter 1995), at 40-45.

Governor's Task Force on Domestic Violence. **The First Report of the Governor's Task Force on Domestic Violence.** Tallahassee, FL (1994).

Grief, G. & Hegar, R. **When Parents Kidnap.** New York: The Free Press (1992).

Hart, B. "State Codes on Domestic Violence: Analysis, Commentary and Recommendations." NCJFCJ, 43 (4) *Juvenile and Family Court Journal* 29 (1992).

Hofford, M., Bailey, C., Davis, J., & Hart, B. "Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice." *Family Law Quarterly*, Vol. 29, No. 2 (Summer 1995).

Johnston, J. "Prevention of Parent or Family Abduction Through Early Identification of Risk Factors." Final Report of Stage 1, Part B, Identifying Risk Factors: The Interview Study (December 1994).

Klein, C. & Orloff, L. E. "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law," *Hofstra Law Review*, Vol. 21, No. 4 (Summer 1993), at 958-959.

Lemon, N., Jaffe, P. & Ganley, A. **Domestic Violence and Children: Resolving Custody and Visitation Disputes.** San Francisco, CA: Family Violence Prevention Fund (1995).

Maine Court Mediation Service. **Mediation in Cases of Domestic Abuse: Helpful Option or Unacceptable Risk.** Portland, ME: Maine Judicial Department (1992).

National Council of Juvenile and Family Court Judges. **Model Code on Domestic and Family Violence.** Reno, NV: NCJFCJ (1993).

Saunders, D. G. "Custody Decisions in Families Experiencing Woman Abuse." *Social Work*, Vol. 39, No. 1 (January, 1994), at 51-59.

Salem, P. & Milne, A.L. "Making Mediation Work in a Domestic Violence Case." *Family Advocate*, Vol. 17, No. 3 (Winter 1995), at 34-38.

Superior Court, State of California, County of Santa Clara. **Santa Clara County Family Court Services Police and Procedure Regarding Domestic Violence Issues** (1993).

Zorza, J. "How Abused Women Can Use the Law to Help Protect Their Children." In **Ending the Cycle of Violence: Community Responses to Children of Battered Women.** E. Peled, P. Jaffe and J. Edleson (Eds.). Newbury Park, CA: Sage Publications (1994), at 147-169.

BJH: Custody '95; Teleconf. 1

B.J. Hart justproj@aol.com

The following projects are a part of the Minnesota Center Against Violence and Abuse (MINCAVA):

[MINCAVA Electronic Clearinghouse](http://www.mincava.umn.edu/) (http://www.mincava.umn.edu/) | [The Link Research Project](http://www.mincava.umn.edu/link/) (http://www.mincava.umn.edu/link/) | [Violence Against Women Online Resources](http://www.vaw.umn.edu/) (http://www.vaw.umn.edu/) | [VAWnet \(Applied Research Forum\)](http://www.vawnet.org/) (http://www.vawnet.org/) | [Minnesota Rural Project for Women and Child Safety](http://www.mincava.umn.edu/rural/) (http://www.mincava.umn.edu/rural/) |

MINCAVA is directed by [Jeffrey L. Edleson, PhD](http://www.tc.umn.edu/~jedleson/) (http://www.tc.umn.edu/~jedleson/).

File Last Modified: Mon Mar 14 11:57:42 2005. Copyright © 1995 - 2005 Minnesota Center Against Violence and Abuse